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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

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## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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### STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of April 1992 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

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

The maximum allowable retail installment contract service charge applicable for calendar year 1992 pursuant to RCW 63.14.130(1)(a) is eleven point seven five percent (11.75%).

The maximum allowable retail installment contract service charge for the purchase of a motor vehicle pursuant to RCW 63.14.130(2)(a) is ten point two five percent (10.25%) for the second calendar quarter of 1992.

The maximum allowable retail installment contract service charge for the purchase of a vessel pursuant to RCW 63.14.130(3)(a) is ten point zero percent (10.00%) for the first calendar quarter of 1992.

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# WASHINGTON STATE REGISTER

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#### WASHINGTON STATE REGISTER

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

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## STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

### 1. ARRANGEMENT OF THE REGISTER

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.

1991 – 1992

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS		
For Inclusion in—	File no later than—			Count 20 days from—	For hearing on or after
91-16	Jul 10	Jul 24	Aug 7	Aug 21	Sep 10
91-17	Jul 24	Aug 7	Aug 21	Sep 4	Sep 24
91-18	Aug 7	Aug 21	Sep 4	Sep 18	Oct 8
91-19	Aug 21	Sep 4	Sep 18	Oct 2	Oct 22
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91-22	Oct 9	Oct 23	Nov 6	Nov 20	Dec 10
91-23	Oct 23	Nov 6	Nov 20	Dec 4	Dec 24
91-24	Nov 6	Nov 20	Dec 4	Dec 18	Jan 7, 1992
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92-01	Nov 21	Dec 5	Dec 19, 1991	Jan 2, 1992	Jan 22
92-02	Dec 5	Dec 19, 1991	Jan 2, 1992	Jan 15	Feb 4
92-03	Dec 26, 1991	Jan 8, 1992	Jan 22	Feb 5	Feb 25
92-04	Jan 8	Jan 22	Feb 5	Feb 19	Mar 10
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92-07	Feb 19	Mar 4	Mar 18	Apr 1	Apr 21
92-08	Mar 4	Mar 18	Apr 1	Apr 15	May 5
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92-23	Oct 21	Nov 4	Nov 18	Dec 2	Dec 22
92-24	Nov 4	Nov 18	Dec 2	Dec 16	Jan 5, 1993

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

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

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

**WSR 92-07-001**  
**EMERGENCY RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**

[Filed March 4, 1992, 4:51 p.m.]

Date of Adoption: March 4, 1992.

Purpose: To implement the provisions of the Washington Administrative Procedure Act.

Citation of Existing Rules Affected by this Order: Amending chapters 326-02, 326-08, and 326-20 WAC.

Statutory Authority for Adoption: RCW 39.19.030(7).

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

Reasons for this Finding: The agency's current practices are not in compliance with chapter 34.05 RCW, the Washington Administrative Procedure Act. Without an immediate change to the rules, the agency lacks authority to perform functions required by its enabling legislation.

Effective Date of Rule: Immediately.

March 4, 1992  
 James A. Medina  
 Director

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-02-010 **PURPOSE.** The purpose and intent of chapter 120, Laws of 1983, and of ~~((these rules))~~ Title 326 WAC is to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses ~~((in participating))~~ in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. This purpose will be accomplished by encouraging the full use of existing minority and women-owned and controlled businesses and the entry of new and diversified minority and women-owned and controlled businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-02-020 **APPLICABILITY.** ~~((This chapter))~~ Title 326 WAC applies to all applications for certification ~~((as a minority or women's business enterprise by the state of Washington))~~ and to all public works and procurement by state agencies and educational institutions: **PROVIDED,** That this ~~((chapter))~~ title does not apply where it is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state. In such a

case, the conflicting portions of this chapter are inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

AMENDATORY SECTION (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-02-030 **DEFINITIONS.** Words and terms used in ~~((these rules))~~ this title shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in ~~((these rules))~~ this title, or the context in which they are used clearly indicates that they should be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Certified business" or "certified" means a business or the status of a business that has been examined by the Washington state office of minority and women's business enterprises and deemed to be a minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), or a combination business enterprise (CBE).

(3) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

~~((3))~~ (4) "Combination ~~((minority and women's))~~ business enterprise" or "CBE" means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by ~~((this))~~ the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by ~~((this))~~ the office. The owners must be United States citizens or lawful permanent residents.

~~((4))~~ (5) "Commercially useful function" means the performance of real and actual services which are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

~~((a))~~ For purposes of certification, factors which may be considered in determining whether a business is or will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract, and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible, and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section, and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition

to those in (a) of this subsection which indicate that a supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials, or

(ii) Is the manufacturer of those goods or materials, or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser, and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm is not performing a commercially useful function include, but are not limited to, the following:

(A) A minimum amount of inventory is not maintained;

(B) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(C) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(D) The supplier does not take ownership of the product.

(5) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(6) "Contract by contract basis" means a single contract within a specific class of contracts.

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(8) "Director" means the director of the office of minority and women's business enterprises.

(9) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented.

(11) "Goods and/or services" means all goods and services, including professional services.

(12) "Joint venture" means a single enterprise partnership of two or more persons or businesses created to carry out a single business enterprise for profit for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and

share in profits and losses in proportion to their contribution to the enterprise.

(13) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office.

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents.

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise, and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington.

(16) "Office" means the office of minority and women's business enterprises of the state of Washington.

(17) "Procurement" means the purchase, lease, or rental of any goods or services.

(18) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(19) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents.

(21) (6) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

~~((22))~~ (7) "Conduit" means a ~~((WBE, MBE, or combination MWBE))~~ certified business which agrees to be named as a subcontractor on a contract in which such ~~((WBE, MBE, or combination MWBE))~~ certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other ~~((non-MWBE))~~ noncertified business.

~~((23))~~ (8) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(9) "Contract by contract basis" means a single contract within a specific class of contracts.

(10) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(11) "Corporate-sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.

(12) "Director" means the director of the office of minority and women's business enterprises.

(13) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(14) "Front" means a business which purports to be ~~((a) A WBE))~~ eligible for certification but is not in fact legitimately owned ~~((or))~~ and controlled by ~~((a man or men; (b) a MBE but is owned or controlled by a nonminority person or persons; or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3)))~~ minorities, women, or a combination thereof.

~~((24))~~ "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

~~((25))~~ (15) "Goods and/or services" means all goods and services, including professional services.

(16) "Joint venture" means a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(17) "Legitimately owned and controlled" means that minorities, women, or a combination thereof, own at least fifty-one percent interest in the business (unless the business qualifies as a corporate sponsored dealership under the provisions of subsection (11) of this section and WAC 326-20-050(4)); and the minorities, women, or combination thereof, possess and exercise sufficient expertise specifically in the firm's field of operation to

make decisions governing the long-term direction and the day-to-day operations of the firm.

(18) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

~~((26))~~ "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.

~~((27))~~ (19) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

(20) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.

(21) "Minority women's business enterprise" or "MWBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority women and is certified by the office. The owners must be United States citizens or lawful permanent residents.

(22) "Office" means the office of minority and women's business enterprises of the state of Washington.

(23) "Pass-through" means a certified business which buys goods from a noncertified business and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(24) "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(25) "Procurement" means the purchase, lease, or rental of any goods or services.

(26) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(27) "Regular dealer" means a certified business that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in

stock, and regularly sold to the public in the usual course of business.

(28) "Services," in the context of "goods and/or services," means all services including, but not limited to, client services, personal services, and purchased services as defined in RCW 39.29.006.

(29) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(30) "Supplier" means a manufacturer, regular dealer, broker, or packager that (a) provides or furnishes goods or materials; (b) performs a commercially useful function; and (c) is not considered a conduit, front, or pass-through.

(31) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

~~((28) "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080:~~

~~(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.~~

~~(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.~~

~~(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.~~

~~(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete.~~

~~(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.~~

~~(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.~~

~~(e) The minority or women owner(s) must have operational control, and as such have day-to-day management control of the dealership, with responsibility for sales, service volume, and profits.~~

~~(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as: Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.~~

~~(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.~~

~~(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.~~

~~(i) The minority or women owner(s) must be president of any corporation formed by the business.~~

~~(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:~~

~~(a) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements, and~~

~~(b) Control over management, interest in capital, interest in profit or loss and contributions to capital, equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The business must be independent and the minority and/or women owner(s) must possess and exercise the legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28).)) (32) "Women's business enterprise," "women-owned business enterprise," or "WBE" means~~



a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-040 PROHIBITED ACTIVITIES WITH REGARD TO CHAPTER 39.19 RCW. (1) RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

~~((1))~~ (a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter,

~~((2))~~ (b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule,

~~((3))~~ (c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter,

~~((4))~~ (d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise,

~~((5))~~ (e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise,

~~((6))~~ (f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter,

~~((7))~~ (g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter,

~~((8))~~ (h) To fail or refuse to comply with any provision of chapter 39.19 RCW or with a contract requirement established under this chapter.

(2) A certified business engages in prohibited activity when it fails to perform a commercially useful function on any public-sector contract or procurement. Failure to perform a commercially useful function occurs when a business:

(a) Functions as a conduit, or

(b) Functions as a pass-through; except brokers and firms operating in industries where such activity is common industry practice, e.g., insurance or real estate.

(3) A business that is deemed to be a switch business is also deemed to have engaged in prohibited activity.

## NEW SECTION

WAC 326-02-045 FACTORS CONSIDERED IN DETERMINING PERFORMANCE OF COMMERCIALLY USEFUL FUNCTION. (1) In determining the performance of a commercially useful function, factors which may be considered include, but are not limited to, the following:

(a) Whether the work to be performed by the business is within the scope of work included in the Standard Industrial Classification code(s) under which the business is listed in the directory of certified businesses published by the office or in the records of the office.

(b) Whether the business could be considered a conduit, front, or pass-through;

(c) Whether the minority and/or woman owner(s) has the skill and expertise to perform the work for which the business is being or has been certified;

(d) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and the principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible;

(2) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and execute material changes in the configuration of those goods or materials; or

(b) Prior to submitting an application for certification, secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(3) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained.

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners.

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user.

(d) The firm does not take ownership of the product.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-050 PENALTIES WHICH MAY BE IMPOSED. (1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this ~~(chapter)~~ title prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

(2) Penalties which may be imposed include one or more of the following:

(a) Withhold payment until the violation is remedied;

(b) Debarment from contracting with the state for up to one year, debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;

(c) Suspension of the contract;

(d) Termination of the contract;

(e) Immediate suspension of the certification of a certified firm;

(f) Payment of civil penalties of up to five thousand dollars for each violation or up to ten percent of the amount of the contract; or

(g) Decertification.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either served personally (~~served upon~~) or (~~transmitted~~) by certified mail, return receipt requested, to the person or (~~entity~~) business incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is (~~received~~) served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, (~~a contested case hearing~~) the office shall conduct a show cause review as outlined in WAC 326-20-171 or an adjudicative proceeding shall be conducted on behalf of the office by the office of administrative hearings (~~The administrative law judge shall issue a proposed decision, with findings of fact and conclusions of law, and a recommendation on the size and nature of the penalty to be imposed, if any. The director may adopt the recommendations of the administrative law judge, or affirm, or reduce the penalty, and shall issue a final order setting forth the civil penalty assessed, if any. The director's order may be appealed to the superior court within thirty days of service of the order. Any penalty imposed under this section is due and payable upon the issuance of the final order by the office, whether or not an appeal to superior court is pursued~~) in accordance with the provisions in chapter 326-08 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-060 FACTORS CONSIDERED IN DETERMINING PENALTIES. In determining the nature of the penalty and monetary amount, if any, of a penalty to be imposed, the factors which may be considered include, but are not limited to:

(1) The potential harm to the (~~MWBE or non-MWBE firm~~) certified or noncertified business;

(2) Potential harm to the state, due to delay or other problems;

(3) The potential for harm to the public;

(4) Whether the violation occurs in the context of particular contract;

(5) The stage or percent of completion of a contract at which the violation occurs;

(6) The timing of the discovery of the violation;

(7) The contracting history of the alleged violator;

(8) The extent to which the alleged violator has cooperated with the investigation;

(9) Whether there have been previous violations by the person.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-070 SUSPENSION OF CONTRACT. (1) The performance of a contract may be immediately suspended upon receipt of adequate evidence received by the office that the person has engaged in any of the prohibited activities described in WAC 326-02-040 and RCW 39.19.080.

(2) The decision of the office to suspend a contract is discretionary and will not be based on an unsupported allegation. Decisions to suspend shall be in the public interest, including the government's interest in doing business with firms that are responsible and (~~the interest~~) in preserving competition.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-080 SUSPENSION OF CERTIFICATION. The certification of a business (~~certified under chapter 39.19 RCW and these regulations~~) may be suspended for engaging in any of the activities prohibited by RCW 39.19.080 and WAC 326-02-040, upon a showing that immediate action is necessary to prevent harm to the public welfare.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-090 PROCEDURES FOR SUSPENSION, HEARING PROVIDED. (1) If the director determines that suspension of the certification of a (~~firm~~) business is necessary to prevent immediate harm to the public welfare, the (~~suspended person or firm~~) business will be notified by personal service or certified mail, return receipt requested, of the suspension and the reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended (~~person or firm~~) business will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the administrative law judge may recommend that:

(a) Suspension of certification remain in effect for up to one year;

(b) The suspension be removed; or

(c) That the (~~firm~~) business be decertified.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-010 PURPOSE. The purpose of this chapter is to effectuate the intent of chapter 39.19 RCW by providing procedures for (~~contested case hearings to review decisions of MWBE to deny or to revoke certification or to refuse to renew certification of a business~~)

~~as an MBE or WBE)) adjudicative proceedings to review decisions by the office to decertify or deny certification of a business and for the assessment of penalties.~~

AMENDATORY SECTION (Amending Order 85-6, filed 7/2/85)

~~WAC 326-08-015 ((TIME FOR APPEAL)) PROCEDURE TO REQUEST AN ADJUDICATIVE PROCEEDING. ((When an applicant has been denied certification, or when a MWBE's certification has not been renewed or has been revoked, the aggrieved party may request a hearing. The request must be made in writing and must be received by the office within thirty calendar days of the receipt of the decision denying certification, denying renewal of certification or revoking certification.)) (1) When business has been notified that it is to be decertified, denied certification, or assessed a penalty, the aggrieved party may request an adjudicative proceeding.~~

~~(2) The request shall be made in writing on 8 1/2" x 11" paper and shall set forth in detail the reasons the business believes the office's decision is in error.~~

~~(3) The request must be filed and served on the office within twenty calendar days from the service of the notice to decertify or deny certification, or assess penalties. Service must be made pursuant to WAC 326-08-070.~~

#### NEW SECTION

WAC 326-08-016 ACTION ON REQUESTS FOR ADJUDICATIVE PROCEEDING. (1) The office shall commence an adjudicative proceeding within ninety days after receipt of a request for an adjudicative proceeding.

(2) An adjudicative proceeding commences when the office notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(3) Within thirty days after receipt of the request for an adjudicative proceeding, the office shall examine the request, notify the requestor of any obvious errors or omissions, request any additional information the office wishes to obtain and is permitted by law to require, and notify the requestor of the name, mailing address, and telephone number of the office that may be contacted regarding the request.

#### NEW SECTION

WAC 326-08-018 PRESIDING OFFICER. The presiding officer in an adjudicative proceeding is the administrative law judge designated by the office of administrative hearings after notice of hearing is issued by the office.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-020 GENERAL PROCEDURES RULES. The provisions of chapter 10-08 WAC, (~~Uniform procedural rules for the conduct of contested~~

~~cases~~)) "Model rules of procedure" shall apply to hearings regarding certification (~~by OMWBE~~) or penalties by the office.

#### NEW SECTION

WAC 326-08-035 WHO MAY APPEAR. (1) Any party to an adjudicative proceeding may participate personally.

(2) The owner of the majority interest in a certified business is a necessary party and shall appear on behalf of the business.

(3) A former employee of the office shall not, at any time after severing his or her employment with the office, appear as a representative or expert witness on behalf of a petitioner in a matter in which he or she previously took an active part as a representative of the office, except with the written permission of the director.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-040 WHO MAY APPEAR ((AND PRACTICE)) IN A REPRESENTATIVE CAPACITY. ((No person other than the following may appear in a representative capacity governed by this chapter.))

(1) ((Washington lawyer.)) Any party to an adjudicative proceeding may be represented or advised by:

(a) An attorney ((at law entitled)) admitted to practice before the Washington state supreme court ((of the state of Washington.));

((2)) (b) Other ((lawyer. An)) attorney ((at law entitled)) admitted to practice before the highest court ((of record)) of any other state, if attorneys ((at law of the state of)) from Washington state are permitted to appear in a representative capacity before administrative agencies of ((such other)) that state, and if not otherwise prohibited by Washington law;

((3) Legal intern. A legal intern licensed to engage in the practice of law in the state of Washington under Admission to Practice Rule 9;

(4) Officer, etc. A bona fide officer, partner, or full-time employee of an association, partnership, or corporation appearing for the association, partnership or corporation;

((5) Former employee of OMWBE.)) (2) A former employee of ((OMWBE shall not, at any time after severing his or her employment with the office, appear, except with the written permission of the director as a representative or expert witness on behalf of a petitioner in a matter in which he or she previously took an active part as a representative of)) the office may appear only as permitted in WAC 326-08-035(3).

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-050 NOTICE OF HEARING. (1) When ((OMWBE)) the director receives a request for ((hearing.)) an adjudicative proceeding, the office will issue a notice ((of hearing will be issued)) to all parties and to the office of administrative hearings as provided by RCW ((34.04.090)) 34.05.434.

~~((+))~~ (2) Time. All parties shall be served with notice not less than twenty days before the hearing.

~~((2) Contents. The notice shall state the time, place, and nature of the hearing. Further, it shall state the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular statute and rules involved, and a short and plain statement of the matters asserted.)~~ (3) The notice shall include:

(a) The names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) The name of the proceeding;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes and rules involved;

(g) A short and plain statement of the matters asserted by the agency; and

(h) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with WAC 326-08-105.

#### NEW SECTION

WAC 326-08-051 ACCOMMODATIONS. (1) If limited English-speaking or hearing impaired parties or witnesses will be involved in an adjudicative proceeding and need an interpreter, an interpreter will be provided at no cost to the party or witness.

(2) If disabled parties or witnesses will be involved in a hearing and need accommodation of facilities or services, the office will provide reasonable accommodation.

(3) Any party or witness requiring an interpreter or accommodation shall notify the office at the time of the request for an adjudicative proceeding.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-070 SERVICE OF PAPERS. ~~((Any paper filed with the administrative law judge shall be served on all parties in the manner described in WAC 10-08-110.))~~ (1) All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by telegraph, by electronic telefacsimile transmission and same-day mailing of copies, or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company properly addressed and with charges prepaid. Service by electronic telefacsimile transmission shall be regarded as

completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

(4) Papers required to be filed with the office shall be deemed filed upon actual receipt during office hours at any location of the office. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

(5) Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by:

(i) Delivering a copy thereof in person to (names.); or

(ii) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(iv) Transmitting a copy thereof by electronic telefacsimile device, and on the same day, mailing a copy to each party to the proceeding or his or her attorney or authorized agent; or

(v) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-080 WHO MAY ISSUE SUBPOENAS. Subpoenas may be issued by the director of ~~((OMWBE, any OMWBE staff member designated by the director))~~ the office, the director's designee, the assigned administrative law judge, or an attorney ~~((at law who is the attorney))~~ for any party in the ~~((contested case))~~ adjudicative proceeding as provided in RCW ~~((34.04.105))~~ 34.05.446.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-090 SERVICE OF SUBPOENAS. Subpoenas may be served in any manner authorized by WAC ~~((10-08-110))~~ 326-08-070.

AMENDATORY SECTION (Amending Order 86-2, filed 8/11/86)

WAC 326-08-095 BURDEN OF PROOF AT A HEARING. (1) At a hearing held pursuant to WAC 326-08-010, the burden of proof shall be on the applicant to demonstrate ~~((why))~~ that the applicant qualifies for certification under chapter 39.19 RCW and Title 326 WAC.

(2) The administrative law judge ~~((may))~~ shall only admit and consider evidence on the issue of whether

~~((OMWBE's))~~ the office's decision to decertify or to deny~~((, revoke, or refuse to renew))~~ certification based on the information which was submitted or obtained by the office, was correct at the time it was made.

(3) The administrative law judge shall only admit and consider evidence related to the grounds specified in the request for an adjudicative proceeding.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-100 PROCEDURES FOR SETTLEMENT OR DISPOSITION WITHOUT A HEARING. ~~((With the approval of the administrative law judge,))~~ (1) Disposition may ((also)) be made of any ((hearing)) adjudicative proceeding by stipulation, consent order ((or)), default~~((Any person feeling aggrieved by the entry of an order of default may request the director to review the order by using the procedure outlined in WAC 326-08-130. The director will set aside an order of default only upon a showing of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar)), or summary judgment.~~

(2) Summary judgment will be considered pursuant to a time schedule set by the administrative law judge and may be decided without oral argument.

NEW SECTION

WAC 326-08-105 DEFAULT. (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the administrative law judge may serve upon all parties a default order with a statement of the grounds for the order.

(2) Within seven days after service of a default order under subsection (1) of this section, the party against whom the default order was entered may file a written motion to the administrative law judge requesting that the order be vacated and stating the grounds relied upon. The administrative law judge will set aside an order of default only upon a showing of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-110 ~~((PROPOSED DECISION= PREPARATION AND SERVICE))~~ INITIAL ORDER. (1) ((Preparation:)) Within ((a reasonable time)) ninety days after the conclusion of ((the hearing before an administrative law judge, the administrative law judge shall prepare a proposed order for signature by the director of OMWBE. The proposed order shall conform to the requirements of WAC 10-08-210.

(2) Service. A copy of the proposed order shall be sent, by certified mail, to all parties)) an adjudicative

proceeding or after submission of memos, briefs, or proposed findings that the administrative law judge may allow after the adjudicative proceeding, the administrative law judge shall prepare an initial order for signature by the director.

(2) The initial order shall include a statement of findings and conclusions and the reasons and basis on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The initial order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(3) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the administrative law judge shall not base a finding exclusively on such inadmissible evidence unless the administrative law judge determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(4) Where it bears on the issues presented, the experience, technical competency, and specialized knowledge of the office may be used in the evaluation of evidence.

(5) If an administrative law judge becomes unavailable for any reason before the entry of the order, a substitute administrative law judge shall be appointed by the office of administrative hearings. The substitute administrative law judge shall use any existing record and may conduct any further proceedings appropriate in the interests of justice. Any action taken by a duly appointed administrative law judge for an unavailable administrative law judge is as effective as if taken by the unavailable administrative law judge.

(6) The administrative law judge shall cause to be served copies of the order on all parties.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-120 OBJECTIONS TO ((PROPOSED DECISION)) INITIAL ORDER. ~~((Any party may make written objections to the proposed order. Any such objection must be served on the director and all other parties within ten days of service of the proposed order. An objection shall state specifically how the proposed order should be modified:))~~ (1) Any party to an adjudicative proceeding may file objections to an initial order pursuant to RCW 34.05.464.

(2) The objections to the initial order shall be filed with the director within twenty days of the date of service of the initial order. Copies of the objections to the initial order shall be served upon all other parties.

(3) The objections to the initial order shall specify the portions of the initial order to which objection is taken and shall refer to the evidence of the record which is relied upon to support each objection.

(4) Any party may file a reply to the objections to the initial order. The reply shall be filed with the director within ten days of the date of service of the objections to the initial order and copies of the reply shall be served upon all other parties.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-08-130 (~~DECISION~~) REVIEW OF INITIAL ORDER; FINAL ORDER. (~~The director will issue a written decision no later than thirty days from the date the proposed decision is served on the parties.~~) (1) An initial order will become final without further action by the office unless, within ninety days of the service of the initial order:

(a) The director determines that the initial order should be reviewed; or

(b) A party to the adjudicative proceeding files objections to the initial order as required in WAC 326-08-120(2).

(2) Upon the occurrence of either subsection (1)(a) or (b) of this section, the director will serve in writing a final order.

NEW SECTION

WAC 326-08-140 PETITION FOR RECONSIDERATION OF A FINAL ORDER. (1) Within ten days of the service of a final order or when an initial order becomes final, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition shall be filed with the office.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the director disposes of the petition for reconsideration.

(4) The petition shall be disposed of by the same person or persons who entered the final order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and remanding for further hearing by the administrative law judge.

(5) The director is deemed to have denied the petition for reconsideration, if, within twenty days from the date the petition is filed, the director does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(6) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (5)(b) of this section is not subject to judicial review.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 326-08-060 FORM OF PLEADINGS.

AMENDATORY SECTION (Amending Order 87-6, filed 8/27/87)

WAC 326-20-010 IN GENERAL. (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, or a combination minority and women's business enterprise or corporate-sponsored dealership as set forth in this title, is eligible to be certified by the state of Washington (~~as a minority business enterprise, a women's business enterprise or a combination minority and women's business enterprise.~~ A business owned and controlled by one or more minority females may be certified as both a MBE and a WBE).

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities and/or women who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race or sex.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-030 PROOF OF MINORITY STATUS. Each minority owner of a business applying for (~~MBE or combination minority and women's business enterprise~~) certification who is visibly identifiable as a minority shall submit with the MWBE application form a photograph or copy of documentation containing the owner's photograph. Each minority owner who is not visibly identifiable as a minority shall submit a copy of his or her birth certificate, tribal enrollment papers, or other document which shows that the owner meets the definition of "minority" as set forth in these rules. The final determination will be in the sole discretion of the office.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-040 PROOF OF WOMAN'S STATUS. Each woman owner of a business applying for certification (~~as a WBE or as a combination minority and women's business enterprise must~~) shall submit with the (~~MWBE~~) application form a copy of her birth certificate, valid driver's license, or other document

which shows that the owner is a woman. The final determination will be in the sole discretion of the office.

AMENDATORY SECTION (Amending Order 87-6, filed 8/27/87)

WAC 326-20-050 PROOF OF OWNERSHIP OF BUSINESS. (1) All minority or women owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, cancelled check used to purchase ownership, or other recognized proof of ownership. The ownership shall be real, substantial, and continuing, shall go beyond the pro forma ownership of the business reflected in the ownership documents, and shall be based on the owner's capital contribution. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements.

(2) In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority or women owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority or women owners' interest in the business was acquired.

(3) The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the following standards ((set out in WAC 326-02-030(28))):

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell, or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(c) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(d) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest shall be complete.

(e) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program which includes such features as capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(f) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-20-060 COMMUNITY OWNER-SHIP. An ownership interest arising in a nonapplicant spouse solely because of the operation of community property laws will not disqualify the applicant spouse from certification. Both spouses ((must)) shall certify that:

(a) Only one spouse participates in the management of the business.

(b) The nonparticipating spouse relinquishes control over his/her community interest in the subject business.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-070 COUNTING OWNERSHIP HELD IN TRUST. In determining whether the fifty-one percent ownership requirement is met, no stock or ownership held in trust shall be counted, except in the following cases:

(1) Where both the trustee and the beneficiary are minorities, or both are women, and the trustee meets the ((fifty-one percent)) control requirement; or

(2) Where the stock or ownership is held in an irrevocable trust for the benefit of a minority or a woman and the minority or woman beneficiary meets the ((fifty-one percent)) control requirement.

AMENDATORY SECTION (Amending Order 88-5, filed 5/31/88)

WAC 326-20-080 FACTORS CONSIDERED IN DETERMINING CONTROL. (1) The minority or woman owner(s) must possess and exercise managerial and operational control over the day-to-day affairs of the business.

(a) Managerial control. The minority or woman owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and direction of the firm.

(b) Operational control. The minority or woman owner(s) has the demonstrable ability to independently make basic decisions pertaining to the daily operations of the business.

(2) Whether a minority or woman owner meets the control requirement ((as defined in WAC 326-02-

~~030(29))~~ is determined on an application-by-application basis. Office management, clerical, or other experience unrelated to the firm's field of operations, is insufficient to establish that the business is legitimately owned and controlled.

(3) Factors which may be considered in determining whether the minority or woman owner meets the control requirement include, but are not limited to, the following:

~~((1))~~ (a) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;

~~((2))~~ (b) The financial interest and/or participation in any other business by any owner or key personnel;

~~((3))~~ (c) Past and current employment history of minority and women owners involved in the business;

~~((4))~~ (d) Members of the board of directors and corporate officers;

~~((5))~~ (e) Experience, training, and expertise of any owners and key personnel;

~~((6))~~ (f) Recent changes in ownership and/or control of the business;

~~((7))~~ (g) Financial obligation to and capital contributions from owners and nonowners of the business; and

~~((8))~~ (h) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business.

~~((9) Control of a corporate-sponsored dealership will be evaluated using the standards set out in WAC 326-02-030(28).))~~

(4) If persons who are not minorities or women are disproportionately responsible for the operation of the business, then the business is not eligible for certification.

(5) The requirements of this section shall not apply, if the business qualifies as a corporate-sponsored dealership under the provisions of WAC 326-20-050(4). Control of a corporate-sponsored dealership will be evaluated using the following standards:

(a) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(b) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(c) The minority or women owner(s) must have and exercise managerial and operational control over the day-to-day management of the dealership, with responsibility for sales, service volume, and profits.

(d) The minority or women owner(s) must have prior business or management experience relating to the business being entered into as an owner.

(e) The minority or women owner(s) must be president of any corporation formed by the business.

AMENDATORY SECTION (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-20-081 INTERTWINEMENT. To be eligible for certification, a ~~((firm))~~ business must be independent. ~~((Significant))~~ Intertwinement with a non-certified ~~((firm))~~ business may be grounds for denial or decertification of a ~~((firm))~~ business. The office will determine whether a ~~((firm))~~ business is ~~((significantly))~~ intertwined with a noncertified ~~((firm))~~ business by looking for factors which include, but are not limited to, the following:

(1) Shared ownership~~((:));~~

(2) Common directors or partners~~((:));~~

(3) Shared equipment, facilities, resources, or employees~~((:));~~

(4) Beneficial financial arrangements which indicate less than arms length transactions with a noncertified ~~((firm,))~~ business;

(5) Overdependency on a noncertified ~~((firm))~~ business to obtain and perform work~~((:));~~

(6) Such an identity of interest exists between the ~~((firm))~~ business seeking certification and a noncertified ~~((firm))~~ business that an affiliation may be presumed~~((:));~~ and

(7) The degree to which financial, equipment, leasing, business and other relationships with noncertified ~~((firms))~~ businesses vary from normal industry practice.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-092 SMALL BUSINESS CONCERN REQUIREMENT. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW and these regulations, ~~((in order to be entitled to certification under chapter 39.19 RCW, a firm))~~ a business must qualify as a small business concern ~~((as defined in WAC 326-20-093))~~ to be eligible for certification or recertification.

(a) Except as otherwise provided in WAC 326-20-096 (for certain federal projects), a small business concern is a business which is independently owned and operated, is not dominant in its field of operations, and which does not exceed the size limitations as set forth in the current table of Standard Industrial Classification (SIC) codes and corresponding industry size standards as adopted by the United States Small Business Administration in Title 13 Code of Federal Regulations, Part 121, on file in the office.

(b) The number of employees or amount of annual receipts listed as the size standard for each SIC code indicates the maximum allowed for a business (including its affiliates) to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern shall be, whenever possible, based on criteria that is consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations.

(2) A ~~((firm))~~ business which exceeds the small business size limits after certification by the office shall be subject to decertification.



AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

~~WAC 326-20-094 ((APPLICATION OF SIZE STANDARD)) ASSIGNMENT OF STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE. (1) The office will determine which SIC code an applicant ((firm)) falls under based on information submitted by the ((firm)) business. The office will prepare conversion tables showing the department of general administration's commodity code designations ((listed in the MWBE directory and the corresponding SIC codes, and)), the codes developed by the Construction Specifications Institute ((with)), and the corresponding SIC codes listed in the directory of certified businesses as described in WAC 326-20-190.~~

~~(2) ((If an applicant's business activities encompass two or more SIC codes, the particular size standard to be applied will be based on the primary industry classification of the applicant concern. In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.~~

~~(3)) In the event ((a firm)) the business plans to expand the areas in which it ((does business)) operates, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.~~

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

~~WAC 326-20-095 DETERMINATION OF FIRM SIZE. (1) At the time of application for certification, ((and again at each renewal, a firm)) a business must demonstrate to the office that it is a small business concern. The office((- in turn, will)) may verify that ((each firm qualifies as)) the business continues to be a small business concern, once certified, at any time. In verifying the applicant's size, the office will review the annual financial statements and other relevant information.~~

~~(2) ((The size of the firm, including its affiliates, will be determined as of the time of application for certification, and at the time of each renewal of certification.)) Affiliates. Except as otherwise provided in this chapter, businesses are affiliates of each other when either directly or indirectly:~~

~~(a) One controls or has power to control the other, or~~

~~(b) A third party or parties controls or has the power to control both; or~~

~~(c) Such an "identity of interest" exists between or among them that affiliation may be presumed.~~

~~(3) Annual receipts. Where the maximum size standard is set by reference to "annual receipts," a business that exceeds the annual receipts in that standard is not eligible for certification. Annual receipts includes all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or~~

commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(4) Period of measurement.

(a) The size of a business that has completed three or more fiscal years will be determined by averaging the annual receipts of the business for each of the most recent three years.

(b) The size of a business that has completed less than three fiscal years will be determined by computing the average of the annual receipts from the time the business was formed as follows: Total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by fifty-two.

(d) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the firm has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(4) Number of employees. Where the size standard is "number of employees" size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

~~WAC 326-20-096 ((STURAA PROJECT)) SIZE STANDARD. (1) No business, regardless of its primary SIC code, is eligible for certification if it exceeds the largest annual revenue limit contained in 13 Code of Federal Regulations, Part 121, on file in the office.~~

~~(2) In determining what is the primary industry in which an applicant (including its affiliates) is engaged, primary consideration shall be given to the distribution of receipts, employees and costs in the differing industry areas in which the business operated during its most recently completed fiscal year. Other factors (e.g., patents, contract awards, assets) may be considered.~~

(3) If the activities of the business encompass two or more SIC codes, the first size standard listed in the directory is the primary industry classification of the business.

(4) A firm which exceeds the small business size limits after certification by the office shall be subject to decertification.

(5) For purposes of utilization on projects funded by the Federal Highway Administration or under The Surface Transportation and ((Urban)) Uniform Relocation Assistance Act of 1987, (P.L. 100-17, or STURAA) the maximum dollar size standard set out in STURAA and 49 CFR Part 23 ((of \$14 million average annual gross receipts over the preceding three fiscal years)) as adjusted for inflation, shall apply, even if the size standard would otherwise be set by reference to number of employees. ((The \$14 million figure)) This standard is a ceiling ((and firms)). Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-098 APPLICABILITY OF FEDERAL REGULATIONS. Whenever issues arise regarding whether a ((firm)) business qualifies as a small business concern which cannot be resolved by reference to these regulations, federal regulations adopted by the United States Small Business Administration at 13 CFR 121 shall provide guidance to resolve such issues.

AMENDATORY SECTION (Amending Order 86-2, filed 8/11/86)

WAC 326-20-110 APPLICATION PROCESS.  
(1) The office will develop and make available an application form for certification under chapter 39.19 RCW, and WAC 326-20-010 ((and 326-20-020)). The application form may be modified at any time. The form will solicit enough information to determine whether the applicant is eligible for ((MWBE)) certification for state-funded projects and may include supplemental questions necessary to determine whether the applicant is eligible for certification for a specific federally-funded project. As part of its investigation, the office may require minority and women owners to provide information in addition to that requested on the application forms.

(2) Where additional information is required from the applicant business to complete the investigation, the office may request the information ((by certified letter)) in writing and may impose a time limit of not ((less than 30)) more than twenty days in which the applicant must respond. The letter shall include notice to the applicant that, if the applicant fails to provide the information within the time requested, the file will be closed administratively. If all the requested information is not received by the office within the ((30)) twenty days, the office may administratively close the file. The applicant will be notified in writing that the file has been administratively closed.

(3) Upon timely receipt of a written request for extension of the time to respond to the request for additional information, ((received by OMWBE prior to expiration of the 30-day time period,)) an extension of time to respond may be granted by the director. A showing of extenuating circumstances may be required, and granting of such request for extension is in the sole discretion of the director.

(4) Administrative closure means that the file is placed in inactive status, and further processing of the application is suspended. An applicant may petition the ((agency)) office for reopening or reactivation of the application file, by written request to the director. Requests to reopen will be granted in the sole discretion of the ((agency)) director. The applicant will be notified in writing of the director's decision to grant or deny the request to reactivate the file. If the request is denied, the applicant may ((resubmit an)) submit a new application ((pursuant to WAC 326-20-220)); PROVIDED, That an applicant may not file more than one additional application within a year from the date of the closure. If the file is administratively reopened and processing resumed, the application will be processed as if it had been received on the date the request to reopen the file is granted by the director.

AMENDATORY SECTION (Amending Order 85-9, filed 9/26/85)

WAC 326-20-115 SIGNATURES OF APPLICANT BUSINESS OWNERS. An application for certification must be signed under oath by all individuals claiming an ownership interest in the business regardless of the structure of the applicant business. Upon written request, ((OMWBE)) the office may accept the affidavit of a corporate officer or other designated representative, identifying the stockholders or owners by sex and race, and providing such other information as the office may require.

AMENDATORY SECTION (Amending Order 85-6, filed 7/2/85)

WAC 326-20-120 SUBMITTAL OF FORMS. Application forms shall be submitted by mail or in person to the office at the following address:

STATE OF WASHINGTON  
OFFICE OF MINORITY AND WOMEN'S BUSINESS  
ENTERPRISES  
406 South Water  
MS: FK-11  
Olympia, WA 98504

The minority or woman owner shall be responsible for ensuring that the form is complete and accurate and is properly delivered to the office. The applicant should keep a copy of the completed form and all documents submitted with the form for its own reference.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-130 PROCESSING APPLICATIONS—TIME. The office will process all applications

as promptly as its resources permit. The office ~~((cannot))~~ does not guarantee that any application will be processed within any certain time period and the inability to process an application by a certain time shall not subject the office or the state to liability.

**AMENDATORY SECTION** (Amending Order 88-9, filed 10/24/88)

WAC 326-20-140 DUTY TO COOPERATE. The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. This duty shall continue after the business is certified. In addition to any other penalties provided by law, the submission of false information to the office in connection with an application for certification or renewal of certification shall be grounds for denial of certification, or decertification.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-150 ON-SITE INVESTIGATIONS. The office may, whenever it deems necessary, conduct ~~((an))~~ unannounced on-site investigations ~~((of an applicant's))~~ into the operations of a business. By submitting the ~~((MWBE))~~ certification application form ~~((the))~~, an applicant agrees that the office may conduct such investigations at any time.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-160 BURDEN OF PROOF. The applicant ~~((business))~~ shall have the burden of proving to the satisfaction of the office that it is eligible for certification.

**AMENDATORY SECTION** (Amending Order 85-2, filed 3/8/85)

WAC 326-20-170 DECISION. The office shall notify the applicant business by mail of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the ~~((women or minority owners))~~ business did not meet ~~((the ownership))~~ one or more of the eligibility criteria, this shall not preclude the office from later denying the application on additional bases ~~((following resubmittal))~~ after further review.

**AMENDATORY SECTION** (Amending Order 88-5, filed 4/18/88)

WAC 326-20-171 DENIAL OF CERTIFICATION—SHOW CAUSE REVIEW. (1) If the office has

reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing ~~((; by certified mail,))~~ of its denial of certification. Within thirty days of receipt of this notification, the applicant must either:

(a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or

(b) Submit a written request for ~~((a contested case hearing))~~ an adjudicative proceeding, pursuant to WAC 326-08-015.

(2) A request for show cause review must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a show cause review, the finality of the denial for appeal purposes is stayed until the show cause review is complete.

(4) Upon receipt of a timely request for a show cause review the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant ~~((by certified mail))~~ in writing of its decision either to affirm the denial or to grant certification. This notification is considered final for purposes of WAC 326-08-015.

~~((6))~~ If a change in business circumstances occurs after the reconsideration period, then the applicant must submit a new application pursuant to WAC 326-20-220, and is not entitled to appeal the denial of the application in question on the basis of the change in business circumstances.

~~((7))~~ "Reconsideration period," for purposes of this section, shall mean the thirty days after receipt of the denial letter, described in subsection (1) of this section plus any additional time authorized by the director in writing.)

**AMENDATORY SECTION** (Amending Order 88-5, filed 4/18/88)

WAC 326-20-172 DECERTIFICATION OF FIRMS. (1) A business may be decertified at any time the office determines that the business does not meet the current criteria for eligibility. A certified business shall notify the office, in writing, within thirty calendar days of any changes in its size, ownership, control, or operations. Failure to provide such notice in a timely manner may lead to decertification.

(2) When the office has determined that a certified ~~((MWBE))~~ business (a) no longer meets the certification criteria or ~~((the certified MWBE fails))~~ (b) failed to supply additional information requested by the office in a timely manner, or (c) failed to give timely notice of changes, the office will notify the ~~((firm))~~ business in writing of its intent to decertify the ~~((firm))~~ business.

~~((2))~~ (3) When a certified ~~((MWBE))~~ business notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified ~~((MWBE))~~ business fails or refuses to return the renewal of certification form, the office will

notify the ~~((firm))~~ business in writing of its decertification. This notification is final for purposes of appeal ~~((;))~~ pursuant to WAC 326-08-015.

~~((3))~~ (4) Upon receipt of an "intent to decertify" letter, the ~~((MWBE))~~ business must either:

(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or

(b) Submit a written request for ~~((a-contested case hearing))~~ an adjudicative proceeding pursuant to WAC 326-08-018.

(c) The request for show cause review must be received by the office within thirty calendar days of receipt of the notice of intent to decertify the firm. The ~~((MWBEs))~~ request for a show cause review must set forth the reasons the ~~((MWBE))~~ business believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

~~((4))~~ (5) If the office has not received a request for a show cause review nor any additional written documentation within thirty days of receipt of the "intent to decertify" letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

~~((5))~~ (6) Upon receipt of the request for a show cause review, the office will review the request and any additional information provided and may conduct further investigation and/or request that the ~~((MWBE))~~ owner(s) attend a show cause meeting ~~((with the director))~~. The office will thereafter notify the ~~((MWBE by certified mail))~~ business in writing of its decision to either affirm or reverse its intent to decertify the ~~((firm))~~ business. This decertification decision is considered final for purposes of WAC 326-08-015.

~~((6))~~ (7) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request ~~((a-contested case hearing))~~ an adjudicative proceeding pursuant to WAC 326-08-015. The request must be made in writing and must be made within thirty days of receipt of the office's decision affirming the decertification decision.

~~((7))~~ (8) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC 326-08-015 for appeal of the decision to decertify has expired without action by the ~~((MWBE))~~ business; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

(9) Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.

#### AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-20-173 EXPIRATION OF CERTIFICATION UPON DEATH OR DISABILITY OF OWNER OF CERTIFIED BUSINESS. (1) Upon death or commencement of long-term disability of the minority or woman owner of a certified business ~~((certified by the office))~~, the guardian of the disabled owner, the executor of the owner's estate, or other person shall notify ~~((OMWBE))~~ the office in writing within thirty

days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

(2) "Long-term disability," for purposes of this section, shall mean the permanent inability to work, or inability to control the day-to-day operations of the business for a period of three consecutive months (ninety days or more), including both mental or physical incompetence.

(3) The certification of a ~~((firm))~~ business shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of ~~((a-certified firm. State agencies may continue to count the firm towards goal attainment only for those contracts awarded prior to the date of death or onset of disability))~~ the business. Upon expiration of certification, the office shall notify the firm, in writing, that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

~~((4) The office shall be notified of any transfer of ownership or substantial ownership interest which occurs within the six months following the death or onset of disability. The office may require the new owners to provide additional information, including requiring submission of a new application form. If transfer of ownership or substantial ownership interest occurring within six months of the date of death or date of documented disability results in majority ownership or control by nonfemales or nonminorities, where applicable, the firm shall be decertified by the office.)~~

#### AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-180 EFFECT OF CERTIFICATION. Certification as a MWBE shall have the following effects:

(1) Certification ~~((as a MWBE))~~ shall entitle state agencies, educational institutions, and local government jurisdictions to ~~((utilize the MWBE))~~ count the business toward meeting their ((MWBE)) goals under this chapter ((or), local legislation((Certification as a MWBE for a federal program shall entitle state agencies, educational institutions, and local government jurisdictions to utilize the MWBE toward meeting the MWBE goals under those programs)), and that require the participation of disadvantaged business enterprises. Certification shall be effective as of the date the decision is made in writing((:

(2) A firm may be decertified at any time the office determines that the MWBE does not meet the current criteria for eligibility for certification. The MWBE shall notify the office in writing within thirty calendar days of any changes in its size, ownership, control, or operations which may affect its continued eligibility as a MWBE. The duty of a business to cooperate with ~~OMWBE~~ investigation and the consent of a business to on-site investigation by ~~OMWBE~~ created in WAC 326-20-140 and 326-20-150 shall continue after a business is certified by ~~OMWBE~~ and will remain in effect for three years, except that the certification of DBEs shall be renewed annually.

(2) Certification does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any business of its obligations under other laws or regulations. Certification does not constitute any determination by the office that the firm is responsible or capable of performing any work.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-185 RECERTIFICATION. ~~((+))~~ Certification is effective for two years.) The office ~~((will))~~ may require ~~((of all certified firms and/or of selected certified firms))~~ any certified business to submit annual notarized statements regarding changes in the information provided during the initial certification process. The office will generally renew the certification as long as the ~~((firm))~~ business continues to meet the eligibility criteria~~((;))~~; the business provides evidence of some level of activity e.g., gross receipts or evidence of continuing efforts to promote the business, and there have been no determinations that the ~~((firm))~~ business has violated chapter 39.19 RCW or ~~((this chapter))~~ its implementing rules in Title 326 WAC. Debarment of a ~~((firm from contracting with))~~ business by the state or one or more ~~((state or))~~ federal agencies or local government jurisdictions may be grounds for nonrenewal of ~~((certification))~~ decertification.

~~((2))~~ Each certified ~~((firm))~~ business must submit a statement of present status prior to expiration of its ~~((two-year))~~ three-year certification. The statement form will be provided to the certified business sixty days before expiration of its certification. Failure to return the completed form within thirty days may lead to decertification by expiration.

~~((3))~~ Certification as a MWBE does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any firm of its obligations under other laws or regulations. Certification as a MWBE does not constitute any determination by the office that the firm is responsible or capable of performing any work.)

AMENDATORY SECTION (Amending Order 85-2, filed 3/8/85)

WAC 326-20-190 ~~((STATE MWBE))~~ DIRECTORY OF CERTIFIED BUSINESSES. The office will maintain a directory of certified ~~((MWBE's))~~ businesses as follows:

(1) The office will maintain a ~~((complete))~~ directory of ~~((all MWBE's))~~ businesses certified by the office for state projects and for federally-funded projects.

(2) The office will update and compile the directory into a form suitable for distribution annually and may issue supplements on a more frequent basis. ~~((The office will include in the supplements a list of those MWBEs~~

~~removed from the list of certified firms at the conclusion of the administrative hearing process.))~~

(3) The ~~((state MWBE))~~ directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and educational institution at no charge. Copies will be provided to the state library.

(4) ~~((Bidders and others proposing to enter into contracts with state agencies and educational institutions shall have the responsibility of ensuring that firms proposed to be used by them toward MWBE goals are certified. State agencies and educational institutions contracting directly with a purported MWBE shall have the responsibility of ensuring that the firm is certified.~~

~~((5))~~ Information concerning the status of a ~~((firm as a MWBE))~~ business may be obtained by contacting the office during designated working hours.

AMENDATORY SECTION (Amending Order 86-2, filed 8/11/86)

WAC 326-20-220 RESUBMISSION OF APPLICATIONS. (1) ~~((An applicant which has withdrawn its application or whose application has been denied may file a new application))~~ A business which withdraws its application, is denied certification, or has been decertified, may be required to submit a new application or to submit additional documentation if there has been a substantial change in ownership, control, or organization of the business. However, no business may file more than two applications in any calendar year.

(2) ~~((An applicant which has experienced a substantial))~~ A business which makes a change in ownership, control, or organization of the business after ~~((the reconsideration period shall not be entitled to certification based on such changed circumstances, and must file a new application))~~ denial or decertification is not entitled to appeal the denial or decertification on the basis of that change.

~~((3))~~ "Reconsideration period," for purposes of this section, shall mean the 30 days after receipt of the denial letter, described in WAC 326-20-175(1), or the date of the show cause meeting if requested pursuant to WAC 326-20-175(1), plus any additional time authorized in writing by the director.)

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 326-20-020 FEDERALLY FUNDED PROJECTS.

WAC 326-20-091 SIZE STANDARDS—PURPOSE.

WAC 326-20-093 DEFINITIONS.

WAC 326-20-097 CHANGE IN FIRM SIZE.

WAC 326-20-200 COMPLAINTS.

**WSR 92-07-002**  
**WITHDRAWAL OF PROPOSED RULES**  
**ENERGY FACILITY SITE**  
**EVALUATION COUNCIL**  
[Filed March 5, 1992, 11:12 a.m.]

WAC 463-42-685 filed in WSR 92-02-099, on January 2, 1992, is withdrawn. This WAC section has been re-written and is being renoticed for a rules hearing on April 14, 1992, at the Rowsix Hearing Room at 2 p.m.  
Jason J. Zeller  
Manager

**WSR 92-07-003**  
**NOTICE OF PUBLIC MEETINGS**  
**SOUTH PUGET SOUND**  
**COMMUNITY COLLEGE**  
[Memorandum—March 5, 1992]

BOARD OF TRUSTEES  
Thursday, March 5, 1992  
Boardroom  
South Puget Sound Community College  
2011 Mottman Road S.W.  
Olympia, WA 98502

Executive session, 8:00 a.m., under RCW 42.30.110, an executive session will be held for the purposes of receiving and evaluating complaints against or reviewing the qualifications of an applicant for public employment or reviewing the performance of a public employee; consultation with legal counsel regarding agency enforcement actions or actual or potential agency litigation; considering the sale or acquisition of real estate; and/or reviewing professional negotiations. No action will be taken as a result of items discussed in the executive session.

**WSR 92-07-004**  
**NOTICE OF PUBLIC MEETINGS**  
**PUGET SOUND**  
**WATER QUALITY AUTHORITY**  
[Memorandum—March 3, 1992]

Listed below are the dates and locations for the regular meetings of the Puget Sound Water Quality Authority through June 1992. We will notify you of the locations of all future 1992 meetings as soon as we have booked the facilities.

The meetings generally begin at 9:30 a.m.; any variation from this starting time will result in a starting time later than 9:30 a.m. Persons interested in more information about the meetings are invited to call Duane Fagergren at 493-9306 (in Lacey) or 1-800-54-SOUND.

March 18, 1992	Renton	Fairwood Library 17009 140th S.E. Renton, WA 98058
April 15, 1992	Olympia	Thurston County Courthouse Building 1, Room 152 2000 Lakeridge Drive S.E. Olympia, WA

May 20, 1992	Anacortes	Anacortes City Hall 6th Street and Q Avenue P.O. Box 547 Anacortes, WA 98221
June 10, 1992	Port Townsend	Port Townsend Public Library 1220 Lawrence Port Townsend, WA 98368

**WSR 92-07-005**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
[Filed March 5, 1992, 11:46 a.m.]

Continuance of WSR 92-03-134.

Title of Rule: Application of pesticides in Benton County and portions of Franklin and Walla Walla counties in chapters 16-230 and 16-231 WAC.

Purpose: Additional restrictions on the use of restricted use pesticides in the area under order in the tri-cities area.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Summary: See Explanation of Rule below.

Reasons Supporting Proposal: During the 1991 spray season herbicide drift on grapes was experienced in the area under order.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cliff Weed, P.O. Box 42589, Olympia, WA, (206) 753-5062.

Name of Proponent: Washington State Department of Agriculture, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The adoption date has been continued until March 13, 1992.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules will create specific nozzling and pressure requirements for ground and aerial apparatus; will prohibit the use of application of all restricted use pesticides when the mean sustained wind velocity is over ten miles per hour in the entire area under order; will create specific morning and evening cut-off times; will create another area 3 buffer zone in southwest Horse Heaven Hills; will limit the use of low volatile ester formulations of 2,4-D to certain dates and areas under order; and will create additional weather requirements concerning all restricted use herbicides in the entire area under order. Additional restrictions on the applications of pesticides are being proposed due to herbicide damage on grapes experienced during the 1991 spray season.

Proposal Changes the Following Existing Rules: Rules relating to restricted use herbicides in Benton County in chapter 16-231 WAC are repealed and combined with these proposed rules in chapter 16-230 WAC.

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

Date of Intended Adoption: March 13, 1992.

March 5, 1992

Michael V. Schwisow  
Deputy Director

**WSR 92-07-006**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Order R-368, Docket No. A-910530—Filed March 5, 1992, 2:16 p.m.]

In the matter of amending chapter 480-04 WAC relating to disclosure of public records; and amending WAC 480-09-100 and 480-09-210 to update commission's address.

The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 91-21-142, filed with the code reviser on October 23, 1991. The commission brings this proceeding pursuant to RCW 80.01.040.

This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The commission scheduled this matter for consideration under Notice No. WSR 91-21-142, at 9:00 a.m., Wednesday, December 18, 1991, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA.

The notice provided interested persons the opportunity to submit data, views, or arguments to the commission in writing until December 6, 1991, and orally at the time and place set for consideration. The commission received three sets of written comments. At its December 18, 1991, meeting, on the record, the commission heard comments from Rowland Thompson, representing Allied Daily Newspapers of Washington, and continued the matter to the January 15, 1992, weekly meeting at the same time and place.

The commission considered the rule change proposal at its January 15, 1992, meeting. No person made oral comments.

Written comments in this docket have been received from: Polly Lord McNeill, attorney at law; U S WEST COMMUNICATIONS; and Michael J. Killeen, attorney at law, representing Allied Daily Newspapers of Washington and the Seattle Times.

The rule change affects no economic values and has no adverse environmental effect.

In reviewing the entire record, the commission determines that it should amend chapter 480-04 WAC, and should amend WAC 480-09-100 and 480-09-210, to read as set forth in Appendix A, shown below. Chapter 480-04 WAC, as amended, will clarify the commission's rules concerning the disclosure of public records. WAC 480-09-100 and 480-09-210, as amended, will correctly state the commission's mailing address. The rule changes shall take effect pursuant to RCW 34.05.380(2).

The following changes were made between the text of the amendments issued pursuant to Notice No. WSR 91-21-142 and the text finally adopted by the commission:

Changes from noticed draft  
WAC 480-04-050

Subsection (2), the word "garbage" is changed to "solid waste."

The subsection is reworded to make it clear that it concerns general information, and is not an alternative procedure for inspecting and copying records.

The subsection is reworded to make it clear that requests for inspection or copying of records of the current operating authority of carriers must comply with WAC 480-04-090.

The subsection is changed to advise a requester that it may not be possible for the commission to process a request made to a district or field office as promptly as a request made to the commission's administrative office, because some information is not readily available in district and field offices.

WAC 480-04-090

First paragraph, a parenthetical is inserted to remind readers that some information is readily accessible without a formal disclosure request.

Subsection (4)(c), the new subsection is changed to specify that the person requesting the record need only identify the individual or organization on whose behalf the request is made, and not every organization he/she represents.

Subsection (4)(d) is changed to specify that the request must indicate whether the request seeks inspection or copying of records.

Subsections (4)(e) and (4)(f), which would have renumbered and slightly reworded current subsections (3)(d) and 3 (e), are replaced by a new subsection numbered (4)(e). It provides that a request must include a description of the record sufficiently clear to allow the record to be readily identified. It changes the requirement that a request include a reference to the record as it is described in the commission's current index to a recommendation that a request include that information.

Subsection (4)(g) is renumbered (4)(f), and is reworded to more closely track the language of RCW 42.17.260(6), which prohibits the commission from giving access to "lists of individuals" requested for commercial purposes.

WAC 480-04-095

Subsection (1), the subsection is reworded to add that the secretary will endeavor to assist a requester in completing and correcting a deficient request, and that the secretary may take action on a deficient request to the extent appropriate, consistent with the commission's obligation to respond promptly to requests for public records.

Subsection (2), the subsection is changed to add that the secretary's review of a request shall include the determination of whether confidential information is being requested, and whether the record or any portion of the

record has been designated confidential under the provisions of RCW 80.04.095 and WAC 480-09-015. Information which a provider has designated confidential is not exempt from public disclosure unless and until a court has determined that it is confidential under RCW 80.04.095. A request for such information triggers the WAC 480-09-015 release procedures, which give the provider an opportunity to obtain an appropriate court order.

Subsection (5) is changed to more closely track the language of RCW 42.17.310(4).

Subsection (6) is changed to clarify the procedure to be followed in processing requests which include information that the provider has designated confidential. The purpose of the change is to avoid unnecessarily triggering the WAC 480-09-015 release procedures.

#### WAC 480-04-110

Proposed subsection (1) is deleted and the current subsections (1) and (2) are retained. Concerns were raised that the proposed language might mandate non-disclosure in instances where the statute may be permissive.

### ORDER

#### THE COMMISSION ORDERS The following:

WAC 480-04-010, 480-04-040, 480-04-080 are repealed. WAC 480-04-020, 480-04-030, 480-04-050, 480-04-060, 480-04-070, 480-04-090, 480-04-110, 480-04-120, and 480-04-130 are amended, and WAC 480-04-065 and 480-04-095 are adopted, as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

WAC 480-09-100, as set forth in Appendix A, is amended as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

WAC 480-09-210, as set forth in Appendix, A, is amended as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

This order and the rules shown below shall be recorded in the order register of the Washington Utilities and Transportation Commission and forwarded to the code reviser for filing pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 4th day of March, 1992.

Washington Utilities and Transportation Commission  
Richard D. Casad, Commissioner  
A. J. Pardini, Commissioner

### APPENDIX "A"

#### AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-020 DEFINITIONS. (1) Public records. "Public record" includes any writing containing information relating to the conduct of ~~((governmental))~~ government or the performance of any governmental or proprietary function prepared, owned, used or retained

by ~~((any state or local agency))~~ the commission regardless of physical form or characteristics.

(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, or combination thereof, and all telefacsimile copies, papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Washington utilities and transportation commission. The Washington utilities and transportation commission, referred to as "the commission" in these rules, is the commission appointed by the governor pursuant to RCW 80.01.010. ~~((The Washington utilities and transportation commission shall hereinafter be referred to as the "commission."))~~

Where appropriate, the term "commission" also refers to the staff and employees of the Washington utilities and transportation commission.

(4) Secretary. "Secretary" means the secretary of the commission. Except as otherwise provided, the term "secretary" also refers to the acting secretary and to the secretary's designee.

#### AMENDATORY SECTION (Amending Order R-157, Cause No. TV-1429, filed 3/4/81)

WAC 480-04-030 DESCRIPTION OF CENTRAL AND FIELD ORGANIZATION OF WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION. (1) ~~((Washington utilities and transportation commission:))~~ The Washington utilities and transportation commission ~~((is a regulatory agency. The administrative offices of the Washington utilities and transportation commission and its staff are located at the Seventh Floor, Highways-Licenses Building, Olympia, Washington-98504))~~ consists of three members who are appointed by the governor pursuant to RCW 80.01.010. The governor designates one member as the chairman.

~~((a) The commission is limited by RCW 80.01.010 to three members, of whom one member is designated as chairman.~~

~~(b) The office of administrative manager and secretary and the executive officer are responsible directly to the commission. All departmental divisions and sections normally respond to the commission through the office of administrative manager and secretary. As required on occasion, the following departments may respond directly to the commission: The hearing examiners, the accounting section, the administrator of the utilities division, and the administrator of the transportation division.~~

~~(c) Pursuant to RCW 80.01.100, the attorney general division is assigned to the commission to represent the people of the state of Washington and the commission in all actions or proceedings involving any question under Titles 80 and 81 RCW or in reference to any act or order of the commission.~~

~~(d) Sections and individuals responsible directly to the administrative manager and secretary are: The personnel~~



officer, the controller, the data research and planning section, and the machine operations section.

(e) Sections responsible directly to the utilities administrator are: The utilities tariff section, the utilities finance section, and the utilities engineering section.

(f) Sections responsible directly to the administrator of transportation are: The transportation permit and insurance section, the transportation tariff section, the transportation research section, the railroad section, and the transportation enforcement or field section.

(2) Field organization:

(a) The field section is composed of six districts, each of which is in the charge of a supervisor:

Office	Address	Office Hours
(i) Seattle District No. 1	1231 Andover Park East, Tukwila WA 98188	Mon. thru Fri. 8-5
(ii) Vancouver District No. 1	110-A "Y" Street P.O. Box 1119 Vancouver, WA 98660	Mon. thru Fri. 8-5
(iii) Yakima District No. 2	3006 Main Street Union Gap, WA 98903	Mon. thru Fri. 8-5
(iv) Spokane District No. 4	East 6204 Dean Spokane, WA 99201	Mon. thru Fri. 8-5
(v) Olympia District No. 5	4320 Martin Way Olympia, WA 98506	Mon. thru Fri. 8-5
(vi) Pasco District No. 6	1600-C West Clark Pasco, WA 99301	Mon. thru Fri. 8-5

(b) The various special investigators, investigators and truck inspectors (at ports of entry) in each district are responsible to the district supervisor.

(c) (2) The administrative office of the commission, also known as the headquarters, is located at 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Its mailing address is WASHINGTON UTILITIES & TRANSPORTATION COMMISSION, 1300 S EVERGREEN PARK DR SW, PO BOX 47250, OLYMPIA WA 98504-7250. Its telephone number is (206) 753-6423.

(3) The commission is organized into the following principal parts: Administrative services division; transportation division; utilities division; policy planning and research section; public affairs section; and regulatory affairs section. The heads of the listed parts are responsible directly to the commissioners. They are housed in the commission's headquarters office.

(4) The commission has six district offices, each of which is in the charge of a district manager. Each of the offices is open during customary commission hours. As of the effective date of this rule, the addresses of the commission's district offices were as follows:

Office	Address
(a) Seattle District No. 1	West Meeker Square 1313 West Meeker Ave. Kent, WA 98032 (206) 859-1727
(b) Vancouver District No. 2	1006 N.E. 146th Suite A Vancouver, WA 98686 (206) 696-6660

Office	Address
(c) Yakima District No. 3	2808 Main Street Union Gap, WA 98903 (509) 575-2789
(d) Spokane District No. 4	East 6204 Dean Spokane, WA 99206 (509) 533-2475
(e) Olympia District No. 5	7912 Martin Way Suite D Olympia, WA 98506 (206) 459-6580
(f) Pasco District No. 6	1600-C West Clark Pasco, WA 99301 (509) 545-2421

Because district office addresses may change from time to time, current addresses and telephone numbers should be obtained from the local telephone directory or from the commission's administrative office.

(5) Each district office maintains ((a district office and)) one or more field offices(;;). The addresses and office hours of the various field offices are available at the district offices and the commission's administrative office((s of the commission during customary office hours)).

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-050 PUBLIC INFORMATION; PUBLIC SUBMITTALS OR REQUESTS OTHER THAN REQUESTS FOR PUBLIC DOCUMENTS. ((Members of the public may make submittals or requests other than requests for public documents to the commission through the Office of the Administrative Manager and Secretary, Seventh Floor, Highways-Licenses Building, Olympia, Washington.)) (1) General information concerning utilities and transportation matters subject to the commission's jurisdiction is available through the commission's administrative office, district offices, and field offices.

(2) Information concerning whether a common or contract carrier of solid waste or motor freight currently has operating authority, the scope of that authority, and the current commission-published tariffs of carriers of motor freight, may be obtained by requesting the information from the commission's administrative office, from the manager of any district office, or from a commission field agent at any field office. Requests for inspection or copying of records which are the source of such information must comply with WAC 480-04-090. Because some information may not be readily available in a district or field office, staff may be unable to process a request for information made to a district or field office as promptly as a request made to the commission's administrative office.

(3) Documents or written requests for information should be submitted to the office of the secretary of the commission. Written communications should be in the

form and should contain the information prescribed in WAC 480-09-100.

(4) Requests may be made by telephone to the commission's public number, and will be routed to staff who can assist the requester.

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-060 PUBLIC RECORDS AVAILABLE; HOURS FOR INSPECTION AND COPYING. (1) ((Inspection. All public records of the commission, as defined in WAC 480-04-020(1) are deemed to be available for public inspection by any person, irrespective of whether such documents are located at the administrative offices or at the district or field offices of the commission, pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 and WAC 480-04-110.

(2) Copying. All public records of the commission, as defined in WAC 480-04-020(1) are deemed to be available for copying pursuant to these rules and except as otherwise provided by section 31, chapter 1, Laws of 1973 and WAC 480-04-110 only at the Administrative Offices of the Commission, Seventh Floor, Highways-Licenses Building, Olympia, Washington, inasmuch as duplicates of all documents located at district and field offices will be available at the administrative offices, and it is deemed and hereby held that use by the public of extremely limited copying facilities at district and field offices will be unreasonably disruptive of the commission's business.)) Except as otherwise provided by RCW 42.17.310 (exempt records), RCW 42.17.260(6) (lists of individuals requested for commercial purposes), RCW 80.04.095 (records containing commercial information), WAC 480-09-015, these rules, and other provisions of the law, all public records of the commission, as defined in WAC 480-04-020(1), are available for public inspection and copying.

(2) The commission shall act promptly on requests for inspection and copying.

(3) The commission shall respond in accordance with these rules to requests received by mail for identifiable public records.

(4) Public records shall be available for inspection and copying during the commission's customary office hours. For purposes of this chapter, the customary office hours of the commission's administrative and district offices shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

#### NEW SECTION

WAC 480-04-065 RECORDS INDEX. The commission will publish and index its significant adjudicative decisions; declaratory orders; and interpretive statements and policy statements.

(1) Each month, the commission will publish separately and make available to subscribers its adjudicative

decisions entered the prior month which resolve contested issues or which it believes will be of interest or significance. The commission will include declaratory orders and interpretive and policy statements and will include a summary of the decisions, orders, and statements with each publication.

(2) The commission will annually publish indices of the principles which are applied in the text of published orders and statements entered during the prior year.

(3) The publications will be available for sale at the commission's estimated actual cost of reproduction and distribution. They will also be available for inspection during office hours in each district office of the commission and in the commission's library in Olympia.

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-070 PUBLIC RECORDS OFFICER. The ((commission's public records shall be in charge of)) secretary of the commission is the public records officer ((designated by)) of the commission for all records maintained by the commission. The ((commission shall designate an alternate officer to act in the absence of the public records officer. The persons so designated shall be)) secretary's office is located in the ((Administrative Offices of the Commission, Seventh Floor, Highways-Licenses Building, Olympia, Washington)) commission's administrative office. ((The)) As the commission's public records officer, the secretary shall be responsible for ((the following: The implementation of)) implementing the commission's rules and regulations regarding release of public records((:)); coordinating the staff of the commission in this regard((:)); and ((generally insuring)) for compliance by the staff with the public records disclosure requirements of chapter ((Laws of 1973)) 42.17 RCW.

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-090 REQUESTS FOR PUBLIC RECORDS. ((In accordance with the requirements of chapter 1, Laws of 1973,)) RCW 42.17.250 through 42.17.320 require that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, and RCW 80.04.095 protects records containing commercial information. To allow compliance with those statutes, public records (other than public information identified in WAC 480-04-050) may be inspected or copies of such records may be obtained, by members of the public, ((upon compliance)) in accordance with the following procedures:

(1) ((Requests for inspection of documents available at district and field offices. A request to inspect documents which are available at district or field offices of the commission shall be made in writing upon a form prescribed by the commission for this purpose, which shall be available at the district offices listed in WAC 480-04-030 (2)(a), (i) through (vi), inclusive, as well as the Commission Administrative Offices, Seventh Floor, Highways-Licenses Building, Olympia, Washington.

The form shall be presented to the district supervisor at the district office, or to the commission field agent at the local offices, during the customary office hours as defined in ~~WAC 480-04-080 (2) and (3).~~

~~(2) Other requests. Other requests involving public documents, including requests for copies of public documents;)) A request shall be made in writing upon a form prescribed by the commission ((which)) or in a letter containing equivalent supporting information. The prescribed form shall be available at the commission's administrative ((offices of the commission. The form shall be presented to the public records officer, or to the acting public records officer if the public records officer is not available, at the administrative offices of the commission during customary office hours, as defined in WAC 480-04-080(1))) office and at each of its district and field offices.~~

~~((3) Request under (1) or (2), supra;)) (2) A request shall be made during the commission's customary office hours.~~

~~(3) A request may be initiated at any office of the commission, by giving the written request to the receptionist or to any other available commission staff member; except that a request for a record or portion thereof which has been designated as confidential under the provisions of RCW 80.04.095 or WAC 480-09-015 must be submitted to the secretary of the commission as provided in WAC 480-09-015(5). Mailed requests should be addressed to the secretary of the commission.~~

~~(4) A request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request is made;~~

~~(c) ((The nature of the request;~~

~~(d) If the matter requested is referenced within a current index which may be maintained by the records officer, a reference to the requested record as it is described in such current index;~~

~~(e) If the requested matter is not identifiable by reference to a commission current index, an appropriate description of the record requested;)) If the person requesting the record represents another individual or organization on whose behalf the request is made, the identity of such individual or organization;~~

~~(d) A statement, heading or other clear indication that the request is a request for inspection and/or copying of public records, and a statement of the nature of the access requested (copying or inspection, or both);~~

~~(e) A description of the record requested sufficiently specific to allow the record to be readily identified. A reference to the requested record as it is described in the current index maintained by the secretary of the commission will be helpful in identifying it;~~

~~(f) A statement of whether a purpose of the request is to obtain a list of individuals to be used for commercial purposes.~~

~~((4) In all cases in which a member of the public makes a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately)) (5) Commission staff will make a reasonable effort~~

to assist in identifying and securing the public record requested.

#### NEW SECTION

##### WAC 480-04-095 DISCLOSURE PROCEDURE.

(1) If a request is incomplete or otherwise deficient, the secretary or the secretary's designee will promptly notify the requester of the deficiency which has been identified in the request, and will endeavor to assist the requester in completing or correcting the request. Notifying the requester of a deficiency is not a denial of the request. The secretary may take action on a deficient request to the extent appropriate, consistent with the commission's obligation to respond promptly to requests for public records.

(2) Upon the receipt of a sufficient request, the secretary or the secretary's designee shall review a requested record, to determine whether the record or a portion of the record is exempt from disclosure under the provisions of RCW 42.17.260, 42.17.310, or other provision of law. The review shall include a determination of whether confidential information, as defined in WAC 480-09-015, is being requested, and whether the record or any portion of the record has been designated as confidential under the provisions of RCW 80.04.095 and WAC 480-09-015.

(3) To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.315, the commission will delete identifying details from a public record when it makes the record available or publishes it. In each case, the justification for the deletion will be explained in writing.

(4) Only the secretary, or in the absence of the secretary, the acting secretary, is authorized to deny requests for public records under these rules. Any action other than the granting of access to public records, when taken by a person other than the secretary or acting secretary, is a deferral of action, and not a denial of a request. Any commission staff member who does not grant access to a public record upon a sufficient written request must immediately remit the requested document together with the written request to the secretary or acting secretary for prompt decision granting or denying the request.

(5) A response by the secretary or acting secretary refusing, in whole or part, inspection of any public record shall specify the reasons for the denial, in writing, at the time of the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. The remainder of the record shall be promptly disclosed.

(6) Records containing "confidential information."

(a) If a requested record contains information that the information provider has designated confidential under the provisions of RCW 80.04.095 and WAC 480-09-015, and the requester has not specifically requested confidential information, the secretary shall advise the requester that material in the file or group of documents has been designated confidential, and shall confirm that the requester is requesting such confidential information, prior to processing the request under WAC 480-09-015.

(b) To the extent a request is for a record or portion thereof designated as confidential under the provisions of RCW 80.04.095 and WAC 480-09-015, it shall be processed in accordance with the provisions of WAC 480-09-015.

(7) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure pursuant to this rule, may request a review under the provisions of WAC 480-04-120.

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-110 EXEMPTIONS; QUALIFICATIONS ON NONDISCLOSURE. (1) The commission reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 480-04-090 is exempt from disclosure under the provisions of ((section 31, chapter 1, Laws of 1973)) RCW 42.17.260, 42.17.310, or any other provision of law.

(2) In addition, pursuant to ((section 26, chapter 1, Laws of 1973)) RCW 42.17.260(1), the commission reserves the right to delete identifying details when it makes available or publishes any public record, in any case when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((1, Laws of 1973)) 42.17 RCW. The ((public records officer will fully justify such deletions)) justification for the deletion will be explained in writing.

(3) ((Only the public records officer of the commission, or in the absence of the public records officer, the acting public records officer is authorized to deny requests for public records under these rules. Any actions other than the granting of access to public records upon request, when taken by persons other than the public records officer, or acting public records officer, will be deemed deferrals of action, and not denials of requests. Any commission staff member or field section member who does not grant access to a public document upon written request by a member of the public, must immediately remit the requested document or documents together with the written request therefor, to the public records officer for decision granting or denying the request. All denials of requests for public records must be accompanied by a written statement specifying the reason for denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld:)) The commission will not give, sell, or provide access to lists of individuals requested for commercial purposes, except as provided in RCW 42.17.260(6).

(4) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(5) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.17.310(2).

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-120 REVIEW OF DENIALS OF PUBLIC RECORDS REQUESTS. (1) ((Any person who objects to)) If the person requesting disclosure disagrees with the denial of a request for a public record, the person may petition for prompt review of ((such)) the decision by ((tendering)) submitting a written request for review to the secretary. The written request shall specifically refer to the written statement by the ((public records officer)) secretary or acting ((public records officer)) secretary which constituted or accompanied the denial. Requesting this review is optional, and failure to request this review does not constitute failure to exhaust administrative remedies.

(2) ((Immediately)) A request for review may be made in person at the commission's administrative office or at a district office, or may be made by mail. Response to a request which is made at a district office or by mail may take longer than response to a request made at the administrative office.

(3) Promptly after receiving a written request for review of a decision denying ((a public record)) disclosure, the ((public records officer shall refer it to the chairman of the commission. The chairman shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the commission as soon as legally possible to review the denial. In any case, the request shall be returned with his final decision, within two business days following the original denial)) secretary or acting secretary shall review the denial decision. The secretary or acting secretary may reconsider the denial decision, or may refer the request to the commission for review at a regular or special meeting of the commission.

((3) Administrative remedies shall not be considered exhausted until the commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first:)) (4) If a revised decision is not sooner returned, the commission's review of a decision denying disclosure shall be deemed completed at the end of the second business day following the secretary's or acting secretary's initial denial decision, and the commission's final decision shall be deemed to be a denial of disclosure. Completion of the review shall constitute final commission action for purposes of judicial review. This provision shall not be construed to prohibit the commission from reversing a denial after the end of the second business day following the initial denial decision.

AMENDATORY SECTION (Amending Order R-43, filed 4/5/73)

WAC 480-04-130 PROTECTION OF PUBLIC RECORDS. ((In order to implement the provisions of section 29, chapter 1, Laws of 1973, requiring agencies to enact reasonable rules to protect public records from damage or disorganization, the following rules are adopted:))

(1) Copying of public documents shall be done by commission personnel only, upon the request of members

of the public under the procedures set ~~((down))~~ out in these rules, unless the secretary determines that it is consistent with the procedures and not disruptive of commission operations to allow the member of the public to perform the copying.

(2) No commission document ~~((staff))~~ may be physically removed by a member of the public from the area designated by the ~~((commission))~~ secretary for the public inspection of documents ~~((for any reason whatever))~~ unless the secretary or the acting secretary authorizes its removal.

(3) When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the commission shall be allowed a reasonable time to inspect the file to determine whether it contains material designated as confidential or information protected from disclosure by ~~((section 31, chapter 1, Laws of 1973 is contained therein, and the commission shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed))~~ RCW 42.17.310 or other provision of law.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-04-010 PURPOSE.

WAC 480-04-040 PUBLIC INFORMATION AVAILABLE.

WAC 480-04-080 OFFICE HOURS.

AMENDATORY SECTION (Amending Order R-336, Docket No. A-900700, filed 2/22/91, effective 3/25/91)

WAC 480-09-100 COMMISSION ADDRESS—COMMUNICATIONS. (1) Address. Except as provided in chapter 480-04 WAC, all written communications and documents should be addressed to: ~~((The Office of the Secretary, Washington Utilities and Transportation Commission, P.O. Box 9022, 1300 South Evergreen Park Drive S.W., Olympia, Washington 98504-9022))~~ OFFICE OF THE SECRETARY, WASHINGTON UTILITIES & TRANSPORTATION COMMISSION, 1300 S EVERGREEN PARK DR SW, PO BOX 47250, OLYMPIA WA 98504-7250, and not to individual members of the commission staff.

(2) Receipt of communications. Except as provided in chapter 480-04 WAC, all communications and documents are deemed to be officially received only when delivered at the office of the secretary and stamped with the date and time. Documents and communications physically received in the commission offices between 5:00 p.m. of one business day and the start of the next business day are not considered officially received until the next business day when stamped with the date and time.

(3) Identification; one subject in a letter. Letters to the Washington utilities and transportation commission (referred to in these rules as the "commission") should include only one subject.

(a) Each item of pleading or correspondence which relates to a proceeding before the commission shall set forth at the top of the first page the docket number and name of the proceeding, if known to the writer, the title of the pleading, and the identity of the person who submits it.

(b) Communications to the commission from the holder of any permit, license, or certificate shall identify the exact name and the number under which the authority is held and the name and title of the writer.

(4) Communications from the commission. Official communications from the commission, other than orders, shall be signed by the commissioners, secretary of the commission, or the secretary's designee.

AMENDATORY SECTION (Amending Order R-310, Docket No. U-89-2966-R, filed 10/12/89; effective 11/12/89)

WAC 480-09-210 RULE MAKING—NOTICE OF PROPOSED RULE—RULES COORDINATOR.

(1) In any proposed rule making, the commission may solicit comments from the public on the subject of possible rule making under active consideration within the agency by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the State Register. The publication shall contain information as provided in RCW 34.05.320 and shall constitute the proposal of a rule.

(3) Within a reasonable time after the publication of the notice of a proposed rule in the State Register, any person may request a copy of the notice by writing to the secretary of the commission.

(4) Petitions for adoption, amendment, or repeal of a rule shall be made pursuant to WAC 480-09-220.

(5) Upon filing notice of a proposed rule with the code reviser, the commission shall have copies of the statement on file and available for public inspection.

(6) Inquiries regarding rules being proposed or being prepared within the commission for proposal may be made to ~~((Office of the Secretary, Rules Coordinator, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington 98504))~~ OFFICE OF THE SECRETARY, RULES COORDINATOR, WASHINGTON UTILITIES & TRANSPORTATION COMMISSION, 1300 S EVERGREEN PARK DR SW, PO BOX 47250, OLYMPIA WA 98504-7250.

(7) Persons may receive notice of proposed rule makings for all commission rules, or for those affecting specific industries, by sending a request in writing to the rules coordinator.

**WSR 92-07-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
 [Order 92-08—Filed March 5, 1992, 3:35 p.m.]

Date of Adoption: March 5, 1992.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-32-05100K and 220-32-05700J;  
 and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: Harvestable numbers of salmon are available but the treaty allotment of sturgeon in the Dalles Pool has been exceeded. These rules are adopted to conform with regulations adopted by the treaty tribes to harvest their allotment of available salmon and sturgeon.

Effective Date of Rule: Immediately.

March 5, 1992  
 Judith Merchant  
 for Joseph R. Blum  
 Director

**NEW SECTION**

**WAC 220-32-05100L COLUMBIA RIVER SALMON SEASONS ABOVE BONNEVILLE.** (1) Notwithstanding the provisions of WAC 220-32-051 and 220-32-052, 220-32-053, 220-32-056, 220-32-057, and 220-32-058, effective immediately it is unlawful for a person to take or possess salmon, shad or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch reporting Areas 1F, 1G, and 1H except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla and Nez Perce treaties may fish under the following provisions:

(a) Open for salmon and shad from 12:00 noon March 5 through March 21, 1992.

(b) Sturgeon may be retained only for subsistence purposes.

(c) Gear: Set Gillnets - No mesh restriction

(2) Notwithstanding the provisions of WAC 220-32-058, closed area at the mouth of:

(a) Hood River is those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the breakwall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

(b) Herman Creek is those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(c) Deschutes River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

(d) Umatilla River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

(e) Big White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located one-half mile downstream from the west bank upstream to light "35".

(f) Wind River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

(g) Klickitat River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1 1/8 miles downstream from the west bank.

(h) Little White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately one-half mile upstream from the eastern shoreline.

(3) Notwithstanding the provisions of WAC 220-22-010, during the open periods in subsection (1):

(a) Area 1F (Bonneville Pool) shall include those waters of the Columbia River upstream from the Bridge of Gods, and downstream from the west end of the 3 mile rapids located approximately 1.8 miles below the Dalles Dam.

(b) Area 1G shall include those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 mile above the Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in midriver, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy light below John Day Dam.

(c) Area 1H shall include those waters of the Columbia River upstream from a fishing boundary marker approximately one-half mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam

**REPEALER**

The following sections of the Washington Administrative Code are repealed effective 12:00 noon March 5, 1992:

WAC 220-32-05100K COLUMBIA RIVER  
SALMON SEASONS ABOVE BONNEVILLE. (92-04)

WAC 220-32-05700J COLUMBIA RIVER  
STURGEON SEASONS ABOVE BONNEVILLE.  
(92-04)

WSR 92-07-008  
PERMANENT RULES  
DEPARTMENT OF FISHERIES

[Order 92-07—Filed March 6, 1992, 8:10 a.m., effective April 16, 1992]

Date of Adoption: March 4, 1992.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-44-030 and 220-44-050.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to notice filed as WSR 92-03-150 on January 22, 1992.

Changes Other than Editing from Proposed to Adopted Version: Include waters west of the mouth of the Sekiu River; and change deepwater complex to 55,000 pounds, Sebastes complex to 50,000 pounds and widow rockfish to 30,000 pounds.

Effective Date of Rule: April 16, 1992.

March 5, 1992  
Judith Merchant  
Deputy  
for Joseph R. Blum  
Director

AMENDATORY SECTION (Amending Order 88-157, filed 10/27/88)

WAC 220-44-030 COASTAL BOTTOMFISH GEAR. It is unlawful to take, fish for, possess, transport through the waters of the state or land in any Washington state ports, bottomfish taken for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 29, 59A, 59B, 60A and that portion of Area 58 within the United States 200-mile Fishery Conservation Zone with any gear except as provided in this section:

(1) Otter trawl and beam trawl.

(a) It is unlawful to use, operate or carry aboard any fishing vessel otter trawl gear having meshes measuring less than 3 inches.

(b) It is unlawful to use or operate any bottom roller or bobbin trawl having meshes less than 4.5 inches. A bottom roller or bobbin trawl must have a minimum of two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend if the fishing vessel is simultaneously carrying aboard a net of less than 4.5-inch minimum mesh size.

Chafing gear must not be connected directly to the terminal (closed) end of the codend. For all bottom roller or bobbin trawls, chafing gear must have a minimum mesh size of 15 inches unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(c) ~~((It is unlawful to use or operate a))~~ On roller or bobbin trawls ~~((with meshes less than 3.0 inches.)),~~ chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6.0 inches. Rollers, bobbins, or discs used in roller or bobbin trawls must be a minimum of 14 inches in diameter.

(d) ~~((Double wall codends may not be used in any trawl with mesh size less than 4.5 inches. If a double wall codend is used, the double walled layers must be the same mesh size and coincide, knot to knot, and may not be longer than 25 trawl meshes or 12 feet, whichever is greater.~~

~~(e))~~ It is unlawful to use or operate a pelagic trawl with meshes less than 3.0 inches. ~~((It is unlawful to use a double wall codend in any pelagic trawl.))~~ Chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches. Footropes of pelagic trawls must be less than 1.75 inches in diameter, including twine necessary for seizing material. Sweepines, including the bottom leg of the bridle, must be bare.

(e) It is unlawful to use double wall codends in any trawl gear.

(2) Set lines. It is unlawful for the operator of set lines to leave such gear unattended unless marked as provided in WAC 220-20-010(5). Set lines must be attended at least once every seven days. Set lines must be marked at the surface at each terminal end with a pole, flag, light, radar reflector, and a buoy displaying clear identification of the owner or operator.

(3) Bottomfish pots. It is unlawful for the operator of bottomfish pots to leave such gear unattended unless marked as provided in WAC 220-20-010(5). Bottomfish pots must be attended at least once every seven days. Bottomfish pots set individually must be marked at the surface with a pole and a flag, light, or radar reflector, and a buoy displaying clear identification of the owner. Bottomfish pots laid on a groundline must be marked at the surface at each terminal end of the groundline with a pole and a flag, light, and radar reflector, and a buoy displaying clear identification of the owner or operator.

(4) Commercial jig gear.

(5) Troll lines. It is unlawful to take, fish for or possess salmon while fishing for bottomfish with troll line gear under authority of a bottomfish troll license, except that in any coastal waters it is lawful to retain for commercial purposes any species of bottomfish taken with commercial salmon gear incidental to a lawful salmon fishery.

(6) Shrimp trawls. It is unlawful in any coastal waters, to retain for commercial purposes more than 1,500 pounds per day of any bottomfish species other than Pacific whiting, shortbelly rockfish or arrowtooth flounder taken with shrimp trawl gear incidental to a lawful shrimp fishery.

(7) It is unlawful to take, fish for or possess any species of shellfish taken with lawful bottomfish gear except as provided in WAC 220-52-053, 220-52-063, 220-52-066, 220-52-069, and 220-52-071.

(8) It is unlawful to take or possess lingcod taken for commercial purposes with any gear from December 1

through April 14 in Coastal Marine Fish-Shellfish Management and Catch Reporting Area 59B.

**AMENDATORY SECTION** (Amending Order 91-12, filed 3/18/91, effective 4/18/91)

**WAC 220-44-050 COASTAL BOTTOMFISH CATCH LIMITS.** It is unlawful to possess, transport through the waters of the state, or land in any Washington state port bottomfish taken from Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, or 63 in excess of the amounts or less than the minimum sizes shown below for the species indicated. All weights are in round pounds:

(1) The following definitions apply to this section:

(a) Fixed two-week fishing period. Each of the following is defined as a fixed, two-week fishing period (hours given are on a 24-hour basis):

0001 hours January 1 to 2400 hours January 14;  
0001 hours January 15 to 2400 hours January 28;  
0001 hours January 29 to 2400 hours February 11;  
0001 hours February 12 to 2400 hours February 25;  
0001 hours February 26 to 2400 hours March 10;  
0001 hours March 11 to 2400 hours March 24;  
0001 hours March 25 to 2400 hours April 7;  
0001 hours April 8 to 2400 hours April 21;  
0001 hours April 22 to 2400 hours May 5;  
0001 hours May 6 to 2400 hours May 19;  
0001 hours May 20 to 2400 hours June 2;  
0001 hours June 3 to 2400 hours June 16;  
0001 hours June 17 to 2400 hours June 30;  
0001 hours July 1 to 2400 hours July 14;  
0001 hours July 15 to 2400 hours July 28;  
0001 hours July 29 to 2400 hours August 11;  
0001 hours August 12 to 2400 hours August 25;  
0001 hours August 26 to 2400 hours September 8;  
0001 hours September 9 to 2400 hours September 22;  
0001 hours September 23 to 2400 hours October 6;  
0001 hours October 7 to 2400 hours October 20;  
0001 hours October 21 to 2400 hours November 3;  
0001 hours November 4 to 2400 hours November 17;  
0001 hours November 18 to 2400 hours December 1;  
0001 hours December 2 to 2400 hours December 15;  
0001 hours December 16 to 2400 hours December 31;

(b) Fixed four-week periods. Each of the following is defined as a fixed, four-week fishing period (hours given are on a 24-hour basis):

0001 hours January 1 to 2400 hours January 28;  
0001 hours January 29 to 2400 hours February 25;  
0001 hours February 26 to 2400 hours March 24;  
0001 hours March 25 to 2400 hours April 21;  
0001 hours April 22 to 2400 hours May 19;  
0001 hours May 20 to 2400 hours June 16;  
0001 hours June 17 to 2400 hours July 14;  
0001 hours July 15 to 2400 hours August 11;  
0001 hours August 12 to 2400 hours September 8;  
0001 hours September 9 to 2400 hours October 6;  
0001 hours October 7 to 2400 hours November 3;  
0001 hours November 4 to 2400 hours December 1;  
0001 hours December 2 to 2400 hours December 31;

(c) Cumulative trip limit. A cumulative trip limit is the maximum amount of fish that may be taken and retained, possessed or landed in a specified period of time, without a limit on the number of landings or trips. Once a vessel has landed a cumulative trip limit, it may fish ahead into the next cumulative trip limit, provided that no landing is made until the next specified period of time. If a closure or reduction in cumulative trip limit of a species or species complex occurs while the vessel is fishing ahead, the vessel must cease fishing for that species or species complex and discard any catch or overage of the species or species complex on board. Such discard is not wastage pursuant to RCW 75.12.120.

(d) Vessel trip. A vessel trip is defined as having occurred upon the initiation of transfer of catch from a fishing vessel.

(e) Vessel trip limit. The amount of fish that may not be exceeded per vessel trip. All fish aboard a fishing vessel upon the initiation of transfer of catch are to be counted towards the vessel trip limit.

(f) Daily trip limit. The maximum amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip in 24 consecutive hours, starting at 0001 hours local time.

(g) Week. Wednesday through the following Tuesday.

(2) Widow rockfish (*Sebastes entomelas*) - ~~((10,000))~~ Cumulative trip limit of 30,000 pounds ~~((per vessel trip per calendar week, defined as Wednesday through the following Tuesday except that a fisherman having made a 1991 declaration of intent may make one landing of not more than 20,000 pounds biweekly, defined as Wednesday through the second Tuesday following. There is no limit on the number of landings of less than 3,000 pounds))~~ in a fixed four-week period. No minimum size.

~~((2))~~ (3) Shortbelly rockfish (*Sebastes jordani*) - no ~~((maximum poundage per))~~ cumulative or vessel trip limit; no minimum size.

~~((3))~~ (4) Pacific Ocean perch (*Sebastes alutus*) - No restriction on landing up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if Pacific Ocean perch represent 20 percent or less of total weight of fish on board per vessel trip. Under no circumstances may a vessel land more than 3,000 pounds of Pacific Ocean perch in any one vessel trip.

~~((4))~~ (5) All other species of rockfish (includes all *Sebastes* spp. except Pacific Ocean perch, widow rockfish, shortbelly rockfish and thornyhead or idiot rockfish) - ~~((25,000 pounds of all other species combined per vessel trip per calendar week, defined as Wednesday through the following Tuesday))~~ cumulative trip limit of 50,000 pounds per fixed two-week period, of which no more than ~~((5,000))~~ 8,000 pounds may be yellowtail rockfish (*Sebastes flavidus*)~~((, except that a fisherman having made a 1991 declaration of intent may make either one landing of no more than 50,000 pounds of all other species combined per vessel trip biweekly, defined as Wednesday through the second Tuesday following, of which no more than 10,000 pounds may be yellowtail rockfish, or two landings of not more than 12,500 pounds of all other species in any one calendar week of which not more than 2,500 pounds in any one landing may be~~



yellowtail rockfish. It is unlawful for any vessel to make other than one landing in excess of 3,000 pounds of other rockfish species in any calendar week, if no declaration to land other species of rockfish twice weekly has been made). No minimum size. The following limits apply to black rockfish (*Sebastes melanops*) taken with hook and line gear under this subsection:

(a) A vessel trip limit of 100 pounds or 30 percent of the total weight of fish aboard, whichever is greater, (including salmon, if the black rockfish are taken incidental to salmon trolling in Pacific Ocean waters), is established for those waters of the Strait of Juan de Fuca west of the mouth of the Sekiu River and Pacific Ocean waters south to Cape Alava (48°09'30" N. latitude) and Pacific Ocean waters between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'10" N. latitude).

(b) Any vessel fishing in the waters set out in (a) of this subsection during any portion of a vessel trip is prohibited from retaining, possessing, or landing black rockfish in excess of 100 pounds or 30 percent of the total weight of fish on board, whichever is greater.

((5)) (6) Deepwater complex: Sablefish, Dover sole and thornyhead or idiot rockfish (*Sebastes* spp.) – ((Fishers are limited to 27,500 pounds of the deepwater complex)) cumulative trip limit of 55,000 pounds per fixed two-week period, of which no more than ((7,500)) 25,000 pounds can be thornyhead rockfish((, per vessel trip, per calendar week, defined as Wednesday through the following Tuesday, except that a fisher having made a 1991 declaration of intent may make either one landing of no more than 55,000 pounds of the deepwater complex of which no more than 15,000 pounds can be thornyhead rockfish, per vessel trip biweekly, defined as Wednesday through the second Tuesday following or two landings of not more than 13,750 pounds of the deepwater complex of which no more than 3,750 pounds can be thornyhead rockfish, in any one calendar week. If no declaration of intent to land twice weekly has been made, then it is unlawful for any vessel to make more than one landing in excess of 4,000 pounds of the deepwater complex except sablefish landings are limited to 1,000 pounds)). No minimum size for Dover sole or thornyhead rockfish.

The following limits apply to sablefish taken under this subsection.

(a) Trawl vessels – No restrictions on landing up to 1,000 pounds per vessel trip. Landings above 1,000 pounds allowed only if sablefish represent 25 percent or less of the total combined round weight of the deepwater complex on board. To convert sablefish to round weight from dressed weight multiply the dressed weight by 1.6. Sablefish minimum size 22 inches in length, unless dressed in which case minimum size 15.5 inches in length from the anterior insertion of the first dorsal fin to the tip of the tail. Trawl vessels are allowed an incidental sablefish catch less than the minimum size of ((1,000)) 5,000 pounds ((or 25 percent of the total combined round weight of the deepwater complex, but not to exceed 5,000 pounds per trip)). This undersize sablefish

incidental allowance is inclusive in the trip limit for the deepwater complex.

(b) Nontrawl vessels – (i) March 1 through May 8 – 1,500 pound (round weight) daily trip limit.

(ii) May 9 through May 11 – no landings of sablefish allowed. Fishing gear may remain in the water during this period.

(iii) Beginning May 12, no trip limit. Minimum size 22 inches in length, unless dressed, in which case minimum size 15.5 inches in length from the anterior insertion of the first dorsal fin to the tip of the tail. Nontrawl vessels are allowed an incidental catch less than the minimum size of 1,500 pounds round weight or 3 percent of all sablefish aboard per trip. To convert to round weight from dressed weight multiply the dressed weight by 1.6.

((6) 1991 Declarations of intent – A 1991 declaration must be made to make other than one vessel trip per week and land in excess of the minimum amounts as provided for in this section. The new declaration form must be completed as provided for in this subsection, and is binding for a minimum of four weeks after the first Wednesday following the declaration. The 1991 declaration of intent to make other than one vessel trip per week must be mailed or delivered to the Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, and must be received prior to the beginning of such fishing. The declaration of intent must contain the name and address of the fisherman, the name and registration number of the vessel, the date on which such fishing will commence and must be signed and dated by the fisherman. The fisherman may return to the one vessel trip per calendar week fishing by filing a declaration of intent to stop fishing other than once weekly with the department in the above manner once the four-week period has passed. The declaration to stop such fishing and begin one vessel trip per calendar week fishing must be received prior to the beginning of the week in which the one vessel trip per calendar week fishing will resume. The date of first landing will determine the beginning of biweekly periodicity. A calendar week is defined as Wednesday through the following Tuesday:))

(7) It is unlawful during unloading of the catch and prior to its being weighed or leaving the unloading facility to intermix with any other species a species or category of bottomfish having a cumulative trip limit, vessel trip limit, or a daily trip limit.

(8) ((For purposes of this section, a vessel trip is defined as having occurred upon the initiation of transfer of catch from the fishing vessel, and all fish aboard the vessel are considered part of the vessel trip limit at the initiation of transfer of catch:)) The fishers copy of all fish receiving tickets showing landings of species provided for in this section must be retained aboard the landing vessel for 90 days after landing.

**WSR 92-07-009**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Order R-369, Docket No. UT-911389—Filed March 6, 1992, 3:01 p.m.]

In the matter of adopting WAC 480-146-091 relating to annual reports containing affiliated transactions.

This action is taken pursuant to Notice Nos. WSR 92-02-080 and 92-05-001 filed with the code reviser on December 31, 1991, and February 5, 1992, respectively. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and is intended administratively to implement that statute.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 92-02-080 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, February 5, 1992, by Notice No. WSR 92-05-001, filed February 5, 1992, it was set over to February 12, 1992, and on that date set over on the record to February 19, 1992, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to January 27, 1992, and orally at 9:00 a.m., Wednesday, February 12, 1992, and continued to February 19, 1992, in the commission's hearing room above noted.

At the February 19, 1992, meeting the commission considered the rule change proposal. Oral comments were made by Carolyn Iblings on behalf of U S WEST Communications, Dean Randall on behalf of GTE Northwest, and Richard Finnigan on behalf of Ellensburg Telephone Company. Written comments were received from John Buerger on behalf of The Washington Water Power Company, Fred Logan on behalf of GTE Northwest, Terry Vann on behalf of the Washington Independent Telephone Association, Corey Knutsen on behalf of Puget Sound Power and Light Company, Anne Eakin on behalf of Pacific Power and Light Company, D. Scott Johnson on behalf of Washington Natural Gas Company, and Mark Roellig on behalf of U S WEST Communications.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-146-091 should be adopted to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-146-091 as adopted will create a uniform affiliated interest reporting format which will consolidate all reporting requirements

of previously approved transactions for gas, electrical, and local exchange companies with over 50,000 access lines in Washington.

The commission's adoption of the new section varies in content from the proposal noticed in that not all local exchange companies need report, but only those serving more than 50,000 access lines in Washington; the meaning of "affiliated interest transactions" has been changed from "transactions" to "contracts or arrangements" between affiliated interests as defined in RCW 80.16.010; the meaning of "intercompany transactions" has been deleted; the terminology "parent" company or "regulated utility" has been changed to "public service" company; and by adding a subsection stating that the section does not modify any obligations of public service companies to seek approval of affiliated interest contracts and arrangements pursuant to chapter 80.16 RCW.

**ORDER**

WHEREFORE, IT IS ORDERED That WAC 480-146-091 as set forth in Appendix A, be adopted as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order be forwarded to the code reviser for filing and recorded in the order register of the Washington Utilities and Transportation Commission pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 6th day of March, 1992.

Washington Utilities and Transportation Commission  
 Sharon L. Nelson, Chairman  
 Richard D. Casad, Commissioner  
 A. J. Pardini, Commissioner

**APPENDIX "A"**

**NEW SECTION**

WAC 480-146-091 REPORTING OF AFFILIATED INTEREST TRANSACTIONS. (1) By June 1, in a format prescribed by the Commission, all gas, electrical, and local exchange companies serving more than fifty thousand access lines in Washington, as defined in RCW 80.04.010, shall file with the Commission a report of all affiliated interest transactions which occurred during the period January 1 through December 31 of the preceding year.

As used in this section "affiliated interest transactions" mean contracts or arrangements between affiliated interests as defined in RCW 80.16.010.

(2) The annual report required by this rule will, at a minimum, include the following information, provided in a format specified by the Commission:

(a) A organization chart of the public service company and a detailed description of the affiliates with appropriate financial information.

(b) A description of the nature of services flowing between the public service company and the affiliate, showing charges and pricing basis.

(c) A description of loans between the public service company and its affiliates.

(d) A description of debt guarantees by the public service company for any affiliate.

(e) A description of transactions with affiliates other than services, loans, or debt guarantees.

(f) A description of the procedure for allocating costs between the public service company and its affiliates.

(3) The annual report required by this section will supersede the reporting requirements contained in previous Commission orders authorizing affiliated interest transactions pursuant to Chapter 80.16 RCW.

(4) Nothing in this section is intended to modify the obligations of public service companies to seek approval of affiliated interest contracts and arrangements pursuant to chapter 80.16 RCW.

### WSR 92-07-010

#### PERMANENT RULES

#### UTILITIES AND TRANSPORTATION COMMISSION

[Order R-370, Docket No. UT-910856—Filed March 6, 1992, 3:03 p.m.]

In the matter of adopting WAC 480-80-048 relating to telecommunication access charges and allowing use of Washington exchange carrier association as filing agent.

This action is taken pursuant to Notice No. WSR 91-21-111 filed with the code reviser on October 22, 1991. The rule change hereinafter adopted shall take effect pursuant to RCW 34.05.380(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and chapter 80.36 RCW is intended administratively to implement these statutes.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 91-21-111 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, February 19, 1992, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to November 20, 1991, and orally at 9:00 a.m., Wednesday, January 15, 1992, in the commission's hearing room above noted.

At the February 19, 1992, meeting the commission considered the rule change proposal. Oral comments were made by Mike Moran on behalf of U S WEST Communications and Terry Vann on behalf of the Washington Independent Telephone Association; and written comments were received from T. Larry Barnes on behalf of AT&T, Edward Shaw on behalf of U S WEST Communications, and Terry Vann on behalf of the Washington Independent Telephone Association.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-80-048 should be adopted to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-80-048 as adopted will allow the Washington Exchange Carrier Association to serve as filing agent in relation to annual reviews of certain access charges by any local exchange company wishing to join, which serves less than one million access lines and operates in the state of Washington; and as tariff bureau for tariff filings.

The commission's adoption of WAC 480-80-048 varies in content from the proposal noticed under WSR 91-21-111 in that the amendment to WAC 480-80-047 was deemed inappropriate. That amendment language was added to the new section WAC 480-80-048. In addition, the first and last sentences of subsection (1) of WAC 480-80-048 (as proposed) have been deleted since the proposed amendment language to WAC 480-80-047 had contained similar language which has been incorporated into WAC 480-80-048.

#### ORDER

WHEREFORE, IT IS ORDERED That WAC 480-80-048 as set forth in Appendix A, be adopted as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.05.380(2).

IT IS FURTHER ORDERED That the order be forwarded to the code reviser for filing and recorded in the order register of the Washington Utilities and Transportation Commission pursuant to chapter 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 6th day of March, 1992.

Washington Utilities and Transportation Commission  
Sharon L. Nelson, Chairman  
Richard D. Casad, Commissioner  
A. J. Pardini, Commissioner

#### APPENDIX "A"

#### NEW SECTION

WAC 480-80-048 COLLECTIVE CONSIDERATION OF WASHINGTON INTRASTATE RATE, TARIFF, OR SERVICE PROPOSALS. (1) Upon approval by the commission of its rules of procedure, the Washington Exchange Carrier Association (WECA) may file with the commission petitions and publish and file with the commission tariffs and may represent before the commission those of its members that authorize it to do so. WECA's rules of procedure may provide for joint or collective consideration of proposals for changes in intrastate toll, interexchange and/or access rates, tariffs or conditions of service.

(2) All initial WECA tariffs and all changes to such tariffs shall be submitted to the commission subject to all the procedural requirements and protections associated with telecommunications company filings before the commission.

(3) Nothing contained in this rule shall prevent any member of WECA from independently submitting to, or

filing with, the commission directly any tariff, revenue requirement computation, report, or proposal.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision shall not compromise the independent evaluation by the commission of any filing or proposal which must be submitted to the commission for final approval.

(5) To the extent that WECA is involved in the collection and redistribution of funds pursuant to commission orders authorizing certain revenue sharing arrangements under common tariff, it shall maintain and provide to the commission monthly and annual financial reports relating to such arrangements. These reports shall include actual fund collections and distributions to each member local exchange company and the basis upon which the collection and distribution is made.

(6) Each local exchange telecommunication company serving less than one million access lines in the state of Washington has the option of utilizing the Washington Exchange Carrier Association as its filing agent/tariff bureau. Companies utilizing WECA may file collectively nontraffic sensitive, traffic sensitive, special access and/or billing and collection revenue and revenue requirement computations and/or tariffs.

(7) Nothing in this section shall be construed as amending or modifying WECA's current methods of administering the NTS/USF pools or the community calling fund under WAC 480-120-400, et. seq.

**WSR 92-07-011**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SERVICES FOR THE BLIND**

[Filed March 6, 1992, 3:15 p.m.]

**Original Notice.**

Title of Rule: WAC 67-35-070 Selecting a licensee or vendor to operate a vending facility—Procedure; 67-35-030 Terms defined; 67-35-060 Selecting a licensee or vendor to operate a vending facility—Notice; and 67-35-080 Vendor scoring—Explanation.

Purpose: Housekeeping.

Statutory Authority for Adoption: Chapter 74.18 RCW.

Summary: Clarify language, repeal WAC 67-35-080, no longer applicable.

Name of Agency Personnel Responsible for Drafting: James Fischer, 521 East Legion Way, 586-0277; Implementation and Enforcement: Bonnie Jindra, 521 East Legion Way, 586-0275.

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

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 67-35-030, added two new terms to definitions, primary locations and nonprimary locations; WAC 67-35-060, deleted "time" from the following: Applications are time and date stamped when they are received;

and WAC 77-35-070, deleted existing section and scoring process and replaced with new selection process that provides opportunities for more vendors to be included in the selection process.

Proposal Changes the Following Existing Rules: On WAC 67-35-070 the change does away with existing scoring of vendors for selecting a vendor to operate a vending facility and puts in place a new process that allows more vendors the opportunity to be included in the final selection process; and WAC 67-35-080 Vendor scoring—Explanation, repeal no longer applicable.

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

Hearing Location: La Quinta Inn Sea-Tac, 2824 South 188th Street, Seattle, WA 98188, on April 25, 1992, at 1:30 p.m.

Submit Written Comments to: Bonnie Jindra, by April 15, 1992.

Date of Intended Adoption: April 29, 1992.

March 6, 1992  
Bonnie Jindra  
Assistant Director  
Administration

AMENDATORY SECTION (Amending Order 84-06, filed 4/16/84)

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

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

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

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

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

(5) "Challenge test licensee" means a person who has prior work experience and/or training in food service and food service management and who takes the challenge test and is licensed by the department to operate a vending facility in the vending facility program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) "Lunch counter" means a vending facility which merchandises, among other things, lines of refreshment and food items suitable for a light meal. Characteristically, the lunch counter has specialized equipment for the refrigerating, cooking or heating of foods and beverages,

and has a limited food preparation area. Merchandise may be consumed at or away from the lunch counter. Vending machines may be part of the facility.

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

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

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

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

(23) "Nonprimary location" means any location that is not a primary location.

#### AMENDATORY SECTION (Amending Order 83-09, filed 12/15/83)

WAC 67-35-060 SELECTING A LICENSEE OR VENDOR TO OPERATE VENDING FACILITY—NOTICE. When a vending facility becomes available a "notice of available facility" is prepared by the vending facility program staff and sent to all licensees and vendors. The "notice of available facility" will contain sufficient information to enable licensees and vendors to determine if they are interested in applying to become the vendor in the available facility. A closing time and date for accepting applications is specified in the "notice," but in no event shall the closing time be less than ten business days from the date of mailing, unless the department declares an emergency requiring less than ten business days notice. ~~((Applications may be accepted in writing or by telephone.))~~ Only written applications will be accepted. Lack of response from a licensee or vendor within the allotted time period will be considered to be a negative response. Applications are ~~((time and))~~ date stamped when they are received.

#### AMENDATORY SECTION (Amending Order 85-12, filed 8/30/85)

WAC 67-35-070 SELECTING A ~~((LICENSEE OR))~~ VENDOR OR LICENSEE TO OPERATE A PRIMARY LOCATION VENDING FACILITY ~~((=PROCEDURE))~~. ~~((To select a licensee or vendor to operate an available vending facility, a score is computed for each licensee or vendor. The two vendors and two licensees having the two highest scores in each respective category as defined in WAC 67-35-030 will be interviewed by a panel representative of the vendors committee, the BEP director, and the building manager. The vendor or licensee who will operate the available vending facility will be chosen in this interview.~~

(2) Vendor score determination:

(a) A basic evaluation score will reflect a vendor's level of competency, as measured by the financial activities of the vending facility compared with vending facilities whose operations are similar.

(b) A vendor will receive one additional point for each year of experience in the vending facility program up to five points.

(c) The basic evaluation score for a vendor is determined by using three items reported on the vendor's monthly report: Gross income, cost of goods purchased and other operating expenses, and net proceeds. The cost of goods purchased and other operating expenses, gross income and net proceeds is determined and converted into a percentage of gross income. The percentages in each category are converted to points, as shown in WAC 67-35-080, and the sum of the two separate scores become the basic evaluation score. The basic evaluation score for each of the most current four quarters will be averaged, and this average plus points earned by seniority becomes the evaluation score.

(d) To achieve relative ranking of vendor and licensee effectiveness, vending facilities have been grouped into three classifications: Cafeterias, vending machine facilities, and other facilities. Other facilities consist of dry stands, snack bars and lunch counters. Any vending facility which as a result of modification, belongs in a different facility

classification will be assigned to that classification and will use the average percentages applicable to that classification. The vendors committee in conjunction with the director of the business enterprise program will group similar vending facilities.

(c) For each group of vending facilities, the national average percentage is used to calculate each item used in the evaluation. These average percentages will be taken from the previous year's Randolph-Sheppard Vending Facility Program Annual Report, which is provided by the United States Department of Education, Office of Rehabilitation Services Administration. The percentages used in the evaluation are the net proceeds to gross income and the cost of goods purchased and other operating expenses. Each federal fiscal year, the vendors shall be informed in writing of the average percentages and to which classification their vending location is assigned.

(f) Any vendor who has not provided the department with current monthly financial statements will not be eligible to bid on available locations:

(3) Licensee score determination:

(a) Individuals completing department sponsored training. The licensee's score will be the total points correct on the preliminary tests, the final examination, and the Randolph-Sheppard test. The BEP director will assure that the potential number of points remain consistent from quarter to quarter.

(b) Challenge test licensee's basic evaluation score will be the score he/she receives on the challenge test.) When a primary location vending facility becomes available, the business enterprise staff will send a written "notice of availability" to all vendors and all licensees as indicated by WAC 67-35-060.

A licensee or vendor bidding on the available primary location must submit their interest in writing to the department by 5:00 p.m. on the closing date of the bid. Bids received after the closing time and date will not be considered and the bids will be returned to the bidder.

#### ELIGIBILITY REQUIREMENTS TO BID ON A PRIMARY LOCATION

To be eligible to bid on a primary location the following must apply:

(1) A vendor must have been assigned to and have actively operated their present location for a minimum of twelve months. If there are no eligible bidders on a primary location, bids will be accepted from vendors who are eligible and have less than twelve months at their present location.

(2) Vendors must have provided the department with current monthly financial statements and have shown a cumulative total net profit on their last twelve months financial statements. Vendors who have not operated a vending facility for twelve consecutive months must use their certification test score for bidding purposes.

(3) Former vendors, who operated a vending facility within the last twelve months, and have provided the department with their most current monthly financial statements, must show a cumulative total net profit on their last twelve months financial statement. If they have not been a business enterprise vendor within the last twenty-four months, they will be required to take the certification test and they will use this score for bidding purposes.

(4) Licensees must have completed the agency sponsored training program and have taken the certification test and received a passing score of seventy percent or better.

(5) Vendors, former vendors, and licensees must include a completed job application with their bid indication. Additional information is encouraged but is not a replacement for the application.

(6) Be current in the payment of all federal and state taxes, Social Security taxes, unemployment taxes, and worker's compensation.

(7) Not owe the department of services for the blind for any back rents, missing equipment, or back inventories.

#### INTERVIEW PANEL COMPOSITION

The interview panel will include one representative of the business enterprise program, one representative of the vendors committee, and one representative of the building management of the available location.

#### APPLICATION SCREENING PROCESS

The interview panel will receive and review all of the applications of the vendors who responded to the notice of availability plus applications of the licensees with the top two scores on the certification test.

Applicants will be selected based on their education and prior work experience in: Operating a similar food service facility to the one on

the notice of availability, operating a different type of food service facility, participation in the business enterprise program all state meetings, and vendor committee meetings, or other program support and career enhancement training programs at colleges or universities.

Each panel member will select five applicants. Those applicants as well as the two licensees will be scheduled for an interview. The total number of applicants to be interviewed will not exceed seventeen.

#### THE INTERVIEW PROCESS

During the interview the panel will complete an applicant rating form for each applicant. The panel will rate each applicant on the interview questions and will use those ratings as guidelines for final selection. The panel selects the applicant who will operate the location.

All interviewed applicants will be notified of the results of the interview.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 67-35-080 VENDOR SCORING—EXPLANATION.

### WSR 92-07-012 EMERGENCY RULES DEPARTMENT OF SERVICES FOR THE BLIND [Filed March 6, 1992, 3:24 p.m.]

Date of Adoption: March 6, 1992.

Purpose: Selecting a vendor or licensee to operate a primary location vending facility.

Citation of Existing Rules Affected by this Order: Repealing WAC 67-35-080 Vendor scoring—Explanation; and amending WAC 67-35-070 Selecting a licensee or vendor to operate vending facility—Procedure.

Statutory Authority for Adoption: Chapter 74.18 RCW.

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

Reasons for this Finding: There are four new large vending facilities available and they should not be awarded under current system. The new language fosters competition, reduces dependence upon the program and corrects a glaring inequity in implementation of the law and makes the process consistent with statute and due process and fairness.

Effective Date of Rule: Immediately.

March 6, 1992  
Shirley A. Smith  
Director

#### AMENDATORY SECTION (Amending Order 85-12, filed 8/30/85)

WAC 67-35-070 ~~SELECTING A ((LICENSEE OR)) VENDOR OR LICENSEE TO OPERATE A PRIMARY LOCATION VENDING FACILITY ((= PROCEDURE)). ((1) To select a licensee or vendor to operate an available vending facility, a score is computed for each licensee or vendor. The two vendors and two~~

licensees having the two highest scores in each respective category as defined in WAC 67-35-030 will be interviewed by a panel representative of the vendors committee, the BEP director, and the building manager. The vendor or licensee who will operate the available vending facility will be chosen in this interview.

(2) Vendor score determination:

(a) A basic evaluation score will reflect a vendor's level of competency, as measured by the financial activities of the vending facility compared with vending facilities whose operations are similar.

(b) A vendor will receive one additional point for each year of experience in the vending facility program up to five points.

(c) The basic evaluation score for a vendor is determined by using three items reported on the vendor's monthly report: Gross income, cost of goods purchased and other operating expenses, and net proceeds. The cost of goods purchased and other operating expenses, gross income and net proceeds is determined and converted into a percentage of gross income. The percentages in each category are converted to points, as shown in WAC 67-35-080, and the sum of the two separate scores become the basic evaluation score. The basic evaluation score for each of the most current four quarters will be averaged, and this average plus points earned by seniority becomes the evaluation score.

(d) To achieve relative ranking of vendor and licensee effectiveness, vending facilities have been grouped into three classifications: Cafeterias, vending machine facilities, and other facilities. Other facilities consist of dry stands, snack bars and lunch counters. Any vending facility which as a result of modification, belongs in a different facility classification will be assigned to that classification and will use the average percentages applicable to that classification. The vendors committee in conjunction with the director of the business enterprise program will group similar vending facilities.

(e) For each group of vending facilities, the national average percentage is used to calculate each item used in the evaluation. These average percentages will be taken from the previous year's Randolph-Sheppard Vending Facility Program Annual Report, which is provided by the United States Department of Education, Office of Rehabilitation Services Administration. The percentages used in the evaluation are the net proceeds to gross income and the cost of goods purchased and other operating expenses. Each federal fiscal year, the vendors shall be informed in writing of the average percentages and to which classification their vending location is assigned.

(f) Any vendor who has not provided the department with current monthly financial statements will not be eligible to bid on available locations.

(3) Licensee score determination:

(a) Individuals completing department sponsored training. The licensee's score will be the total points correct on the preliminary tests, the final examination, and the Randolph-Sheppard test. The BEP director will assure that the potential number of points remain consistent from quarter to quarter.

(b) Challenge test licensee's basic evaluation score will be the score he/she receives on the challenge test.)

When a primary location vending facility becomes available, the business enterprise staff will send a written "notice of availability" to all vendors and all licensees as indicated by WAC 67-35-060.

A licensee or vendor bidding on the available primary location must submit their interest in writing to the department by 5:00 p.m. on the closing date of the bid. Bids received after the closing time and date will not be considered and the bids will be returned to the bidder.

ELIGIBILITY REQUIREMENTS TO BID ON A PRIMARY LOCATION

To be eligible to bid on a primary location the following must apply:

(1) A vendor must have been assigned to and have actively operated their present location for a minimum of twelve months. If there are no eligible bidders on a primary location, bids will be accepted from vendors who are eligible and have less than twelve months at their present location.

(2) Vendors must have provided the department with current monthly financial statements and have shown a cumulative total net profit on their last twelve months financial statements. Vendors who have not operated a vending facility for twelve consecutive months must use their certification test score for bidding purposes.

(3) Former vendors, who operated a vending facility within the last twelve months, and have provided the department with their most current monthly financial statements, must show a cumulative total net profit on their last twelve months financial statement. If they have not been a business enterprise vendor within the last twenty-four months, they will be required to take the certification test and they will use this score for bidding purposes.

(4) Licensees must have completed the agency sponsored training program and have taken the certification test and received a passing score of seventy percent or better.

(5) Vendors, former vendors, and licensees must include a completed job application with their bid indication. Additional information is encouraged but is not a replacement for the application.

(6) Be current in the payment of all federal and state taxes, Social Security taxes, unemployment taxes, and worker's compensation.

(7) Not owe the department of services for the blind for any back rents, missing equipment, or back inventories.

INTERVIEW PANEL COMPOSITION

The interview panel will include one representative of the business enterprise program, one representative of the vendors committee, and one representative of the building management of the available location.

APPLICATION SCREENING PROCESS

The interview panel will receive and review all of the applications of the vendors who responded to the notice of availability plus applications of the licensees with the top two scores on the certification test.

Applicants will be selected based on their education and prior work experience in: Operating a similar food service facility to the one on the notice of availability, operating a different type of food service facility, participation in the business enterprise program all state meetings, and vendor committee meetings, or other program support and career enhancement training programs at colleges or universities.

Each panel member will select five applicants. Those applicants as well as the two licensees will be scheduled for an interview. The total number of applicants to be interviewed will not exceed seventeen.

**THE INTERVIEW PROCESS**

During the interview the panel will complete an applicant rating form for each applicant. The panel will rate each applicant on the interview questions and will use those ratings as guidelines for final selection. The panel selects the applicant who will operate the location.

All interviewed applicants will be notified of the results of the interview.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 67-35-080 **VENDOR SCORING—EXPLANATION.**

**WSR 92-07-013**  
**NOTICE OF PUBLIC MEETINGS**  
**FOREST PRACTICES BOARD**  
 [Memorandum—March 6, 1992]

Notice is hereby given in accordance with RCW 42.30.080.

There will be a special Forest Practices Board meeting on March 13, 1992. The meeting will convene at 9:00 a.m. at the Tacoma Convention Center - Sheraton Tacoma Hotel, 1313 Market Street.

Additional information may be obtained from Forest Practices Division, 1007 South Washington, EL-03, Olympia, WA 98504, (206) 753-5315.

**WSR 92-07-014**  
**PERMANENT RULES**  
**LOTTERY COMMISSION**  
 [Filed March 6, 1992, 4:38 p.m.]

Date of Adoption: March 6, 1992.

Purpose: To amend WAC 315-34-040.

Citation of Existing Rules Affected by this Order: Amending WAC 315-34-040.

Statutory Authority for Adoption: RCW 67.70.040.

Pursuant to notice filed as WSR 92-03-146 on January 22, 1992.

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

March 6, 1992

Evelyn Y. Sun

Director

**AMENDATORY SECTION (Amending WSR 90-19-048, filed 9/14/90, effective 10/15/90)**

WAC 315-34-040 **PRIZES FOR LOTTO.** (1) The prize amounts to be paid to each Lotto player who selects a winning combination of numbers in the first, second, third and fourth prize categories vary due to pari-mutuel calculation of prizes. The prize amounts are based on the total amount in the prize pool for that Lotto drawing distributed over the number of winning tickets in each category.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All six winning numbers in one play	First Prize (Jackpot)	1:13,983,816
Any five but not six winning numbers in one play	Second Prize	1:54,201
Any four but not five or six winning numbers in one play	Third Prize	1:1,033
Any three but not four, five or six winning numbers in one play	Fourth Prize	1:57

(2) Prize allocation. The prize allocation consists of ~~((forty-five))~~ forty-eight percent of Lotto revenue. The prize allocation will be divided between the prize pool and the prize reserve as follows: prize pool—~~((forty-three))~~ forty-six percent of Lotto revenue; prize reserve—two percent of Lotto revenue.

(3) Prize amounts.

(a) First prize (jackpot). ~~((Fifty-eight))~~ Sixty-four percent of the prize pool is to be divided equally among all players who selected all six winning numbers in one play (in any sequence). The director may increase the cash value of the jackpot by an amount not to exceed the amount in the prize reserve.

(b) Second prize. ~~((Six))~~ Five percent of the prize pool is to be divided equally among all players who selected five of the six winning numbers in one play (in any sequence).

(c) Third prize. ~~((Twelve))~~ Ten percent of the prize pool is to be divided equally among all players who selected four of the six winning numbers in one play (in any sequence).

(d) Fourth prize. ~~((Twenty-four))~~ Twenty-one percent of the prize pool is to be divided equally among all players who selected three of the six winning numbers in one play (in any sequence).

(e) Prize reserve. The prize reserve will be held for payment of prizes at the discretion of the director.

(f) All prizes will be rounded to the nearest dollar. The remainder or shortages, if any, from the rounding process shall be placed in or taken from the prize reserve.



(g) The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(h) The holder of two or more jackpot winning tickets with a cumulative total cash value of \$250,000 or more may elect to receive a single prize based on the total cash value with prize payments in accordance with subsection (5)(a) or (b) of this section.

(i) In the event any player who has selected three, four, five, or six of the six winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

(4) Roll-over feature.

(a) If no player selects all six winning numbers for any given drawing, the jackpot accumulated for that drawing will be added to the jackpot accumulation for the next drawing. This process is repeated until the jackpot is won.

(b) If no player selects five of the six winning numbers for any given drawing, the second prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(c) If no player selects four of the six winning numbers for any given drawing, the third prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(d) If no player selects three of the six winning numbers for any given drawing, the fourth prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(5) Prize payments will be made in accordance with WAC 315-30-030(6).

(a) Each prize that has a cash value of \$500,000 or more shall be paid in twenty annual payments.

(b) Each prize that has a cash value of more than \$250,000 but less than \$500,000 shall, at the discretion of the director, be paid either in ten annual payments or twenty annual payments.

(c) Each prize that has a cash value of \$250,000 or less shall be paid in a single payment.

(d) For prizes paid over a period of years, the lottery will make the first annual payment. The remaining payments will be paid in the form designated by the director.

**WSR 92-07-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
 [Order 92-09—Filed March 6, 1992, 4:57 p.m.]

Date of Adoption: March 6, 1992.  
 Purpose: Personal use rules.  
 Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-56-280.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: This regulation is necessary to allow harvest of carp which may be stranded by the drawdown of Snake River impoundments behind Little Goose and Lower Monument Dams.

Effective Date of Rule: Immediately.

March 6, 1992  
 Judith Merchant  
 Deputy  
 for Joseph R. Blum  
 Director

**NEW SECTION**

**WAC 220-56-28000A CARP—LAWFUL GEAR.**  
*Notwithstanding the provisions of WAC 220-56-280, effective immediately through March 20, 1992, it is lawful to take carp for personal use from the following waters between the Highway 12 Bridge at Clarkston and Little Goose Dam:*

(1) *Area: Ponds located behind (landward of) the road or railroad embankments which parallel the main Snake River channel and which are normally connecting backwater portions of the impoundments behind Little Goose and Lower Monument Dams.*

(2) *Gear: Angling, spearing, bow and arrow, by hand or dipnet.*

*Bag Limit: No limit.*

**WSR 92-07-016**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
**(Examining Board of Psychology)**  
 [Filed March 9, 1992, 2:44 p.m.]

The Examining Board of Psychology wishes to withdraw the CR-102 for original notice of adoption of WAC 246-924-991 and 246-924-992 which was filed January 22, 1992, WSR 92-03-141. The Department of Health is adopting very similar rules and has agreed to modify their rules to include the board's concern. Because of this, these two separate rules are not necessary and we wish to withdraw them.

Dave Gossett  
 Chair

**WSR 92-07-017**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 [Order 251—Filed March 9, 1992, 2:48 p.m.]

Date of Adoption: March 4, 1992.

Purpose: To adopt new fees for new legislation regarding the Chiropractic Examining Board.

Citation of Existing Rules Affected by this Order: Amending WAC 246-806-990.

Statutory Authority for Adoption: RCW 43.70.250.

Pursuant to notice filed as WSR 92-03-140 on January 22, 1992.

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

March 4, 1992  
 Kristine M. Gebbie  
 Secretary

**AMENDATORY SECTION** (Amending Order 207, filed 10/21/91, effective 11/21/91)

WAC 246-806-990 CHIROPRACTIC FEES. The following fees shall be charged by the professional licensing division of the department of health:

Title of Fee	Fee
Application/full examination or reexamination	\$300.00
Original license	200.00
Temporary permit application	150.00
Temporary practice permit	50.00
Preceptorship	100.00
License renewal	300.00
Late renewal penalty	150.00
Inactive license renewal	((+100.00))
	150.00
Duplicate	15.00
(([Certificate] [Certification])) <u>Certification</u>	25.00
Chiropractic x-ray technician application	25.00
Chiropractic x-ray technician original registration	25.00
Renewal	40.00
Late renewal penalty	25.00
Duplicate	15.00
Certification	25.00

**WSR 92-07-018**  
 WITHDRAWAL OF PROPOSED RULES  
 HIGHER EDUCATION  
 PERSONNEL BOARD  
 [Filed March 9, 1992, 3:48 p.m.]

The Higher Education Personnel Board hereby withdraws proposed WAC 251-01-075, 251-01-120, 251-01-145, 251-01-150, 251-01-210, 251-01-350, 251-01-390, and 251-01-410 rule amendments, proposed new section WAC 251-01-147, and proposed WAC 251-01-385 repealer filed with your office on December 30, 1991, as WSR 92-02-060, and continued on February 10, 1992, as WSR 92-05-026.

In addition the Higher Education Personnel Board hereby withdraws proposed WAC 251-10-030 and 251-12-072 rule amendments filed with your office on December

30, 1991, as WSR 92-02-061 and 92-02-062, respectively, and continued on February 10, 1992, as WSR 92-05-027 and 92-05-028, respectively.

Additionally, the Higher Education Personnel Board hereby withdraws proposed chapter 251-17 WAC rule amendments filed with your office on December 30, 1991, as WSR 92-02-063, and continued on February 10, 1992, as WSR 92-05-029.

John A. Spitz  
 Director

**WSR 92-07-019**  
 WITHDRAWAL OF PROPOSED RULES  
 HIGHER EDUCATION  
 PERSONNEL BOARD  
 [Filed March 9, 1992, 3:50 p.m.]

The Higher Education Personnel Board hereby withdraws proposed WAC 251-01-255 rule amendment filed with your office on February 18, 1992, as WSR 92-05-072.

In addition, the Higher Education Personnel Board hereby withdraws proposed WAC 251-01-395 and 251-09-071 rule amendments filed with your office February 18, 1992, as WSR 92-05-073 and 92-05-075, respectively.

John A. Spitz  
 Director

**WSR 92-07-020**  
 NOTICE OF PUBLIC MEETINGS  
 BELLINGHAM TECHNICAL COLLEGE  
 [Memorandum—March 9, 1992]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, March 19, 1992, 8-10 a.m., in the Bellingham Technical College Building G Conference Center A.

**WSR 92-07-021**  
 RULES OF COURT  
 STATE SUPREME COURT  
 [March 5, 1992]

IN THE MATTER OF THE ADOPTION NO. 25700-B-243  
 OF THE WASHINGTON STATE BAR ORDER  
 ASSOCIATION'S LAW CLERK  
 PROGRAM FEES

This matter having come before the Court at its March 5, 1992, En Banc Administrative Conference on the recommendation of the Washington State Bar Association, Board of Governors, pursuant to APR 6(a), for approval of the Law Clerk Program Fee Schedule. The Court having considered the proposal;

Now, therefore, it is hereby  
 ORDERED:

That the Law Clerk Program Fee Schedule is as follows:

- (a) \$200.00 to be assessed on May 1, 1992, for the balance of the Fiscal Year (ending September 30, 1992).
- (b) \$500.00 annually thereafter, payable October 1.

DATED at Olympia, Washington this 5th day of March, 1992.

Fred H. Dore

CHIEF JUSTICE

**WSR 92-07-022**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [March 5, 1992]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENT TO RULE 19 FOR APR 12 NO. 25700-A-498 ORDER

The Limited Practice Board having recommended the adoption of the amendment to Rule 19 for APR 12, and the Court having approved the proposed amendment to the Rule;

Now, therefore, it is hereby

ORDERED:

(a) That the amendment to Rule 19 for APR 12 is adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment will become effective immediately.

DATED at Olympia, Washington this 5th day of March, 1992.

Dore, C/J

Robert F. Utter	James M. Dolliver
Robert F. Brachtenbach	Charles Z. Smith
B. Durham	Richard P. Guy
James A. Andersen	Charles W. Johnson

**RULES 19**  
**LPO NAME, SIGNATURE, AND NUMBER**  
**REQUIRED ON DISCLOSURE FORM**

~~The Limited Practice Officer (LPO) who selects, prepares, and/or completes the documents shall be identified on the disclosure form by name, as required by APR 12 (c)(2), along with their Limited Practice Board number. The documents, selected, prepared, and/or completed by the LPO shall be particularly identified on the a disclosure which shall also include the name, signature, and number of the limited practice officer.~~

**WSR 92-07-023**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed March 10, 1992, 10:46 a.m.]

Date of Adoption: March 10, 1992.

Purpose: The proposal establishes in rule billing policies and procedures, and hourly and overtime rates for service.

Citation of Existing Rules Affected by this Order: Amending [new sections] WAC 16-470-900 through 16-470-920.

Statutory Authority for Adoption: Chapter 17.24 RCW.

Pursuant to notice filed as WSR 92-03-104 on January 17, 1992.

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

March 10, 1992  
 Michael V. Schwisow  
 Deputy Director  
 for C. Alan Pettibone  
 Director

NEW SECTION

WAC 16-470-900 SCHEDULE OF FEES AND CHARGES—BILLING POLICIES AND PROCEDURES. (1) All billable services provided under chapter 17.24 RCW are due and payable upon billing by the department. For the convenience of established accounts and in accord with good business practices, the department provides a monthly billing. Accounts not paid in full within thirty days of billing shall be considered delinquent.

(2) All delinquent accounts shall be assessed a late charge equal to one percent per month, or portion of a month, on the unpaid balance.

(3) Except for established accounts where there is a reasonable expectation of additional charges during a calendar month, the minimum billable amount through the monthly billing system shall be twenty dollars. All billable services of less than twenty dollars shall be due and payable on the date that service is rendered.

(4) No person with an account ninety days or more in arrears shall receive service except on the basis of payment in full at the time service is rendered. Such accounts shall not be restored to monthly billing status until all past due amounts are paid-in-full. Such accounts may be subject to legal action for collection.

(5) Accounts that become ninety days or more in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

NEW SECTION

WAC 16-470-905 SCHEDULE OF FEES AND CHARGES—ESTABLISHING HOURLY RATES.

(1) Requested services shall be provided at an hourly rate and an overtime rate except as provided in WAC 16-470-905(5). The overtime rate shall apply for service provided before 8:00 a.m. or after 5:00 p.m. during the work day and for all services provided on Saturday,

Sunday, or on a holiday listed in subsection (2) of this section.

(2) Holidays shall mean New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day immediately following Thanksgiving Day, Veteran's Day, Christmas Day, President's Day, and Martin Luther King's Birthday.

(3) The minimum hourly charge assessed shall be one hour. Additional charges shall be in one-half hour increments prospectively.

(4) Persons requesting service with less than twenty-four hours notice on a weekend or holiday, or before 8:00 a.m. or after 5:00 p.m., may be subject to a call back charge of two hours at the overtime rate in addition to all other charges if the department is actually required to pay call back to the employee(s) providing the requested service.

(5) For larger projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated hourly rate.

**NEW SECTION**

**WAC 16-470-910 SCHEDULE OF FEES AND CHARGES—APPLICABLE FEES AND CHARGES.**

(1) Hourly rate . . . . . \$25.00

(2) Overtime rate . . . . . \$32.00

(3) Laboratory diagnostic services, except as provided in subsection (4) of this section, shall be charged at the applicable hourly rate plus materials.

(4) Plant pathology laboratory diagnostic fees shall be as follows:

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+samples
virus	\$75.00 ea	\$55.00 ea	\$42.00 ea	\$16.00 ea	\$ 2.50 ea
bacteria	35.00 ea	32.00 ea	30.00 ea	29.00 ea	29.00 ea
fungus	35.00 ea	30.00 ea	28.00 ea	29.00 ea	26.00 ea
nematode	26.00 ea	24.00 ea	22.00 ea	22.00 ea	20.00 ea

Note: To receive volume rates, samples must be submitted as a unit and identification request must be for one specific virus, bacterium, fungus, or nematode.

**NEW SECTION**

**WAC 16-470-915 SCHEDULE OF FEES AND CHARGES—FEES FOR POST ENTRY INSPECTION SERVICES.** (1) Site inspection and/or permit review and approval . . . . . \$50.00

(2) Subsequent inspections of post entry plant materials shall be provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

(4) Fees for post entry inspection services shall be effective May 1, 1992.

**NEW SECTION**

**WAC 16-470-920 SCHEDULE OF FEES AND CHARGES—MISCELLANEOUS FEES.** (1) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular

work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a work day or trip when per diem is applicable.

(2) Postage and other miscellaneous costs shall be charged back at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents shall be provided subject to the charges and conditions established in WAC 16-401-025.

(4) Fee for special handling service (i.e., Federal Express, Air Parcel Post, or Air Freight) . . . . . \$3.50

(5) Fee for facsimile transmission of documents, per document . . . . . \$3.50

**WSR 92-07-024**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed March 10, 1992, 10:49 a.m.]

Date of Adoption: March 10, 1992.

Purpose: To stop the spread of and to protect Washington waters and wetlands from new infestations of nonnative, aggressive, perennial weeds.

Citation of Existing Rules Affected by this Order: Amending [new sections] WAC 16-752-500 through 16-752-525.

Statutory Authority for Adoption: RCW 17.10.235 and chapter 17.24 RCW.

Pursuant to notice filed as WSR 92-03-105 on January 17, 1992.

Changes Other than Editing from Proposed to Adopted Version: WAC 16-752-507 was added to specify the quarantine area.

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

March 10, 1992

Michael V. Schwisow

Deputy Director

for C. Alan Pettibone

Director

**WETLAND AND AQUATIC WEED QUARANTINE**

**NEW SECTION**

**WAC 16-752-500 ESTABLISHING WETLAND AND AQUATIC WEED QUARANTINE.** Washington waters and wetlands are threatened by nonnative, aggressive, perennial weeds that destroy the commercial, aesthetic, and recreational value of these areas. Parrot's Feather (or parrotfeather or waterfeather), Brazilian elodea (or egeria), eurasian watermilfoil, and hydrilla, when established, will clog irrigation systems and waterways and seriously impact recreational use of the waterways. Salt meadow cordgrass, common cordgrass, and smooth cordgrass are noxious weeds that have invaded a small part of the salt water estuarine areas on the Washington coast displacing native species, threatening bird and mammal habitats and the shellfish industry. The director of agriculture, pursuant to the powers provided in chapters 17.10 and 17.24 RCW, finds that the

regulation and exclusion of these plants and plant parts are necessary to preserve Washington waters and wetlands, both fresh water and estuarine, from new or additional infestation. These requirements and restrictions, contained in WAC 16-752-500 through 16-752-525, are in addition to the requirements contained in WAC 232-12-271, "Criteria for planting aquatic plants and releasing wildlife," administered by the Washington state department of wildlife.

#### NEW SECTION

**WAC 16-752-505 WETLAND AND AQUATIC WEED QUARANTINE—REGULATED ARTICLES.** All plants and plant parts of the following are regulated articles under this chapter: Eurasian watermilfoil (*Myriophyllum spicatum*); hydrilla (*Hydrilla verticillata*); salt meadow cordgrass (*Spartina patens*); common cordgrass (*Spartina anglica*); smooth cordgrass (*Spartina alterniflora*); Parrot's Feather, parrotfeather or waterfeather (*Myriophyllum aquaticum* also known as *M. brasiliense* or *M. proserpinacoides*); and Brazilian elodea or egeria (*Egeria densa* or *Elodea densa*).

#### NEW SECTION

**WAC 16-752-507 WETLAND AND AQUATIC WEED QUARANTINE—QUARANTINE AREA.** The area under the wetland and aquatic weed quarantine includes all counties within the state of Washington and all states, territories, and districts of the United States.

#### NEW SECTION

**WAC 16-752-510 WETLAND AND AQUATIC WEED QUARANTINE—PROHIBITED ACTS.** It is prohibited to transport, buy, sell, offer for sale, or to distribute plants or plant parts of the regulated plants, listed in WAC 16-752-505, into or within the state of Washington. It is further prohibited to intentionally transplant wild plants and/or plant parts of these species within the state of Washington.

#### NEW SECTION

**WAC 16-752-515 WETLAND AND AQUATIC WEED QUARANTINE—EXEMPTIONS.** The prohibition on transporting plants or plant parts in WAC 16-752-510 shall not apply to plants or plant parts collected for herbariums, research in control methods, creation of pressed specimens for educational or identification purposes and other scientific activities: **PROVIDED**, That all activities requiring live plants, except pressed specimens, are conducted under permit from the director and are conducted in such a way that no infestation is created. No permit is required to transport plants or plant parts, as a part of a noxious weed control activity, to a sanitary landfill, to be burned, or otherwise for disposition: **PROVIDED**, That such activities are conducted under the supervision of an official weed control agency or other public agency with management responsibilities

for the control efforts and are conducted in such a manner that seed dispersal or dispersal of propagative materials to uninfested areas are prevented. Live plants for educational or training purposes shall not require a permit provided that specimens are disposed of in such a manner as to prevent infestation.

#### NEW SECTION

**WAC 16-752-520 WETLAND AND AQUATIC WEED QUARANTINE—DISPOSITION OF REGULATED ARTICLES.** Any plants or plant parts transported, bought, sold, offered for sale, or planted in violation of this order shall be subject to destruction or shipment back out-of-state if the director determines that such shipment may be done without danger of infestation. Any action shall be at the expense of the owner or the owner's agent and without compensation.

#### NEW SECTION

**WAC 16-752-525 WETLAND AND AQUATIC WEED QUARANTINE—PENALTIES.** Any person who violates the terms of this quarantine, as provided in WAC 16-752-500 through 16-752-520, or who aids and abets in such violation, shall be subject to criminal and/or civil penalties provided by law.

### **WSR 92-07-025**

#### **PERMANENT RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed March 10, 1992, 10:52 a.m.]

Date of Adoption: March 10, 1992.

Purpose: To protect Washington agriculture and natural resources from nonnative, aggressive species of noxious weeds.

Citation of Existing Rules Affected by this Order: Amending [new sections] WAC 16-752-600 through 16-752-660.

Statutory Authority for Adoption: Chapters 17.10 and 17.24 RCW.

Pursuant to notice filed as WSR 92-03-106 on January 17, 1992.

Changes Other than Editing from Proposed to Adopted Version: WAC 16-752-605 was added to specify the quarantine area.

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

March 10, 1992

Michael V. Schwisow  
Deputy Director  
for C. Alan Pettibone  
Director

### **NOXIOUS WEED SEED AND PLANT QUARANTINE**

#### NEW SECTION

**WAC 16-752-600 ESTABLISHING THE NOXIOUS WEED SEED AND PLANT QUARANTINE.** Washington agriculture and natural resources are

threatened by nonnative, aggressive species of noxious weeds. A number of these noxious weeds are transported and sold within the state of Washington both as nursery plants and as seeds in packets of flower seeds or "wildflower mixes." Subsequent "escape" of these ornamentals has been a documented source of a number of infestations and has resulted in large public and private expenditures by landowners and land managers, weed boards, and weed districts and the department of agriculture to achieve the control mandated in chapter 17.10 RCW. The director of agriculture, pursuant to the powers provided in chapters 17.10 and 17.24 RCW, finds that regulation of the sale of these seed packets and plants is necessary to protect Washington agriculture and natural resources and prevent public and private costs of control.

Note: For rules prescribing the limits of prohibited and restricted noxious weed seeds as contaminants in certified seed, see WAC 16-300-010 through 16-300-025.

**NEW SECTION**

**WAC 16-752-605 NOXIOUS WEED SEED AND PLANT QUARANTINE—QUARANTINE AREA.** The area under the noxious weed seed and plant quarantine includes all counties within the state of Washington and all states, territories, and districts of the United States.

**NEW SECTION**

**WAC 16-752-610 NOXIOUS WEED SEED AND PLANT QUARANTINE—REGULATED ARTICLES.** All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are regulated under the terms of this noxious weed quarantine:

Scientific Name	Common Names
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa
<i>Anthriscus sylvestris</i>	wild chervil
<i>Carduus acanthoides</i>	plumeless thistle
<i>Carduus nutans</i>	musk thistle, nodding thistle
<i>Centaurea diffusa</i>	diffuse knapweed
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centaury, horse-knobs, hardheads
<i>Centaurea maculosa</i>	spotted knapweed
<i>Centaurea macrocephala</i>	bighead knapweed
<i>Centaurea nigra</i>	black knapweed
<i>Centaurea nigrescens</i>	Vochin knapweed
<i>Chaenorrhinum minus</i>	dwarf snapdragon
<i>Chrysanthemum leucanthemum</i>	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	wild carrot, Queen Anne's lace
<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip

Scientific Name	Common Names
<i>Hibiscus trionum</i>	/ Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Hieracium aurantiacum</i>	orange hawkweed, orange paintbrush, red daisy, flameweed, devil's weed, grim-the-collier
<i>Hieracium pratense</i>	yellow hawkweed, yellow paintbrush, devil's paintbrush, yellow devil, field hawkweed, king devil
<i>Hypericum perforatum</i>	common St. Johnswort, goatweed, St. Johnswort
<i>Isatis tinctoria</i>	dyers' woad
<i>Kochia scoparia</i>	kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed
<i>Linaria genistifolia</i> spp. <i>dalmatica</i>	Dalmatian toadflax
<i>Lepidium latifolium</i>	perennial pepperweed
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort
<i>Onopordum acanthium</i>	Scotch thistle
<i>Proboscidea louisianica</i>	unicorn-plant
<i>Salvia aethiopsis</i>	Mediterranean sage
<i>Silybum marianum</i>	milk thistle
<i>Torilis arvensis</i>	hedgearsley
<i>Ulex europaeus</i>	gorse, furze
<i>Zygophyllum fabago</i>	Syrian bean-caper

**NEW SECTION**

**WAC 16-752-620 NOXIOUS WEED SEED AND PLANT QUARANTINE—PROHIBITED ACTS.** It is prohibited to transport, buy, sell, offer for sale, or to distribute plants or plant parts of the regulated species listed in WAC 16-752-610 into or within the state of Washington or to sell, offer for sale, or distribute seed packets of the seed, flower seed blends, or wildflower mixes of these regulated species into or within the state of Washington.

**NEW SECTION**

**WAC 16-752-630 NOXIOUS WEED SEED AND PLANT QUARANTINE—EXCEPTIONS.** The prohibition on transporting of plants and plant parts shall not apply to plant or plant parts collected for herbariums, research in control methods, creation of pressed specimens, or for educational or identification purposes and other scientific activities: PROVIDED, That all activities requiring live plants are conducted in such a manner as to prevent infestation. In addition, plants or plant parts may be transported, as a part of a noxious weed control activity, to a sanitary landfill, to be burned, or otherwise for disposition under the supervision of a noxious weed control agency.

**NEW SECTION**

**WAC 16-752-640 NOXIOUS WEED SEED AND PLANT QUARANTINE—PERMITS.** The director may allow the movement of materials, otherwise prohibited, by special permit. Such permit shall specify the terms and conditions under which movement is allowed.

NEW SECTION

WAC 16-752-650 NOXIOUS WEED SEED AND PLANT QUARANTINE—DISPOSITION OF REGULATED ARTICLES. Any plants, plant parts, or seed packets transported, bought, sold, or offered for sale in violation of this noxious weed quarantine shall be subject to destruction or shipment out-of-state or other disposition in a manner prescribed by the director to prevent infestation. Any action shall be at the expense of the owner or the owner's agent and without compensation.

NEW SECTION

WAC 16-752-660 NOXIOUS WEED SEED AND PLANT QUARANTINE—PENALTIES. Any person who violates the terms of the noxious weed quarantine, as provided in WAC 16-752-600 through 16-752-650, or who aids or abets in such violation, shall be subject to the civil and/or criminal penalties provided in chapter 17.24 RCW.

**WSR 92-07-026****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES****(Public Assistance)**

[Order 3334—Filed March 10, 1992, 11:22 a.m.]

Date of Adoption: March 10, 1992.

Purpose: To incorporate into Washington Administrative Code the current policy regarding oxygen services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-86-080 Oxygen service.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 92-03-041 on January 10, 1992.

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

March 10, 1992

Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2321, filed 12/27/85)

WAC 388-86-080 OXYGEN SERVICE. (1) The department may make oxygen ((shall be made)) and related equipment and supplies available through contract ((to include regulators, humidifiers, masks and related supplies)) to recipients ((under age sixty-five in their own homes)) when ((requested by)) the attending physician requests the service.

~~((2) Oxygen and related supplies may be obtained from contract supplier or other oxygen supplier at less cost for recipients in skilled nursing homes on the request of the attending physician.~~

~~((3) Recipients age sixty-five and over and others eligible for part B Medicare benefits who are not in a~~

~~nursing home or hospital shall have oxygen and equipment for its administration available only under Medicare. Such persons are not eligible for state owned equipment:))~~

**WSR 92-07-027****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES****(Public Assistance)**

[Order 3335—Filed March 10, 1992, 11:23 a.m.]

Date of Adoption: March 10, 1992.

Purpose: Amended effective December 3, 1990, to Omnibus Budget Reconciliation Act 4118(h). Changes permit medical expense payments by government programs which apply toward client's medically needy spenddown liability and assures that medical and remedial care expenses allowed toward spenddown liability are provided by a practitioner recognized under state law.

Citation of Existing Rules Affected by this Order: Amending WAC 388-99-030 Allocation of excess income—Spenddown.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: OBRA Section 4118(h).

Pursuant to notice filed as WSR 92-03-111 on January 21, 1992.

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

March 10, 1992

Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2929, filed 1/31/90)

WAC 388-99-030 ALLOCATION OF EXCESS INCOME—SPENDDOWN. (1) On initial or subsequent applications, the department shall deduct previously incurred medical expenses from the applicant's excess countable income subject to the following restrictions:

(a) The medical expense shall be a current liability:

(i) Of the applicant or financially responsible relative in the same household; or

(ii) Subject to payment during or after the base period, by a public program ((of the state, county, or city other than Medicaid)) as defined in subsection (2).

(b) The medical expense shall not have been used at any other time to reduce excess countable income on a medical application which resulted in eligibility;

(c) The department shall not consider toward spenddown the portion of the medical expense paid or covered by a third-party ((liability)) resource.

(i) The department shall disregard the possible payment as a resource and allow the entire expense for spenddown when a health insurer fails to send either payment or notice of the portion of a medical services bill covered within forty-five days of the date of service or thirty days from the last day of the base period, whichever is sooner.

(ii) When Medicare is the only insurance available and the applicant is hospitalized for the first time in a calendar year and the client still owes the bill, the department shall allow the Medicare deductible toward the spenddown.

(d) The department shall consider toward spenddown a medical expense incurred and paid ~~((for))~~ during the base period:

(i) ~~By the applicant ((during the base period)); or~~

(ii) Subject to payment by a public program ((of the state, county, or city other than Medicaid, and)) as defined in subsection (2).

(e) The department shall consider only medical services provided by practitioners recognized under state law.

(2) For the purposes of this section, a public program is one administered and funded, except for deductibles and co-insurance amounts, by a state, county, city, or territory. Funding for a public program shall be:

(a) From a source other than federally matched or funded; and

(b) Appropriated by a state, county, city, or territory; or

(c) Transferred from a state, county, city, or territory to the administering agency.

(3) If the incurred medical bills equal or exceed the excess countable income at the time of application, the department shall certify the ((applicant is eligible)) applicant's eligibility.

~~((3))~~ (4) If the incurred medical bills are less than the excess countable income, the department shall not approve the application and shall require the applicant to spenddown the remaining excess countable income. The department shall certify the applicant eligible only when excess countable income has been completely ((spenddown)) spent down. For base periods beginning on or after February 1, 1990, the department shall deduct medical expenses incurred during the spenddown period in the following order:

(a) Medicare and other health insurance premiums, deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Expenses for necessary medical and remedial care not covered by the limited casualty program and provided by a practitioner recognized under state law;

(c) Expenses for necessary medical and remedial care covered by the limited casualty program which a public program ((of the state, county, or city other than Medicaid)) as defined by subsection (2), has paid;

(d) Inpatient or outpatient hospital expenses for necessary medical and remedial care covered by the limited casualty program, but remaining an applicant's liability; and

(e) Expenses for necessary medical and remedial care other than inpatient or outpatient hospital expenses covered by the limited casualty program.

~~((4))~~ (5) The applicant shall provide the department with complete documentation of incurred medical expenses within thirty days of the end of the base period. Once the applicant's medical eligibility is approved, the department shall not consider expenses either not listed or omitted by the applicant. The applicant may use such

expenses to reduce excess countable income on a subsequent application, provided:

(a) The expenses incurred before the certification date meet the conditions in subsection (1) of this section; and

(b) Medical care or supplies received and paid for, on or after the certification date and before receiving medical coupons, meet the conditions in subsections (1)(b), (c), (d), and (e) of this section.

~~((5))~~ (6) The applicant is liable for any expenses incurred before the ((date the applicant is eligible)) first day of eligibility.

**WSR 92-07-028**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 3337—Filed March 10, 1992, 11:25 a.m.]

Date of Adoption: March 10, 1992.

Purpose: To assure consistency of the rules with the federal law on when a lien can be placed on a person's property when a person receives Medicaid payments incorrectly.

Citation of Existing Rules Affected by this Order: Amending WAC 388-81-050 Restitution.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 92-03-042 on January 10, 1992.

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

March 10, 1992

Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 1646, filed 4/27/81)

WAC 388-81-050 RESTITUTION. (1) If a medical care recipient ((of medical care)) was not eligible for ((such)) medical care or ((comes into)) takes possession of nonexempt resources which ((he/she)) the recipient fails to disclose to the department, the amount of such medical care payment ((made by)) the department pays on ((his/her)) the recipient's behalf ((which could have been met by his/her undisclosed resources)) shall be an overpayment and a debt due the department. ((See chapter 388-44 WAC for definition of overpayment and procedures pertaining to repayment by grant recipients.) Reimbursement cannot be collected))

(2) The department shall not collect reimbursement from a grant for vendor payments incorrectly paid for medical care.

~~((2))~~ (3) If the department does not obtain repayment ((is not obtained)) from a ((nongrant)) recipient, the ((case and the files relative thereto shall be forwarded to the)) office of ((reimbursements for such further)) financial recovery shall take action as ((deemed necessary)) described under 388-44 WAC. ((However, in no event shall))

(4) The department may place a lien ((be filed while the ineligible recipient or the dependent spouse is still



living unless the claim has been reduced to judgment in a superior)) against the recipient's property, both personal and real, before the recipient's death only if a court ((of the state of Washington)) judgment determines that benefits were incorrectly paid on behalf of the recipient.

**WSR 92-07-029**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Order 3338—Filed March 10, 1992, 11:28 a.m.]

Date of Adoption: March 10, 1992.

Purpose: Amended to assure consistency with state law on how the estate is determined at time of death. Changes definition "value of estate at the time of death" when recovery from estates is being considered.

Citation of Existing Rules Affected by this Order: Amending WAC 388-81-047 Recovery from estates.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: RCW 43.20B.140.

Pursuant to notice filed as WSR 92-03-112 on January 21, 1992.

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

March 10, 1992

Leslie F. James, Director  
 Administrative Services

**AMENDATORY SECTION** (Amending Order 2585, filed 1/19/88)

WAC 388-81-047 RECOVERY FROM ESTATES. (1) The department shall recover the cost of medical care provided to a recipient, who was sixty-five years old or older, upon the recipient's death, except:

(a) Where there is a surviving spouse; or

(b) Where there is a surviving child who is:

(i) ~~((Under))~~ Twenty~~((=one))~~ years of age~~((;))~~ and under; or

(ii) Blind or disabled as defined in chapter 388-92 WAC; or

(c) Where there are surviving children, other than defined in (b) of this subsection, recovery shall not include:

(i) The first fifty thousand dollars of the estate value at the time of death~~((;))~~; and

(ii) Sixty-five percent of the remainder.

(2) The department shall assert and enforce a claim against the estate of the deceased recipient for the debt in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The department shall file a lien against any real property which was in the name of the recipient just prior to death.

(a) The lien shall be filed with the county auditor of the county in which the property is located~~((;))~~; and

(b) The lien shall be deemed effective as of the date of the recipient's death~~((;))~~; and

and

(c) Recovery shall be upon the next sale or transfer of the property.

(4) If a surviving spouse or child, as defined in subsection (1)(b) of this section, is discovered or contacts the department prior to recovery, the department shall release the lien.

(5) The term "child" shall include both natural and adopted children.

(6) The value of the estate shall be the ~~((valuation listed in current property tax records))~~ total estate value less any liabilities on any real property outstanding at the time of death.

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 92-07-030**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed March 10, 1992, 11:30 a.m.]

Date of Adoption: March 10, 1992.

Purpose: To amend the period of time for negotiations between processors and associations representing producers of potatoes and sweet corn and to adopt a record-keeping requirement for negotiations.

Citation of Existing Rules Affected by this Order: Amending WAC 16-622-050.

Statutory Authority for Adoption: RCW 15.83.100.

Pursuant to notice filed as WSR 92-03-069 on January 14, 1992.

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

March 10, 1992

C. Alan Pettibone  
 Director

**AMENDATORY SECTION** (Amending WSR 90-08-069, filed 4/2/90)

WAC 16-622-050 NEGOTIATING PERIOD. The negotiating period provided in RCW 15.83.010 ~~((and 15.83.060))~~ shall commence each year on ~~((February 1st))~~ January 15th for potatoes and ~~((on February 5th for))~~ sweet corn. Negotiations may begin at any time prior to ~~((these))~~ this date~~((s))~~ and may continue past the date which is ~~((thirty))~~ forty-five days following ~~((these))~~ this date~~((s))~~ by mutual consent of the affected parties. Contracts which are agreed to during this mutual consent period will be considered advance contracts.

**NEW SECTION**

WAC 16-622-060 REPORT OF NEGOTIATING SESSION. (1) Each accredited association of producers and handler shall, within a reasonable time following a negotiating session, place a copy of a summary of the discussions into their respective accreditation file maintained for that negotiating unit. For the purposes of this section, a negotiating session is a meeting of the parties at which pertinent information is exchanged. Each summary shall accurately reflect the substance of discussions and the points raised by either side. Each summary shall

be signed by an authorized representative of the association of producers or handler which prepared it. Each summary shall contain the last offer of contract terms placed on the table during that negotiating session. Either party may place supplementary materials regarding the negotiation into their file. (2) At the conclusion of the forty-five day negotiating period which is thirty days prior to the normal planting date, each of the parties to a negotiation shall place, in their respective accreditation file for that negotiating unit, a report summarizing the negotiations and indicating whether an agreement was reached.

### WSR 92-07-031

#### NOTICE OF PUBLIC MEETINGS TRANSPORTATION IMPROVEMENT BOARD

[Memorandum—March 6, 1992]

#### MEETING NOTICE FOR MARCH 1992 TRANSPORTATION IMPROVEMENT BOARD OLYMPIA, WASHINGTON 98504-0901

Increase subcommittee meeting, 11:00 a.m. – 12:00 p.m., Thursday, March 26, 1992, in Port Angeles in Haguewood's Restaurant at the Red Lion Bay Shore Inn, 221 North Lincoln Street.

Strategic management, 1:00 p.m. – 5:00 p.m., Thursday, March 26, 1992, in Port Angeles in Haguewood's Restaurant at the Red Lion Bay Shore Inn, 221 North Lincoln Street.

Work session, 6:00 p.m., Thursday, March 26, 1992, in Haguewood's Restaurant.

TIB meeting, 9:00 a.m., Friday, March 27, 1992, in Port Angeles at the Port Angeles City Hall Council Chambers, 321 East 5th Street.

The next scheduled meeting is April 24, 1992, in Olympia at the Transportation Building.

### WSR 92-07-032

#### ATTORNEY GENERAL OPINION

Cite as: AGO 1992 No. 4

[March 6, 1992]

#### DEPARTMENT OF WILDLIFE—ANIMALS—GAME—ADMINISTRATIVE LAW—AUTHORITY OF THE DEPARTMENT OF WILDLIFE TO REGULATE WILDLIFE AND DELETERIOUS EXOTIC WILDLIFE BROUGHT INTO WASHINGTON

1. If an individual lawfully acquires wildlife in another state and lawfully brings it into Washington, the wildlife is the property of the individual, not the State. However, to lawfully bring wildlife into Washington an individual must comply with regulations of the Department of Wildlife and the individual's ownership is subject to the overarching regulatory authority of the State.

2. The Department of Wildlife has the authority to regulate deleterious exotic wildlife. Regulations adopted by the Department to regulate deleterious exotic wildlife do not conflict with RCW 77.12.010, which provides that nothing contained herein shall be construed to infringe on a private property owner's control over his or her private property.

Requested by:

Honorable Steve Fuhrman  
State Representative, District 7  
414 John L. O'Brien Building, AS-33  
Olympia, Washington 98504

### WSR 92-07-033

#### PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Institutions)

[Filed March 10, 1992, 1:25 p.m.]

Original Notice.

Title of Rule: WAC 275-56-005 Purpose and authority; 275-56-015 Definitions; 275-56-088 Regional support networks—Community support services; and 275-56-447 Employment services.

Purpose: The three amendments and one new rule implement the provisions of SHB 1915 which is designed to add employment services to the existing service provided by mental health programs within the state to persons with mental illness.

Statutory Authority for Adoption: RCW 71.24.035, 71.24.045, and 71.24.300.

Statute Being Implemented: RCW 71.24.035, 71.24.045, and 71.24.300.

Summary: These proposed rule amendments and new rule provide performance standards for mental health provider agencies.

Reasons Supporting Proposal: Implement the provisions of SHB 1915 relating to employment services in mental health programs which are designed to include supported employment, transitional work, placement in competitive employment and other work-related services that will result in employment for mentally ill persons. Emergency adoption is required in order to meet the March 31, 1992, deadline which has been extended by the Division of Vocational Rehabilitation for approval of services. Without DVR approval of this WAC, payments for services will not be issued.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Hasan Malik, Mental Health Division, 586-0356.

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 May 5, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by May 5, 1992.

Date of Intended Adoption: May 19, 1992.

March 10, 1992  
Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 2935, filed 1/24/90, effective 1/25/90)

WAC 275-56-005 PURPOSE AND AUTHORITY. The purpose of chapter 275-56 WAC is to establish a county-managed community mental health program to help people experiencing mental illness retain or gain respected and productive positions in their community. This chapter establishes rules and regulations for county and regional support network administration of community mental health programs, licensing service providers, information, accountability, contracts and services. Chapter 275-56 WAC is adopted under chapter 71.24 RCW.

(1) Chapter 275-56 WAC enables participation in the community mental health system by service providers which are profit or nonprofit businesses, private or public businesses, individuals or partnerships, as well as corporations. A provider may contract with a county or regional support network (RSN) for one or more services defined by chapter 71.24 RCW.

(2) The rules and regulations for county duties are specified in two areas:

(a) County planning under WAC 275-56-020, 275-56-025, 275-56-040, 275-56-050, 275-56-055, and 275-56-060; and

(b) County fiscal requirements under WAC 275-56-065 through 275-56-085.

(3) Compliance with the rules and regulations for RSN duties shall be phased in according to the RSN contract (WAC 275-56-042). These rules and regulations are specified in two areas:

(a) RSN development and planning (WAC 275-56-016, 275-56-017, 275-56-035, 275-56-042, 275-56-043, 275-56-050, 275-56-055, 275-56-060, 275-56-087, 275-56-088, and 275-56-089); and

(b) RSN fiscal requirements (WAC 275-56-065 through 275-56-085).

(4) Minimum standards for licensing service providers are specified in four areas:

(a) Licensing procedures under WAC 275-56-090 through 275-56-105;

(b) Organizational administration for the provider under WAC 275-56-110 through 275-56-215, as follows:

(i) Administration;

(ii) Provider fiscal administration;

(iii) Personnel management;

(iv) Quality assurance;

(v) Program evaluation; and

(vi) Facilities(;;).

(c) Services administration under WAC 275-56-220 through 275-56-340, as follows:

(i) Accessibility and awareness of services;

(ii) Consumer rights;

(iii) Consumer entry, service planning, and service operations; and

(iv) Consumer records(;;).

(d) Services under WAC 275-56-355 through 275-56-515:

(i) Emergency services, including preadmission screening services;

(ii) Outpatient services;

(iii) Day treatment services;

(iv) Consultation and education services;

(v) Community support services; ~~(and)~~

(vi) Residential services; and

(vii) Employment services.

AMENDATORY SECTION (Amending Order 2935, filed 1/24/90, effective 1/25/90)

WAC 275-56-015 DEFINITIONS. For the purposes of the rules, regulations, and standards of chapter 275-56 WAC, the following words and phrases shall have the following meaning:

(1) "Acutely mentally ill" means a condition limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in this chapter;

(b) Being gravely disabled as defined in this chapter; or

(c) Presenting a likelihood of serious harm as defined in this chapter.

(2) "Authority" means the board of county commissioners, county council, county executive, or RSN entity having the authority to establish a community mental health program.

(3) "Available resources" means funds appropriated by the legislature during any biennium for the purpose of providing community mental health programs. When RSNs are established or after July 1, 1995, "available resources" means:

(a) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(b) State funds appropriated under this chapter or chapter 71.05 RCW by the legislature during a biennium to provide mental health services.

(4) "Case management" means assistance to the consumer and family or significant others to obtain, maintain, or develop appropriate resources for the consumer. This involves obtaining or providing the full range of needed services to help consumers establish and maintain respected positions in the community, including:

(a) Housing;

(b) Income;

(c) Employment and other meaningful activities;

(d) Monitoring and interventions; and

(e) Crisis intervention and resolution.

(5) "Child" or "children" means a person or persons seventeen years of age and younger.

(6) "Chronically mentally ill" means a child or adult having a mental disorder, in the case of a child as defined by chapter 71.34 RCW, and meeting at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years(;;);

(b) In the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements:

(i) Are due to a mental disorder (as defined in chapter 71.34 RCW); and ~~(where the placements)~~

(ii) Progress toward a more restrictive setting. Placements by the department shall include but ~~(are)~~ not be limited to placements by child protective services and child welfare services;

~~(b)~~ (c) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding year;

~~(c)~~ (d) Has been unable to engage in substantial gainful activity (subsection ~~(47))~~ (50) of this section) by reason of any mental disorder lasting for a continuous period of not less than twelve months; or

~~(d)~~ (e) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(7) "Clinical staff member" means a regularly employed or contracted staff member or supervisor engaged in providing direct evaluative, diagnostic, or therapeutic services to consumers. The term does not include volunteers or students.

(8) "Community mental health program" means the total mental health program established by a county or group of counties acting in combination for the purpose of providing mental health services in accordance with the Community Mental Health Services Act, chapter 71.24 RCW. After July 1, 1995, or when RSNs are established, "community mental health program" means all activities or programs using available resources, under subsection (3) of this section.

(9) "Community Mental Health Services Act" means chapter 71.24 RCW.

(10) "Community support services" means:

(a) For non-RSN counties before July 1, 1995, services for priority population consumers including:

(i) Discharge planning for consumers leaving;

(A) State hospitals and other acute care inpatient facilities;

(B) Inpatient psychiatric facilities for consumers twenty years of age or younger; and

(C) Children's mental health residential treatment facilities(;;).

(ii) Contacts with consumers, families, schools, or significant others to provide for an effective program of community maintenance; and

- (iii) Medication monitoring.
- (b) After July 1, 1995, or when RSNs are established, for adult and children priority populations under WAC 275-56-010 (1)(b), services authorized, planned, and coordinated through resource management services include:
- (i) Assessment and diagnosis;
  - (ii) Emergency crisis intervention available twenty-four hours a day, seven days a week;
  - (iii) Prescreening determinations for mentally ill consumers considered for placement in nursing homes as required by federal law;
  - (iv) Screening for consumers considered for admission to residential services;
  - (v) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);
  - (vi) Case management services;
  - (vii) Psychiatric treatment, including medication supervision;
  - (viii) Counseling;
  - (ix) Psychotherapy;
  - (x) Assured transfer of relevant patient information among service providers;
  - (xi) Maintenance of the mental health information system for priority populations; and
  - (xii) Other services required by priority populations as determined by RSNs.
- (11) "Consumers" means persons, couples or families receiving clinical, coordinative, or support services.
- (12) "Consultation" means review and recommendations regarding the job responsibilities, activities or decisions of administrative, clinical or clerical staff, contracted employees, volunteers or students by persons with appropriate knowledge and experience to make recommendations. This definition does not constitute a definition of consultation and education.
- (13) "Consultation and education services" means those services provided to assist others in the community in understanding and caring for priority populations including:
- (a) Consultation to other community providers; and
  - (b) Educational and public information services.
- (14) "Crisis" means a situation where a person is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial or neurophysiological functioning.
- (15) "Crisis respite services" means residential support services provided to an individual who is in crisis or at risk of crisis; such services may be provided, in their own home or another home-like setting.
- (16) "Crisis response system" means the system designed to resolve crises in the least restrictive manner possible, including:
- (a) Emergency services;
  - (b) Crisis intervention;
  - (c) Crisis respite;
  - (d) Investigation and detention services; and
  - (e) Evaluation and treatment services.
- (17) "Day treatment services" means services for mentally ill consumers, including training in basic living and social skills, supported work, vocational rehabilitation activities, and may include therapeutic treatment.
- (18) "Department" means the department of social and health services.
- (19) "Direct treatment services" means clinical services provided directly to consumers meeting the consumer's mental health needs, as distinct from activities conducted with other persons, organizations, or groups on behalf of consumers, and also as distinct from supervisory, consultative, or training activities conducted with regard to consumers or services.
- (20) "Disabled" means an individual with a developmental disability, or a serious physical or sensory impairment.
- (21) "Elderly" means a person sixty years of age or older.
- (22) "Emergency services" means those responses and intervention services provided to consumers experiencing mental health emergencies or crises, including:
- (a) Twenty-four-hour telephone service; and
  - (b) Twenty-four-hour crisis intervention and outreach services.
- (23) "Employment services" means supported employment, transitional work, placement in competitive employment, and other work-related services that result in persons with a mental illness becoming engaged in meaningful and gainful full-time or part-time work.
- (24) "Geriatric long-term rehabilitative services" means long-term rehabilitative services (subsection ((30)) (32) of this section) for individuals (~~(age)~~ fifty-five years of age and over, or fifty-four years of

age and under who, because of psychoneurological impairments, are appropriate for this level of care.

~~((24))~~ (25) "Governing body" means the final decision-making body for a provider.

~~((25))~~ (26) "Gravely disabled" means a condition where a person, as a result of a mental disorder:

(a) Is in danger of serious physical harm resulting from a failure to provide for ~~((their))~~ such persons's essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning:

(i) Evidenced by repeated and escalating loss of cognition or volitional control over ~~((their))~~ such person's actions; and

(ii) Is not receiving such care as is essential for ~~((their))~~ such person's health or safety.

~~((26))~~ (27) "Individualized service plan" (ISP) means the plan developed by resource management services assuring continuity of a person's care and identifying needed residential and community support services.

~~((27))~~ (28) "Individualized treatment plan" (ITP) means the plan developed by the service provider identifying a person's treatment needs and methods of treatment and, in RSNs, is consistent with the ISP.

~~((28))~~ (29) "Integrated work setting" means that all work is done in settings which offer regular contact with nondisabled co-workers and includes social interaction and integration at the work site.

(30) "Less restrictive setting" means that service in which the consumer functions at maximum independence in the most normative environment possible.

~~((29))~~ (31) "Long-term adaptive services" means a facility-based residential program with twenty-four-hour nursing care and medical supervision, and mental health services which include:

(a) Program and case consultation from a mental health professional;

(b) Individualized treatment, as appropriate; and

(c) Staff training.

~~((30))~~ (32) "Long-term rehabilitative services" means a facility-based residential program for adults or children who:

(a) Require twenty-four-hour supervision;

(b) Do not require extensive medical care; and

(c) Have a severe functional or behavioral impairment as a result of a psychiatric disorder; or

(d) Do not follow or do not have an effective medication regime.

~~((31))~~ (33) "Material adjustment" means a budget revision equaling ten percent of a cost center.

~~((32))~~ (34) "Mental disorder" means organic, mental, or emotional impairment having substantial adverse effect on an individual's cognitive or volitional functions.

~~((33))~~ (35) "Mental health professional" means:

(a) A physician or osteopath licensed under chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry;

(b) A psychologist licensed under chapter 18.83 RCW;

(c) A psychiatric nurse, which means a registered nurse licensed under chapter 18.88 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(d) A social worker, which means a person with a masters or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent by the secretary;

(e) A person having at least a masters degree in behavioral sciences, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(f) A mental health counselor or marriage and family therapist certified under chapter 18.19 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(g) A professionally licensed occupational or physical therapist having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional; or

(h) A person having at least a bachelors degree in behavioral sciences or related field from an accredited college or university and having at least five years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional.

~~((34))~~ (36) "Mental health services" means services required under chapter 71.24 RCW, including:

(a) In non-RSN counties:

- (i) Emergency services, including screening for patients being considered for admission to state hospitals;
- (ii) Outpatient services;
- (iii) Day treatment;
- (iv) Consultation and education services; and
- (v) Community support services.
- (b) When RSNs are established, or after July 1, 1995, "mental health services" shall mean all services provided by RSNs.
- ~~((35))~~ (37) "Mentally ill persons" and "the mentally ill" means a person or condition defined in this chapter as:
- (a) Acutely mentally ill;
- (b) Chronically mentally ill; or
- (c) Seriously disturbed.
- ~~((36))~~ (38) "Minority" or "ethnic minority" means any of the following general population groups:
- (a) American Indian or Alaskan native, which includes:
- (i) An enrolled Indian;
- (A) A person enrolled or eligible for enrollment in a recognized tribe(:);
- (B) A person determined eligible to be found Indian by the secretary of the interior(:); or
- (C) An Eskimo, Aleut or other Alaskan native.
- (ii) A Canadian Indian: A person being a member of a treaty tribe, Metis community or nonstatus Indian community, from Canada(:); and
- (iii) An unenrolled Indian: A person considered Indian by a federally or nonfederally recognized Indian tribe or an off-reservation Indian/Alaskan native community organization(:);
- (b) Asian or Pacific Islander;
- (c) Black; or
- (d) Hispanic.
- ~~((37))~~ (39) "Outpatient services" means those services provided to priority populations needing less intensive treatment than that provided through inpatient, residential, or day treatment programs. Services shall include, but are not limited to:
- (a) Evaluation;
- (b) Individual, family, and group psychotherapy; and
- (c) Medication management.
- ~~((38))~~ (40) "Preadmission screening services" means those services provided for consumers being considered for voluntary admission to state hospitals to determine the appropriateness of admission and availability of alternatives.
- ~~((39))~~ (41) "Pre-vocational services" means activities which are oriented toward job or career exploration and training that is designed to lead toward integrated, competitive employment; transitional employment; supported employment; or volunteer vocational experience.
- (42) "Properly executed accounting documents" means accounting documents processed in a manner consistent with provider policies and procedures and providing sufficient and adequate documentation for an audit of the agency's financial transactions.
- ~~((40))~~ (43) "Provider" means licensed service provider as defined in chapter 71.24 RCW.
- ~~((41))~~ (44) "Regional support network" (RSN) means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary under this chapter.
- ~~((42))~~ (45) "Registration records" means all the records of the department, RSN, treatment facilities, and other persons providing services to the department, county departments, or facilities. Registration records identify individuals receiving or having received services for mental illness which have been funded by available resources.
- ~~((43))~~ (46) "Residential services" means a complete range of residences and supports authorized by resource management services. These may involve a facility, a distinct part thereof or services supporting community living, including, at least:
- (a) Evaluation and treatment services as defined in chapter 71.05 RCW;
- (b) Crisis respite care;
- (c) Supported living services;
- (d) Supervised care;
- (e) Long-term rehabilitative care;
- (f) Long-term adaptive care; and
- (g) Support services to nursing home residents.
- ~~((44))~~ (47) "Resource management services" means the planning, coordination, and authorization of residential and community support services administered under an ISP for priority populations, including:

(a) Seven-day-a-week, twenty-four-hour-a-day availability of information regarding mentally ill adults' and children's enrollment in services; and

(b) Access to their ISP by county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

~~((45))~~ (48) "Secretary" means the secretary of the department of social and health services.

~~((46))~~ (49) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to self or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder causing major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a minor child diagnosed by a mental health professional as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school, or with peers or is clearly interfering with the child's personality development and learning.

~~((47))~~ (50) "Substantial gainful activity" is work involving significant physical or mental activities done for pay or profit. Substantial gainful activity means, for elderly, retired persons and disabled persons, due to physical or mental impairment, the ability to manage retirement and/or disability income and activities of daily living. Substantial gainful activity means, for children, the ability to productively participate in educational activities.

~~((48))~~ (51) "Supervised living services" means facility-based care for adults requiring twenty-four-hour supervision but are able to use community-based resources outside of the facility when needed. Supervised living services provide minimal-to-moderate on-site programming primarily directed at maintaining consumers at this level of care or preparing consumers for transition into supported living services.

~~((49))~~ (52) "Supervision" means regular or occasional monitoring of the administrative, clinical, or clerical work performance of staff, students, volunteers, or contracted employees by persons with the authority to give direction and require change.

~~((50))~~ (53) "Supported employment" is competitive employment in an integrated work setting with ongoing support services for individuals with mental illness, for whom competitive employment has not traditionally occurred or which has been interrupted.

(54) "Supported living services" means nonfacility residential programs for adults and children requiring a flexible array of services and supports to successfully live in their homes, adult family homes, or foster homes.

~~((51))~~ (55) "Training" means planned educational events or activities designed to instill or enhance skills and to increase knowledge.

~~((52))~~ (56) "Transitional employment" means competitive work in an integrated setting for individuals with mental illness who may need support services (but not necessarily job skill training services), provided either at the work site or away from the work site. The job placement may not necessarily be a permanent employment outcome for the individual.

(57) "Treatment records" means registration and all other records concerning consumers receiving or at any time having received services for mental illness, which are maintained by the department, RSNs, and service providers. Treatment records do not include notes or records maintained for personal use by RSN or treatment facility staff providing treatment services if the notes or records are unavailable to others.

#### AMENDATORY SECTION (Amending Order 2935, filed 1/24/90, effective 1/25/90)

WAC 275-56-088 REGIONAL SUPPORT NETWORKS—COMMUNITY SUPPORT SERVICES. After July 1, 1995, or when RSNs are established, for adults and children priority populations (WAC 275-56-010 (1)(b)), community support services shall include:

- (1) Assessment and diagnosis (WAC 275-56-260);
- (2) Emergency crisis intervention available twenty-four hours a day, seven days a week (WAC 275-56-355);
- (3) Prescreening determinations for mentally ill consumers being considered for placement in nursing homes as required by federal law and department issuances;

(4) Screening for consumers being considered for admission to residential services;

(5) Discharge planning for consumers leaving state mental hospitals, other acute care inpatient facilities, and other children's mental health residential treatment facilities (WAC 275-56-445);

(6) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);

(7) Case management services (WAC 275-56-445);

(8) Employment Services;

(9) Psychiatric treatment, including medication supervision (WAC 275-56-295);

~~((9))~~ (10) Counseling (WAC 275-56-385);

~~((10))~~ (11) Psychotherapy (WAC 275-56-385);

~~((11))~~ (12) Assuring transfer of relevant patient information between service providers (WAC 275-56-240);

~~((12))~~ (13) Participation in the state mental health information systems for priority populations (WAC 275-56-055); and

~~((13))~~ (14) Other services required by priority populations as determined by RSNs, including day treatment services (WAC 275-56-400).

#### NEW SECTION

WAC 275-56-447 EMPLOYMENT SERVICES. (1) The county or RSN when established shall ensure that the following employment services, which help consumers achieve their own goals toward integrated and competitive work, shall be provided:

(a) Assessment of the consumers' work history, skills, training, education, and personal career goals;

(b) Provision of information, experience, and assistance to help the consumers make sound vocational decisions;

(c) Active involvement with consumers served in establishing individualized job and career development plans and revision of the individual treatment plan (ITP) accordingly;

(d) Assistance to consumers in locating employment opportunities consistent with consumer skills, goals, and interests;

(e) Active support of the consumers on an ongoing basis at their employment setting which shall include outreach and support services to individuals at their place of employment, if required, as well as the use of other interventions such as job coaching; and

(f) Interaction with the consumers' employer to maintain stability of employment and to assure reasonable accommodation is made in accordance with the Americans with Disabilities Act (ADA) of 1990.

(2) When the county or RSN contracts with more than one agency to provide services as described under subsection (1)(a) through (f) of this section, the county or RSN shall have a written plan of inter-agency collaboration and information sharing to ensure consistent and timely case movement.

(3) The county or RSN shall provide employment services, as described under section (1) of this section, in accordance with:

(a) Provision or ensured access to recent information about how employment may affect the benefits of persons served, such as Social Security Income (SSI) and Social Security Disability Insurance (SSDI);

(b) Maintenance and provision of data as requested by the department or RSN, which reflects the scope and effectiveness of the employment or prevocational services program;

(c) That compensation for persons placed in employment in accordance with the "Fair Labor Standards Act of 1938" (29 U.S.C. 214);

(d) When the provider offers employment or pre-vocational work experiences, an indigenous written safety program and the safety program shall be in place and in full compliance with WAC 296-24-060 relative to first aid training and certification; and

(e) Staff providing pre-vocational or employment services and the staff shall receive basic orientation training relative to vocational assessment, placement, and concepts of supported employment within three months of employment.

(4) To be licensed as a provider of employment services, an agency shall:

(a) Provide all services listed under subsections (1) and (2) of this section; and

(b) Serve persons and coordinate efforts with rehabilitation and employment services, such as the division of vocational rehabilitation, the state employment services, and the business community and job placement services within the community.

**WSR 92-07-034**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Institutions)**

[Order 3333—Filed March 10, 1992, 1:27 p.m., effective March 11, 1992, 12:01 a.m.]

Date of Adoption: March 10, 1992.

Purpose: The three amendments and one new rule implement the provisions of SHB 1915 which is designed to add employment services to the existing service provided by mental health programs within the state to persons with mental illness.

Citation of Existing Rules Affected by this Order: Amending WAC 275-56-005, 275-56-015, and 275-56-088.

Statutory Authority for Adoption: RCW 71.24.035, 71.24.045, and 71-24-300.

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: Implement the SHB 1915 provisions relating to employment services in mental health programs which are designed to include supported employment, transitional work, placement in competitive employment and other work-related services that will result in employment for mentally ill persons. Emergency adoption needed to meet March 31, 1992, deadline extended by the Division of Vocational Rehabilitation for approval of services. Without this approval, payments for services will not be issued.

Effective Date of Rule: March 11, 1992, 12:01 a.m.

March 10, 1992

Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2935, filed 1/24/90, effective 1/25/90)

**WAC 275-56-005 PURPOSE AND AUTHORITY.** *The purpose of chapter 275-56 WAC is to establish a county-managed community mental health program to help people experiencing mental illness retain or gain respected and productive positions in their community. This chapter establishes rules and regulations for county and regional support network administration of community mental health programs, licensing service providers, information, accountability, contracts and services. Chapter 275-56 WAC is adopted under chapter 71.24 RCW.*

*(1) Chapter 275-56 WAC enables participation in the community mental health system by service providers which are profit or nonprofit businesses, private or public businesses, individuals or partnerships, as well as corporations. A provider may contract with a county or regional support network (RSN) for one or more services defined by chapter 71.24 RCW.*

(2) The rules and regulations for county duties are specified in two areas:

(a) County planning under WAC 275-56-020, 275-56-025, 275-56-040, 275-56-050, 275-56-055, and 275-56-060; and

(b) County fiscal requirements under WAC 275-56-065 through 275-56-085.

(3) Compliance with the rules and regulations for RSN duties shall be phased in according to the RSN contract (WAC 275-56-042). These rules and regulations are specified in two areas:

(a) RSN development and planning (WAC 275-56-016, 275-56-017, 275-56-035, 275-56-042, 275-56-043, 275-56-050, 275-56-055, 275-56-060, 275-56-087, 275-56-088, and 275-56-089); and

(b) RSN fiscal requirements (WAC 275-56-065 through 275-56-085).

(4) Minimum standards for licensing service providers are specified in four areas:

(a) Licensing procedures under WAC 275-56-090 through 275-56-105;

(b) Organizational administration for the provider under WAC 275-56-110 through 275-56-215, as follows:

(i) Administration;

(ii) Provider fiscal administration;

(iii) Personnel management;

(iv) Quality assurance;

(v) Program evaluation; and

(vi) Facilities((-));

(c) Services administration under WAC 275-56-220 through 275-56-340, as follows:

(i) Accessibility and awareness of services;

(ii) Consumer rights;

(iii) Consumer entry, service planning, and service operations; and

(iv) Consumer records((-));

(d) Services under WAC 275-56-355 through 275-56-515:

(i) Emergency services, including preadmission screening services;

(ii) Outpatient services;

(iii) Day treatment services;

(iv) Consultation and education services;

(v) Community support services; ((and))

(vi) Residential services; and

(vii) Employment services.

**AMENDATORY SECTION** (Amending Order 2935, filed 1/24/90, effective 1/25/90)

WAC 275-56-015 DEFINITIONS. For the purposes of the rules, regulations, and standards of chapter 275-56 WAC, the following words and phrases shall have the following meaning:

(1) "Acutely mentally ill" means a condition limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in this chapter;

(b) Being gravely disabled as defined in this chapter; or

(c) Presenting a likelihood of serious harm as defined in this chapter.

(2) "Authority" means the board of county commissioners, county council, county executive, or RSN entity having the authority to establish a community mental health program.

(3) "Available resources" means funds appropriated by the legislature during any biennium for the purpose of providing community mental health programs. When RSNs are established or after July 1, 1995, "available resources" means:

(a) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(b) State funds appropriated under this chapter or chapter 71.05 RCW by the legislature during a biennium to provide mental health services.

(4) "Case management" means assistance to the consumer and family or significant others to obtain, maintain, or develop appropriate resources for the consumer. This involves obtaining or providing the full range of needed services to help consumers establish and maintain respected positions in the community, including:

(a) Housing;

(b) Income;

(c) Employment and other meaningful activities;

(d) Monitoring and interventions; and

(e) Crisis intervention and resolution.

(5) "Child" or "children" means a person or persons seventeen years of age and younger.

(6) "Chronically mentally ill" means a child or adult having a mental disorder, in the case of a child as defined by chapter 71.34 RCW, and meeting at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years((-or));

(b) In the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements:

(i) Are due to a mental disorder (as defined in chapter 71.34 RCW); and ((where the placements))

(ii) Progress toward a more restrictive setting. Placements by the department shall include but ((are)) not be limited to placements by child protective services and child welfare services;

((b)) (c) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months duration within the preceding year;

((c)) (d) Has been unable to engage in substantial gainful activity (subsection ((47)) (50) of this section) by reason of any mental disorder lasting for a continuous period of not less than twelve months; or

((d)) (e) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(7) "Clinical staff member" means a regularly employed or contracted staff member or supervisor engaged in providing direct evaluative, diagnostic, or therapeutic services to consumers. The term does not include volunteers or students.

(8) "Community mental health program" means the total mental health program established by a county or group of counties acting in combination for the purpose of providing mental health services in accordance with

the Community Mental Health Services Act, chapter 71.24 RCW. After July 1, 1995, or when RSNs are established, "community mental health program" means all activities or programs using available resources, under subsection (3) of this section.

(9) "Community Mental Health Services Act" means chapter 71.24 RCW.

(10) "Community support services" means:

(a) For non-RSN counties before July 1, 1995, services for priority population consumers including:

(i) Discharge planning for consumers leaving:

(A) State hospitals and other acute care inpatient facilities;

(B) Inpatient psychiatric facilities for consumers twenty years of age or younger, and

(C) Children's mental health residential treatment facilities(;).

(ii) Contacts with consumers, families, schools, or significant others to provide for an effective program of community maintenance; and

(iii) Medication monitoring.

(b) After July 1, 1995, or when RSNs are established, for adult and children priority populations under WAC 275-56-010 (1)(b), services authorized, planned, and coordinated through resource management services include:

(i) Assessment and diagnosis;

(ii) Emergency crisis intervention available twenty-four hours a day, seven days a week;

(iii) Prescreening determinations for mentally ill consumers considered for placement in nursing homes as required by federal law;

(iv) Screening for consumers considered for admission to residential services;

(v) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);

(vi) Case management services;

(vii) Psychiatric treatment, including medication supervision;

(viii) Counseling;

(ix) Psychotherapy;

(x) Assured transfer of relevant patient information among service providers;

(xi) Maintenance of the mental health information system for priority populations; and

(xii) Other services required by priority populations as determined by RSNs.

(11) "Consumers" means persons, couples or families receiving clinical, coordinative, or support services.

(12) "Consultation" means review and recommendations regarding the job responsibilities, activities or decisions of administrative, clinical or clerical staff, contracted employees, volunteers or students by persons with appropriate knowledge and experience to make recommendations. This definition does not constitute a definition of consultation and education.

(13) "Consultation and education services" means those services provided to assist others in the community in understanding and caring for priority populations including:

(a) Consultation to other community providers; and

(b) Educational and public information services.

(14) "Crisis" means a situation where a person is acutely mentally ill or experiencing serious disruption in cognitive, volitional, psychosocial or neurophysiological functioning.

(15) "Crisis respite services" means residential support services provided to an individual who is in crisis or at risk of crisis; such services may be provided, in their own home or another home-like setting.

(16) "Crisis response system" means the system designed to resolve crises in the least restrictive manner possible, including:

(a) Emergency services;

(b) Crisis intervention;

(c) Crisis respite;

(d) Investigation and detention services; and

(e) Evaluation and treatment services.

(17) "Day treatment services" means services for mentally ill consumers, including training in basic living and social skills, supported work, vocational rehabilitation activities, and may include therapeutic treatment.

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

(19) "Direct treatment services" means clinical services provided directly to consumers meeting the consumer's mental health needs, as distinct from activities conducted with other persons, organizations, or groups on behalf of consumers, and also as distinct from supervisory, consultative, or training activities conducted with regard to consumers or services.

(20) "Disabled" means an individual with a developmental disability, or a serious physical or sensory impairment.

(21) "Elderly" means a person sixty years of age or older.

(22) "Emergency services" means those responses and intervention services provided to consumers experiencing mental health emergencies or crises, including:

(a) Twenty-four-hour telephone service; and

(b) Twenty-four-hour crisis intervention and outreach services.

(23) "Employment services" means supported employment, transitional work, placement in competitive employment, and other work-related services that result in persons with a mental illness becoming engaged in meaningful and gainful full-time or part-time work.

(24) "Geriatric long-term rehabilitative services" means long-term rehabilitative services (subsection ~~((30))~~ (32) of this section) for individuals ~~((age))~~ fifty-five years of age and over, or fifty-four years of age and under who, because of psychoneurological impairments, are appropriate for this level of care.

~~((24))~~ (25) "Governing body" means the final decision-making body for a provider.

~~((25))~~ (26) "Gravely disabled" means a condition where a person, as a result of a mental disorder:

(a) Is in danger of serious physical harm resulting from a failure to provide for ~~((their))~~ such persons's essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning;



(i) Evidenced by repeated and escalating loss of cognition or volitional control over ~~((their))~~ such person's actions; and

(ii) Is not receiving such care as is essential for ~~((their))~~ such person's health or safety.

~~((26))~~ (27) "Individualized service plan" (ISP) means the plan developed by resource management services assuring continuity of a person's care and identifying needed residential and community support services.

~~((27))~~ (28) "Individualized treatment plan" (ITP) means the plan developed by the service provider identifying a person's treatment needs and methods of treatment and, in RSNs, is consistent with the ISP.

~~((28))~~ (29) "Integrated work setting" means that all work is done in settings which offer regular contact with nondisabled co-workers and includes social interaction and integration at the work site.

(30) "Less restrictive setting" means that service in which the consumer functions at maximum independence in the most normative environment possible.

~~((29))~~ (31) "Long-term adaptive services" means a facility-based residential program with twenty-four-hour nursing care and medical supervision, and mental health services which include:

(a) Program and case consultation from a mental health professional;

(b) Individualized treatment, as appropriate; and

(c) Staff training.

~~((30))~~ (32) "Long-term rehabilitative services" means a facility-based residential program for adults or children who:

(a) Require twenty-four-hour supervision;

(b) Do not require extensive medical care; and

(c) Have a severe functional or behavioral impairment as a result of a psychiatric disorder; or

(d) Do not follow or do not have an effective medication regime.

~~((31))~~ (33) "Material adjustment" means a budget revision equaling ten percent of a cost center.

~~((32))~~ (34) "Mental disorder" means organic, mental, or emotional impairment having substantial adverse effect on an individual's cognitive or volitional functions.

~~((33))~~ (35) "Mental health professional" means:

(a) A physician or osteopath licensed under chapter 18.57 or 18.71 RCW, who is board eligible in psychiatry;

(b) A psychologist licensed under chapter 18.83 RCW;

(c) A psychiatric nurse, which means a registered nurse licensed under chapter 18.88 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(d) A social worker, which means a person with a masters or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent by the secretary;

(e) A person having at least a masters degree in behavioral sciences, nursing sciences, or related field from an accredited college or university and having at least two years' experience in the direct treatment of mentally

ill individuals under the supervision of a mental health professional;

(f) A mental health counselor or marriage and family therapist certified under chapter 18.19 RCW and having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional;

(g) A professionally licensed occupational or physical therapist having at least two years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional; or

(h) A person having at least a bachelors degree in behavioral sciences or related field from an accredited college or university and having at least five years' experience in the direct treatment of mentally ill individuals under the supervision of a mental health professional.

~~((34))~~ (36) "Mental health services" means services required under chapter 71.24 RCW, including:

(a) In non-RSN counties:

(i) Emergency services, including screening for patients being considered for admission to state hospitals;

(ii) Outpatient services;

(iii) Day treatment;

(iv) Consultation and education services; and

(v) Community support services.

(b) When RSNs are established, or after July 1, 1995, "mental health services" shall mean all services provided by RSNs.

~~((35))~~ (37) "Mentally ill persons" and "the mentally ill" means a person or condition defined in this chapter as:

(a) Acutely mentally ill;

(b) Chronically mentally ill; or

(c) Seriously disturbed.

~~((36))~~ (38) "Minority" or "ethnic minority" means any of the following general population groups:

(a) American Indian or Alaskan native, which includes:

(i) An enrolled Indian:

(A) A person enrolled or eligible for enrollment in a recognized tribe(-);

(B) A person determined eligible to be found Indian by the secretary of the interior(-); or

(C) An Eskimo, Aleut or other Alaskan native.

(ii) A Canadian Indian: A person being a member of a treaty tribe, Metis community or nonstatus Indian community, from Canada(-); and

(iii) An unenrolled Indian: A person considered Indian by a federally or nonfederally recognized Indian tribe or an off-reservation Indian/Alaskan native community organization(-);

(b) Asian or Pacific Islander;

(c) Black; or

(d) Hispanic.

~~((37))~~ (39) "Outpatient services" means those services provided to priority populations needing less intensive treatment than that provided through inpatient, residential, or day treatment programs. Services shall include, but are not limited to:

(a) Evaluation;

(b) Individual, family, and group psychotherapy; and

(c) Medication management.

~~((38))~~ (40) "Preadmission screening services" means those services provided for consumers being considered for voluntary admission to state hospitals to determine the appropriateness of admission and availability of alternatives.

~~((39))~~ (41) "Pre-vocational services" means activities which are oriented toward job or career exploration and training that is designed to lead toward integrated, competitive employment, transitional employment, supported employment, or volunteer vocational experience.

(42) "Properly executed accounting documents" means accounting documents processed in a manner consistent with provider policies and procedures and providing sufficient and adequate documentation for an audit of the agency's financial transactions.

~~((40))~~ (43) "Provider" means licensed service provider as defined in chapter 71.24 RCW.

~~((41))~~ (44) "Regional support network" (RSN) means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary under this chapter.

~~((42))~~ (45) "Registration records" means all the records of the department, RSN, treatment facilities, and other persons providing services to the department, county departments, or facilities. Registration records identify individuals receiving or having received services for mental illness which have been funded by available resources.

~~((43))~~ (46) "Residential services" means a complete range of residences and supports authorized by resource management services. These may involve a facility, a distinct part thereof or services supporting community living, including, at least:

(a) Evaluation and treatment services as defined in chapter 71.05 RCW;

(b) Crisis respite care;

(c) Supported living services;

(d) Supervised care;

(e) Long-term rehabilitative care;

(f) Long-term adaptive care; and

(g) Support services to nursing home residents.

~~((44))~~ (47) "Resource management services" means the planning, coordination, and authorization of residential and community support services administered under an ISP for priority populations, including:

(a) Seven-day-a-week, twenty-four-hour-a-day availability of information regarding mentally ill adults' and children's enrollment in services; and

(b) Access to their ISP by county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the RSN.

~~((45))~~ (48) "Secretary" means the secretary of the department of social and health services.

~~((46))~~ (49) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to self or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder causing major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a minor child diagnosed by a mental health professional as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school, or with peers or is clearly interfering with the child's personality development and learning.

~~((47))~~ (50) "Substantial gainful activity" is work involving significant physical or mental activities done for pay or profit. Substantial gainful activity means, for elderly, retired persons and disabled persons, due to physical or mental impairment, the ability to manage retirement and/or disability income and activities of daily living. Substantial gainful activity means, for children, the ability to productively participate in educational activities.

~~((48))~~ (51) "Supervised living services" means facility-based care for adults requiring twenty-four-hour supervision but are able to use community-based resources outside of the facility when needed. Supervised living services provide minimal-to-moderate on-site programming primarily directed at maintaining consumers at this level of care or preparing consumers for transition into supported living services.

~~((49))~~ (52) "Supervision" means regular or occasional monitoring of the administrative, clinical, or clerical work performance of staff, students, volunteers, or contracted employees by persons with the authority to give direction and require change.

~~((50))~~ (53) "Supported employment" is competitive employment in an integrated work setting with ongoing support services for individuals with mental illness, for whom competitive employment has not traditionally occurred or which has been interrupted.

(54) "Supported living services" means nonfacility residential programs for adults and children requiring a flexible array of services and supports to successfully live in their homes, adult family homes, or foster homes.

~~((51))~~ (55) "Training" means planned educational events or activities designed to instill or enhance skills and to increase knowledge.

~~((52))~~ (56) "Transitional employment" means competitive work in an integrated setting for individuals with mental illness who may need support services (but not necessarily job skill training services), provided either at the work site or away from the work site. The job placement may not necessarily be a permanent employment outcome for the individual.

(57) "Treatment records" means registration and all other records concerning consumers receiving or at any time having received services for mental illness, which are maintained by the department, RSNs, and service providers. Treatment records do not include notes or records maintained for personal use by RSN or treatment facility staff providing treatment services if the notes or records are unavailable to others.

**AMENDATORY SECTION** (Amending Order 2935, filed 1/24/90, effective 1/25/90)

WAC 275-56-088 REGIONAL SUPPORT NETWORKS—COMMUNITY SUPPORT SERVICES. After July 1, 1995, or when RSNs are established, for adults and children priority populations (WAC 275-56-010 (1)(b)), community support services shall include:

- (1) Assessment and diagnosis (WAC 275-56-260);
- (2) Emergency crisis intervention available twenty-four hours a day, seven days a week (WAC 275-56-355);
- (3) Prescreening determinations for mentally ill consumers being considered for placement in nursing homes as required by federal law and department issuances;
- (4) Screening for consumers being considered for admission to residential services;
- (5) Discharge planning for consumers leaving state mental hospitals, other acute care inpatient facilities, and other children's mental health residential treatment facilities (WAC 275-56-445);
- (6) Investigation, legal, and other nonresidential services (chapter 71.05 RCW);
- (7) Case management services (WAC 275-56-445);
- (8) Employment Services;
- (9) Psychiatric treatment, including medication supervision (WAC 275-56-295);
- ~~((9))~~ (10) Counseling (WAC 275-56-385);
- ~~((10))~~ (11) Psychotherapy (WAC 275-56-385);
- ~~((11))~~ (12) Assuring transfer of relevant patient information between service providers (WAC 275-56-240);
- ~~((12))~~ (13) Participation in the state mental health information systems for priority populations (WAC 275-56-055); and
- ~~((13))~~ (14) Other services required by priority populations as determined by RSNs, including day treatment services (WAC 275-56-400).

**NEW SECTION**

WAC 275-56-447 EMPLOYMENT SERVICES.

- (1) The county or RSN when established shall ensure that the following employment services, which help consumers achieve their own goals toward integrated and competitive work, shall be provided:
- (a) Assessment of the consumers' work history, skills, training, education, and personal career goals;
  - (b) Provision of information, experience, and assistance to help the consumers make sound vocational decisions;
  - (c) Active involvement with consumers served in establishing individualized job and career development plans and revision of the individual treatment plan (ITP) accordingly;
  - (d) Assistance to consumers in locating employment opportunities consistent with consumer skills, goals, and interests;
  - (e) Active support of the consumers on an ongoing basis at their employment setting which shall include outreach and support services to individuals at their place of employment, if required, as well as the use of other interventions such as job coaching; and

(f) Interaction with the consumers' employer to maintain stability of employment and to assure reasonable accommodation is made in accordance with the Americans with Disabilities Act (ADA) of 1990.

(2) When the county or RSN contracts with more than one agency to provide services as described under subsection (1)(a) through (f) of this section, the county or RSN shall have a written plan of inter-agency collaboration and information sharing to ensure consistent and timely case movement.

(3) The county or RSN shall provide employment services, as described under section (1) of this section, in accordance with:

(a) Provision or ensured access to recent information about how employment may affect the benefits of persons served, such as Social Security Income (SSI) and Social Security Disability Insurance (SSDI);

(b) Maintenance and provision of data as requested by the department or RSN, which reflects the scope and effectiveness of the employment or prevocational services program;

(c) That compensation for persons placed in employment in accordance with the "Fair Labor Standards Act of 1938" (29 U.S.C. 214);

(d) When the provider offers employment or pre-vocational work experiences, an indigenous written safety program and the safety program shall be in place and in full compliance with WAC 296-24-060 relative to first aid training and certification; and

(e) Staff providing pre-vocational or employment services and the staff shall receive basic orientation training relative to vocational assessment, placement, and concepts of supported employment within three months of employment.

(4) To be licensed as a provider of employment services, an agency shall:

(a) Provide all services listed under subsections (1) and (2) of this section; and

(b) Serve persons and coordinate efforts with rehabilitation and employment services, such as the division of vocational rehabilitation, the state employment services, and the business community and job placement services within the community.

**WSR 92-07-035**

**EMERGENCY RULES**

**DEPARTMENT OF FISHERIES**

[Order 92-09—Filed March 10, 1992, 2:06 p.m.]

Date of Adoption: March 10, 1992.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-57-385 and 220-57-460.

Statutory Authority for Adoption: RCW 75.08.080.

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

to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The return of spring chinook salmon to the Quillayute and Soleduck rivers is adequate to support an earlier fishery. This rule will go into effect by permanent regulation beginning in 1993. This rule is necessary to achieve harvest of the available surplus in 1992.

Effective Date of Rule: Immediately.

March 10, 1992  
William Koss  
for Joseph R. Blum  
Director

NEW SECTION

**WAC 220-57-38500T QUILLAYUTE RIVER.** *Notwithstanding the provisions of WAC 220-57-385, effective immediately until further notice, Bag Limit A in those waters of the Quillayute River downstream from the confluence of the Soleduck and Bogachiel Rivers, including the waters of Olympic National Park.*

NEW SECTION

**WAC 220-57-46000Y SOLEDUCK RIVER.** *Notwithstanding the provisions of WAC 220-57-460, effective immediately until further notice, Bag Limit A in those waters of the Soleduck River downstream from the concrete pump station at the Soleduck Hatchery.*

**WSR 92-07-036**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Order 252—Filed March 10, 1992, 2:52 p.m.]

Date of Adoption: March 4, 1992.

Purpose: These rules prescribe procedures for renewal of veterinary licenses and animal technician registrations, establishes fee categories for new approved license categories, and changes the late renewal penalties.

Citation of Existing Rules Affected by this Order: Amending WAC 246-933-980, 246-933-990, and 246-935-990.

Statutory Authority for Adoption: For WAC 246-933-908 and 246-935-125 is RCW 43.70.040 and 18.92.140; and for WAC 246-933-990 and 246-935-990 is RCW 43.70.250.

Pursuant to notice filed as WSR 92-03-125 on January 21, 1992.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-933-990 Fees, the speciality licensure (initial exam/initial license) was reduced by \$25, to make the fee \$225 instead of \$250.

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

March 4, 1992  
Kristine M. Gebbie  
Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-933-980 RENEWAL OF LICENSES.** ~~((1) Effective with the renewal period beginning July 1, 1977, the annual license renewal date for veterinarians will be changed to coincide with the licensee's birthdate. Conversion to this staggered renewal system will be accomplished as follows:~~

~~(a) Current licensees, as of June 30, 1977. Licensed veterinarians desiring to renew their license will be required to pay a fee of fifteen dollars plus one-twelfth of that amount for each month, or fraction thereof, in order to extend their license to expire on their birth anniversary date next following June 30, 1978.~~

~~(b) On and after July 1, 1977, all new or initial veterinarian licenses issued will expire on the applicant's next birth anniversary date.~~

~~(2) After this conversion to a staggered renewal system, licensees may annually renew their license from birth anniversary date to the next birth anniversary date. However, licensees who fail to pay the license renewal fee on or before the license expiration date will be subject to the late payment penalty fee as set forth in WAC 308-152-010-))~~

(1) A veterinarian's license shall be renewed annually on the veterinarian's birth anniversary date. A veterinarian shall apply for renewal by submitting to the department:

(a) The renewal fee specified in WAC 246-933-990; and

(b) Evidence of the completion of continuing education if required by WAC 246-933-420.

(2) Failure to renew annually shall invalidate the license.

(a) A veterinarian may reinstate a license that has been expired less than three years by submitting to the department:

(i) A renewal application provided by the department;

(ii) The current renewal fee, a renewal fee for each year in which the license was expired, and the late renewal fee as specified in WAC 246-933-990; and

(iii) Evidence of compliance with the continuing education requirements of WAC 246-933-420.

(b) A veterinarian may request the reinstatement of a license that has been expired three or more years by submitting to the department:

(i) A reinstatement application for licensure, including an explanation for the license lapse and a chronology of the applicant's professional activities since the last renewal; and

(ii) The items specified in (a) (ii) and (iii) of this subsection. The board may require an applicant who has been out of active practice for a period of three or more years to pass the licensing examination to practice veterinary medicine.

AMENDATORY SECTION (Amending Order 122, filed 12/27/90, effective 1/31/91)

**WAC 246-933-990 FEES.** The following fees shall be charged by the professional licensing services division of the department of health:

Title of Fee	Fee
<b>Veterinarian:</b>	
National board examination (NBE) (initial/retake)	\$150.00
Clinical competency test (CCT) (initial/retake)	130.00
State examination (initial exam/ initial license)	225.00
State examination (retake)	150.00
<u>Specialty licensure (initial exam/initial license)</u>	<u>225.00</u>
Impaired veterinarian assessment	25.00
Temporary permit	100.00
<u>State or specialty license renewal</u>	<u>115.00</u>
<u>Retired active and renewal</u>	<u>60.00</u>
Impaired veterinarian assessment	25.00
Late renewal penalty ( <u>state and specialty license</u> )	((+40.00)) 35.00
<u>Late renewal penalty (retired active license)</u>	<u>20.00</u>
Duplicate license	15.00
Certification	25.00

**NEW SECTION**

WAC 246-935-125 RENEWAL OF REGISTRATIONS. Effective with the renewal period beginning July 1, 1992, the annual registration renewal date for animal technicians will be changed to coincide with the registrant's birthdate. A registrant's annual renewal fee shall be prorated during the transition period while renewal dates are changed to coincide with the registrant's birthdate. After this conversion to a staggered renewal system, registrants may renew their registration at the annual fee rate for one year from birth anniversary date to birth anniversary date. However, registrants who fail to pay the registration renewal fee on or before the registration expiration date will be subject to the late payment penalty fee as set forth in WAC 246-935-990.

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-935-990 FEES. The following fees shall be charged by the professional licensing services division of the department of health:

Title of Fee	Fee
<b>Animal technician:</b>	
National examination (initial/retake)	\$ 95.00
State examination (initial/retake)	100.00
Initial (( <del>license</del> )) <u>registration</u>	60.00
Renewal	60.00
Late renewal penalty	((60.00)) 20.00
Duplicate (( <del>license</del> )) <u>registration</u>	15.00
Certification	25.00

**WSR 92-07-037**

**WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF WILDLIFE**

[Filed March 11, 1992, 11:10 a.m.]

The proposed rule adopting WAC 232-28-61903, 1992-94 Washington game fish seasons and catch limits—Clear Lake (Pierce County), Echo Lake, Morton Lake, and Serene Lake, filed on January 2, 1992, WSR 92-02-090, is hereby withdrawn.

Pamela K. Madson  
Administrative Rules Officer

**WSR 92-07-038**

**PERMANENT RULES  
WILDLIFE COMMISSION**

[Order 536—Filed March 11, 1992, 11:12 a.m.]

Date of Adoption: February 8, 1992.

Purpose: To implement a mid-summer closure on Lake Desire.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 92-02-088 on January 2, 1992.

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

March 6, 1992

Curt Smitch

Director

for Dean A. Lydig  
Chair

**NEW SECTION**

WAC 232-28-61901 1992-94 WASHINGTON GAME FISH SEASONS AND CATCH LIMITS – LAKE DESIRE. Notwithstanding the provisions of WAC 232-28-619, the game fish seasons for Lake Desire are as follows:

Lake Desire: Open year around, except July 5–August 31 in 1992 and 1993.

**WSR 92-07-039**

**PERMANENT RULES  
WILDLIFE COMMISSION**

[Order 537—Filed March 11, 1992, 11:44 a.m.]

Date of Adoption: February 8, 1992.

Purpose: To close Pipers Creek (Carkeek Creek) to game fishing.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 92-02-089 on January 2, 1992.

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

March 6, 1992

Curt Smitch

Director

for Dean A. Lydig  
Chair

**NEW SECTION**

WAC 232-28-61902 1992-94 WASHINGTON GAME FISH SEASONS AND CATCH LIMITS - PIPERS CREEK. Notwithstanding the provisions of WAC 232-28-619, the game fish seasons and catch limits for Pipers Creek are as follows:

Pipers Creek (Carkeek Creek): from its mouth to concrete culvert adjacent the Metro plant (including Venema Creek); CLOSED WATERS. From concrete culvert adjacent the Metro plant to source: 1992 season closed water. June 1, 1993 to October 31, 1993 season, trout - no min. length, juveniles only (under 15 years old).

**WSR 92-07-040**  
**PERMANENT RULES**  
**WILDLIFE COMMISSION**  
[Order 538—Filed March 11, 1992, 11:45 a.m.]

Date of Adoption: February 8, 1992.

Purpose: To correct walleye regulations, reestablishing the intended daily catch limit.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 92-02-091 on January 2, 1992.

Effective Date of Rule: Thirty-one days after filing.  
March 6, 1992  
Curt Smitch  
Director  
for Dean A. Lydig  
Chair

**NEW SECTION**

WAC 232-28-61904 1992-94 WASHINGTON GAME FISH SEASONS AND CATCH LIMITS - WALLEYE. Notwithstanding the provisions of WAC 232-28-619, the game fish seasons and catch limits for walleye, statewide, are as follows:

GAME FISH SPECIES	DAILY CATCH LIMITS	MINIMUM SIZE LIMITS	POSSESSION LIMITS
Walleye . . .	Five, not more than one over twenty-four inches	Eighteen inches	Ten, not more than two over twenty-four inches

**WSR 92-07-041**  
**PERMANENT RULES**  
**WILDLIFE COMMISSION**  
[Order 539—Filed March 11, 1992, 11:46 a.m.]

Date of Adoption: February 8, 1992.

Purpose: To remove wild steelhead release regulations for the period December 1 through last day of February on the North and South Forks of the Skykomish River.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 92-02-092 on January 2, 1992.

Effective Date of Rule: Thirty-one days after filing.  
March 6, 1992  
Curt Smitch  
Director  
for Dean A. Lydig  
Chair

**NEW SECTION**

WAC 232-28-61905 1992-94 WASHINGTON GAME FISH SEASONS AND CATCH LIMITS - SKYKOMISH RIVER. Notwithstanding the provisions of WAC 232-28-619, the game fish seasons and catch limits for the Skykomish River, North Fork and South Fork are as follows:

Skykomish River, North Fork, from its mouth to one thousand feet downstream from Bear Creek Falls: June 1 through the last day of February season. Trout - catch limit - two, minimum length fourteen inches. Closed waters from one thousand feet below Bear Creek Falls to one thousand feet above Bear Creek Falls.

From one thousand feet upstream of Bear Creek Falls to headwaters: Trout - catch limit - two, minimum length fourteen inches. Bait prohibited.

Skykomish River, South Fork, from its mouth to six hundred feet downstream from the Sunset Falls Fishway: June 1 through the last day of February season. Trout - catch limit - two, minimum length fourteen inches. Closed waters from Sunset Falls Fishway to a point six hundred feet downstream of the fishway.

From Sunset Falls to source: Trout - catch limit - two, minimum length fourteen inches. Bait prohibited. Additional November 1 through last day of February season for whitefish only.

**WSR 92-07-042**  
**PERMANENT RULES**  
**WILDLIFE COMMISSION**  
[Order 540—Filed March 11, 1992, 11:47 a.m.]

Date of Adoption: February 8, 1992.

Purpose: To provide additional language to the Tokul Creek regulation for clarification.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 92-02-093 on January 2, 1992.

Effective Date of Rule: Thirty-one days after filing.  
March 6, 1992  
Curt Smitch  
Director  
for Dean A. Lydig  
Chair

**NEW SECTION**

WAC 232-28-61906 1992-94 WASHINGTON GAME FISH SEASONS AND CATCH LIMITS - TOKUL CREEK. Notwithstanding the provisions of WAC 232-28-619, the game fish seasons and catch limits for Tokul Creek are as follows:

Tokul Creek, from its mouth to the posted cable boundary marker located approximately seven hundred feet upstream of the mouth: December 1 through March 31 season. Trout – catch limit – two, minimum length fourteen inches. This area is closed daily from 5:00 p.m. to 7:00 a.m. This area is closed to all fishing from April 1 – November 30.

From the posted cable boundary marker located approximately seven hundred feet upstream of the mouth to the railroad trestle: Closed to all fishing year around.

**WSR 92-07-043****NOTICE OF PUBLIC MEETINGS****DEPARTMENT OF****TRADE AND ECONOMIC DEVELOPMENT****(Community Economic Revitalization Board)**

[Memorandum—March 9, 1992]

The location of the March 21, 1992, meeting of the CERB members has been changed from Olympia to Seattle.

Any questions regarding the CERB meetings should be sent to: CERB Administrator, Community Economic Revitalization Board, c/o Department of Trade and Economic Development, 2001 6th Avenue, Suite 2700, Seattle, WA 98121, (206) 464-6282.

**WSR 92-07-044****NOTICE OF PUBLIC MEETINGS****SOUTH PUGET SOUND****COMMUNITY COLLEGE**

[Memorandum—March 6, 1992]

At their March 5, 1992, meeting, the board of trustees changed the April 2 meeting date to April 16, 1992.

**WSR 92-07-045****NOTICE OF PUBLIC MEETINGS****WESTERN WASHINGTON UNIVERSITY**

[Memorandum—March 5, 1992]

The board of trustees of Western Washington University will change its regularly scheduled meeting from April 3, 1992, to Wednesday, April 15, 1992, at 1:30 p.m. on Western's campus, Old Main Room 340.

**WSR 92-07-046****PROPOSED RULES****HEALTH CARE AUTHORITY****(State Employees Benefits Board)**

[Filed March 11, 1992, 3:57 p.m.]

Continuance of WSR 92-04-001.

Title of Rule: Eligible employees, retirees and dependents, WAC 182-12-115.

Hearing Location: Tye Motel, Tumwater, Washington, on March 18, 1992, at 2:30 p.m.

Date of Intended Adoption: March 18, 1992.

March 11, 1992

Kristen A. West  
Rules Coordinator

**WSR 92-07-047****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES****(Public Assistance)**

[Filed March 12, 1992, 2:13 p.m.]

Original Notice.

Title of Rule: WAC 388-49-180 Categorical eligibility for general assistance clients.

Purpose: This proposed rule amendment brings the WAC into compliance with CFR. This amendment provides categorical eligibility for clients who receive state-funded general assistance.

Statutory Authority for Adoption: RCW 74.04.510.

Statute Being Implemented: RCW 74.04.510.

Summary: Clients who are receiving continuing general assistance will be considered categorically eligible for food stamps. These people are exempt for food stamp purposes from resources, gross and net income standards, Social Security number requirement, sponsored alien requirement, and residency requirement.

Reasons Supporting Proposal: Farm bill technical amendments provide that continuing state-funded general assistance clients are categorically eligible for food stamps.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana Beck, Division of Income Assistance, 438-8308.

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

Rule is necessary because of federal law, CFR 273.2 (j)(2) and (4).

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 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: April 21, 1992.

March 12, 1992

Fred Stephens  
for Leslie F. James, Director  
Administrative Services

AMENDATORY SECTION (Amending Order 3016, filed 5/31/90, effective 7/1/90)

WAC 388-49-180 CATEGORICAL ELIGIBILITY. (1) The department shall determine households categorically eligible for food stamps when all household members are authorized to receive AFDC ((and/or)), SSI and/or continuing state-funded general assistance benefits, except when:

- (a) The entire household is:
  - (i) Institutionalized;
  - (ii) Disqualified for any reason from receiving food stamps; or
  - (iii) Terminated due to failure to comply with monthly reporting requirements under WAC 388-49-590.
- (b) Any member is disqualified for an intentional program violation; or
- (c) The head of the household is disqualified for failure to comply with work registration requirements.
- (2) The department shall exempt a categorically eligible household from the following food stamp eligibility requirements:
  - (a) Resources((:));
  - (b) Gross and net income standards((:));
  - (c) Social Security number requirement((:));
  - (d) Sponsored alien requirement((:)); and
  - (e) Residency requirement.

**WSR 92-07-048**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed March 12, 1992, 2:15 p.m.]

**Original Notice.**

Title of Rule: WAC 388-37-039 Continuing general assistance—Assistance units.

Purpose: This WAC changes the department's policy on the combination of assistance units for multiple-program households. This section identifies the assistance unit composition for the general assistance program. The purpose also eliminates WAC 388-37-031 as this section is unnecessary and confusing and is already contained in WAC 388-15-212 and 388-15-213.

Statutory Authority for Adoption: RCW 74.04.005.

Statute Being Implemented: RCW 74.04.005.

Summary: This new WAC describes assistance unit composition for continuing general assistance. States department policy that the GA assistance unit consists of: Only the persons eligible for the GA program. If other family members are eligible for the AFDC program, they are not included in the GA assistance unit; or both people in the case of a married couple if both are eligible for GA. Repeals an obsolete and confusing WAC section in which the information is contained in WAC 388-15-212 and 388-15-213.

Reasons Supporting Proposal: Adds new section that changes the department's policy on the combination of assistance units for multiple program households. Repeals an unnecessary and confusing section of WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: RoseMary Micheli, Division of Income Assistance, 438-8318.

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 April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992

Fred Stephens

for Leslie F. James, Director  
Administrative Services

NEW SECTION

WAC 388-37-039 CONTINUING GENERAL ASSISTANCE—ASSISTANCE UNITS. The department shall include, in a single assistance unit, the following eligible persons living together:

- (1) An incapacitated or pregnant single person;
- (2) A married couple if both persons are incapacitated;
- (3) Only the incapacitated spouse in the case of a married couple when the other spouse is employable. The income and resources of the employable spouse shall be considered as described in chapter 388-28 WAC;
- (4) Only the incapacitated person in the case of a married couple/family when:
  - (a) The spouse or child(ren) with whom the person lives is eligible for an aid to families with dependent children grant;
  - (b) The incapacitated person is not eligible for an aid to families with dependent children grant; and
  - (c) The incapacitated person is not under sanction from the aid to families with dependent children program.
- (5) A married couple when the husband is incapacitated and the wife is eligible for general assistance under the pregnant woman provision;
- (6) Only the pregnant woman in the case of a married couple when the other spouse is employable. The income and resources of the employable spouse shall be considered as described in chapter 388-28 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-37-031 Continuing general assistance—Payment to employable spouse.

**WSR 92-07-049**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed March 12, 1992, 2:17 p.m.]

**Original Notice.**

Title of Rule: WAC 388-33-015 Payment of grant—Persons included.

Purpose: Clarifies that for the general assistant program, the payment standard is based on the number of people included in the assistance unit, but the grant can



be paid to each individual within the assistance on a prorated basis.

Statutory Authority for Adoption: RCW 74.04.005.

Statute Being Implemented: RCW 74.04.005.

Summary: Adds a qualifier that for the general assistance program, the grant can be paid to each individual without the assistance unit on a prorated basis.

Reasons Supporting Proposal: Clarifies that for the general assistance program, the payment standard is based on the number of people included in the assistance unit, but that the payment may be made on a prorated basis to each individual in the assistance unit.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: RoseMary Micheli, Division of Income Assistance, 438-8318.

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 April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992  
Fred Stephens  
for Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 1338, filed 9/18/78)

WAC 388-33-015 PAYMENT OF GRANT—PERSONS INCLUDED. Except as specified under subsection (2) of this section, each grant shall encompass only one assistance unit, even though there may be two or more assistance units in the same family group or household. For proper allocation of requirements and income among assistance units, see WAC ((388-29-080 and)) 388-28-500 and 388-29-080.

(2) For the general assistance program, the grant shall encompass only one assistance unit but may be paid in separate, prorated amounts to each person in the assistance unit.

**WSR 92-07-050**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed March 12, 1992, 2:18 p.m.]

Original Notice.

Title of Rule: WAC 388-29-001 Definitions.

Purpose: Clarifies the phrase "assistance unit" by adding to the definition. Explains that when this phrase

is used, it also refers to the person or group of persons who receive assistance under one program.

Statutory Authority for Adoption: RCW 74.04.005.

Statute Being Implemented: RCW 74.04.005.

Summary: Adds to the definition of an assistance unit. Clarifies that when this phrase is used throughout WAC, it also refers to the person or group of persons who will receive assistance under one program.

Reasons Supporting Proposal: Clarifies the term "assistance unit" used throughout WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: RoseMary Micheli, Division of Income Assistance, 438-8318.

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 April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992  
Fred Stephens  
for Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2947, filed 3/1/90, effective 4/1/90)

WAC 388-29-001 DEFINITIONS. (1) "Assistance unit" means a person or group of persons required to be included together when determining eligibility for an assistance program. Once eligibility for an assistance program is established, the assistance unit is the person or group of persons eligible to be included together under one assistance program.

(2) "Board and room" means a living arrangement in which ((an individual)) a person purchases food, shelter, and household maintenance requirements from one vendor.

(3) "Boarding home" means any place where one or more persons purchase food, shelter, and household maintenance requirements from one vendor.

(4) "Consolidated standards of need" means combining individual requirement amounts into a single dollar value.

(5) "Household maintenance" means the requirements for space heating, water heating, cooking, lights, refrigeration, household supplies, garbage pickup, sewage disposal, and water.

(6) "Life estate" means the right to use property for the duration of a specific person's lifetime.

(7) "Maximum" means no incremental increase in the payment standard for additional members of an assistance unit beyond a designated size.

(8) "Medical institution" means an institution where professional personnel provide medical, nursing, or convalescent care.

(9) "Need" means the difference between the payment standard and the applicant's or recipient's available income, if any.

(10) "Payment standard" means the amount to which the applicant's or recipient's available income and resources are compared in determining financial eligibility.

(11) "Rateable reduction" means the percentage difference between the need standard and the payment standard.

(12) "Requirement" means an item or service recognized by the department as essential to the welfare of ~~((an individual))~~ a person.

(a) "Additional requirement" means a requirement which is essential to some clients under specified conditions.

(b) "Basic requirements" means food, clothing, shelter, transportation, household maintenance, personal maintenance, and necessary incidentals.

(13) "Residing in own home" means a living arrangement not involving boarding and rooming or care in a hospital, nursing home, or another institution.

(14) "Standards of need" or "need standard" means the income required by an applicant or recipient to maintain a minimum and adequate level of living.

**WSR 92-07-051**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed March 12, 1992, 2:20 p.m.]

**Original Notice.**

Title of Rule: WAC 388-22-030 Definitions.

Purpose: Clarifies the phrase "assistance unit" used throughout WAC by adding to the definition. Explains that when this phrase is used, it also refers to the person or group of persons who receive assistance under one program.

Statutory Authority for Adoption: RCW 74.04.005.

Statute Being Implemented: RCW 74.04.005.

Summary: Adds to the definition of an assistance unit. Clarifies that when this phrase is used throughout WAC, it also refers to the person or group of persons who will receive assistance under one program.

Reasons Supporting Proposal: To clarify the term "assistance unit" used throughout WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: RoseMary Micheli, Division of Income Assistance, 438-8318.

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 April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992  
Fred Stephens  
for Leslie F. James, Director  
Administrative Services

**AMENDATORY SECTION** (Amending Order 2801, filed 5/24/89)

WAC 388-22-030 DEFINITIONS. This section contains definitions of words and phrases extensively used in the department's rules concerning the financial aid programs. This section provides a central location for definitions while eliminating the need to repeat the same in each WAC chapter. Related definitions are grouped under the key word.

For medical assistance—Title XIX and medical services (fully state-financed) program definitions, see chapter 388-80 WAC. For food stamp program definitions, see chapter 388-49 WAC.

(1) "Adequate consideration" means the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

(2) "Adult" means a person eighteen years of age or older.

(3) "Applicant" means any member of an assistance unit by or for whom a request for assistance has been made.

(4) "Application" means a written request for financial assistance or a written ~~((or oral))~~ request for medical or social service, provided by the department of social and health services, made by a person in the person's own behalf or in behalf of another person.

(5) "Assistance unit" means a person or group of persons required to be included together when determining eligibility for an assistance program. Once the department establishes eligibility for an assistance program, the assistance unit is the person or group of persons eligible to be included together under one assistance program.

(6) "Authorization" means an official approval of a departmental action.

(a) "Authorization date" means the date the prescribed form authorizing assistance is signed.

(b) "Authorization of grant" means attesting the applicant's eligibility for assistance and giving authority to make payment accordingly.

(7) "Automobile" means a motorized vehicle.

(8) "Board and room" means a living arrangement where a person purchases food, shelter, and household maintenance from one vendor.

(9) "Boarding home" means a place where a person purchases food, shelter, and household maintenance on a board and room basis.

(10) "CFR" means the code of federal regulations established by the federal government.

(11) "Cash savings" means money which is not classified as income.

(12) "Certification date" means the date the worker certifies changes in a client's case and authorizes a change in grant.

(13) "Child" or "minor child" means a person under 18 years of age.

(14) "Chore services" means household, yard, and/or personal care services which assist a person in the person's own home.

(15) "Client" means an applicant and/or recipient of financial, medical and/or social services.

(16) "Continuing assistance" means payments to persons who are eligible for and receive regular monthly grants on a prepayment basis.

(17) "Dependent child" means a child who is not self-supporting, married, or a member of the armed forces of the United States. Receiving public assistance does not constitute self-support.

(18) "Disability." (See WAC 388-93-025.)

(19) "Disaster assistance" means a financial grant or temporary housing for eligible victims of an emergency or major disaster as declared by the governor or president.

(20) "Effective date" means the date eligibility for a grant begins, changes, or ends.

(21) "Encumbrances" means any mortgage, claim, lien, charge or other legally enforceable liability, such as past due taxes, attached to and binding on property.

(22) "Entitlement" means any form of benefit, such as compensation, insurance, pension retirement, military, bonus, allotment, allowance payable in cash or in-kind in which a client may have a claim or interest.

(23) "Equity" means quick-sale value less encumbrances.

(24) "Estate" means all real and personal property that a deceased person has a right or interest as of the date of death.

(25) "Exception to policy" means a waiver by the secretary's designee to a department policy for a specific client experiencing an undue hardship because of the policy. The waiver may not be contrary to law.

(26) "Fair hearing" means an ~~((administrative))~~ adjudicative proceeding to hear and decide a client appeal of a department action or decision.

(27) "Federal aid" means the assistance grant programs funded in part by the United States government.

(28) "Food stamp program" means the program administered by the department in cooperation with the U.S. Department of Agriculture to certify eligible households to receive food coupons used to buy food.

(29) "Fraud."

(a) For financial aid programs, fraud means a deliberate, intentional and willful act with the specific purpose of deceiving the department with respect to any material fact, condition or circumstance affecting eligibility or need.

(b) "Food stamp fraud" is defined in chapter 388-49 WAC.

(30) "Funeral" means the care of the remains of a deceased person with, appropriate services including necessary costs of, needed facilities, a lot or cremation, and the customary memorial marking of a grave.

(31) "General assistance" means state-funded assistance to eligible pregnant or incapacitated persons who are not eligible for or not receiving federal aid assistance.

(32) "Grant" means an entitlement awarded to a client and paid by state warrants redeemable at par.

(a) "Grant adjustment" means postpayment of the difference between the amount a client was eligible for in a given period and the amount already paid.

(b) "Initial grant" means the payment due from date of eligibility to the date of the first regular grant.

(c) "Minimum grant" means ten dollars, unless a court decision requires payment of a smaller amount, or the grant would have exceeded ten dollars prior to applying a mandatory overpayment deduction.

(d) "One-time grant" means a payment supplementing or replacing a regular grant.

(e) "Regular grant" means the monthly prepayment of assistance on a continuing basis.

(33) "Grantee" means the person or persons to or for whom assistance is paid.

(34) "House" means a separate structure of one or more rooms.

(35) "Household maintenance" means the requirements for space heating, water heating, cooking, lights, refrigeration, household supplies, garbage, sewage disposal, and water.

(36) "Income" means any appreciable gain in real or personal property (cash or in-kind) received by a client during the month for which eligibility is determined, and that can be applied toward the needs of the assistance unit.

(a) "Cash income" means income in the form of money, bank notes, checks or any other readily liquidated form.

(b) "Earned income" means income in cash or in-kind earned as wages, salary, commissions or profit from activities in which the individual is engaged as a self-employed person or as an employee.

(c) "Exempt income" means net income which is not deducted from the cost of requirements to determine need.

(d) "Income in-kind" means income in the form of a requirement which contributes appreciably toward meeting the need for the requirement. Income in-kind shall be evaluated in terms of its cash equivalent under WAC 388-28-600.

(e) "Net income" means gross income less cost of producing or maintaining the income.

(f) "Nonexempt income" means net income which is deducted from the cost of requirements to determine need.

(g) "Recurrent income" means income which can be predicted to occur at regular intervals.

(37) "Incapacity" (see WAC 388-24-065 for AFDC and WAC 388-37-030 and 388-37-032 for GA-U).

(38) "Inquiry" means a request for information about the department and/or the services offered by the department.

(39) "Institution" means a treatment facility within which an individual receives professional care specific to that facility.

(a) "Institution-medical" provides medical, nursing or convalescent care by professional personnel.

(b) "Institution-private" is operated by nongovernmental authority by private interests.

(c) "Institution-public" is supported by public funds and administered by a governmental agency.

(d) "Institutional services" are those items and services furnished to individuals in a particular institution.

(e) "Nursing home" means a public facility or private licensed facility certified by the department to provide skilled nursing and/or intermediate care.

(40) "Joint account" means a numbered account within a financial institution which is registered to two or more parties and is accessible

to each party for withdrawal of a cash resource (see WAC 388-28-430 (2)(a)).

(41) "Living in own home" means a living arrangement other than a boarding home, hospital, nursing home, or other institution.

(42) "Marketable securities" means stocks, bonds, mortgages, and all other forms of negotiable securities.

(43) "Minor" means a person under eighteen years of age.

(44) "Need" is the difference between the assistance unit's financial requirements, by departmental standards, and the value of all nonexempt net income and resources received by or available to the assistance unit.

(45) "Need under normal conditions of living" means the Washington state gross median income adjusted for family size as promulgated by the secretary of HEW, under the authority granted by Title XX of the Social Security Act minus other income during a period of time when not receiving public assistance.

(46) "Overpayment" means any assistance paid to an assistance unit where:

(a) Eligibility for the payment did not exist; or

(b) Assistance paid was in excess of need.

(47) "Payee" means the person in whose name a warrant or check is issued.

(48) "Permanent and total disability" means the inability to do any substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is expected to last for at least twelve consecutive months.

(49) "Property" means all resources and/or income possessed by a client.

(a) "Personal property" means any form of property which is not real property.

(b) "Real property" is land, buildings thereon and fixtures permanently attached to such buildings. Growing crops are included. Any structure used as a dwelling shall be considered as real property.

(c) "Transfer of property" means a conveyance of title to, or any interest in, property from one party to another through a bill of sale, deed, or any other instrument conveying the interest in property.

(d) "Used and useful property" means property which currently serves a practical purpose for a client.

(50) "Protective payment" means a grant payment to an individual on behalf of an eligible recipient.

(51) "Psychiatric facility" means an institution legally qualified to administer psychiatric inpatient treatment.

(52) "Public assistance" means public aid to persons in need thereof for any cause including services, medical care, assistance grants, disbursing orders, and work relief.

(53) "Recipient" means any person within an assistance unit receiving assistance.

(54) "Reinstate" means an authorization to resume payment of a grant from the category in which payment was previously suspended.

(55) "Requirement" means an item of maintenance or a service recognized by the department as essential to the welfare of an individual.

(a) "Additional requirement" means a requirement which is essential for some clients under specified conditions. See WAC 388-29-150 through 388-29-270.

(b) "Basic requirements" means the needs essential to all persons; food, clothing, personal maintenance and necessary incidentals, shelter and household maintenance.

(56) "Resource" means an asset, tangible or intangible, owned by or available to a client which can be applied toward meeting financial need, either directly or by conversion into money or its equivalent. Any resource obtained on or after the first of the month in which eligibility is determined is called "income."

(a) "Exempt resource" is a resource which by policy is not considered in computing financial need.

(b) "Nonexempt resource" means a resource which is not exempt, and the value of which is used to determine financial need.

(57) "Restitution" means repayment to the state of assistance paid contrary to law.

(58) "Separate property" means real or personal property which was acquired by either spouse before marriage, or as a result of gift or inheritance, or was acquired and paid for entirely out of income from separate property.

(59) "Statements in support of application" means any form or document required under department regulations.

(60) "Suspension" means a temporary discontinuance of a grant payment.

(61) "Terminate" means discontinuance of payment or suspension status.

(62) "Transfer" means reassignment of a case record from one CSO to another in accordance with a client's change of residence.

(63) "Unmarried parents" means a man and a woman not legally married who are the natural parents of the same child.

(64) "Value" means the worth of an item in money or goods at a certain time.

(a) "Ceiling value" means the limitation established by the department on the gross market value of nonexempt property.

(b) "Fair market value" means the price at which a seller willing, but not required to sell, might sell to a purchaser, willing but not required to purchase.

(c) "Quick-sale value" or "forced-sale value" is the value at which property can be converted into cash almost immediately, and without waiting for "the best offer."

(65) "Vendor payment" means an authorized payment to an individual, corporation or agency for goods furnished or services rendered to an individual eligible for public assistance.

(66) "Vocational training" means an organized curriculum in a school, training unit, or training program under recognized sponsorship with a specific vocational training objective.

(67) "Warrant" means the state treasurer's warrant issued in payment of a grant.

(68) "Warrant register" means the list of warrants issued specifying payee's name, amount of payment, warrant number, and for each AFDC payment the number of matchable persons whose need is being met by the grant.

(a) "Regular warrant register" means the list of regular grants paid.

(b) "Supplemental warrant register" means the list of initial, adjusting and one-time grants paid.

## WSR 92-07-052

### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed March 12, 1992, 2:27 p.m.]

#### Original Notice.

Title of Rule: Chapter 16-162 WAC, Animal production standards for organic meat and dairy products.

Purpose: To establish standards for the production of organic meat and dairy products. Amends chapter 16-156 WAC to allow producers of organic meat and dairy products to be certified by the department of agriculture.

Statutory Authority for Adoption: RCW 15.86.060.

Statute Being Implemented: Chapter 15.86 RCW.

Summary: Production standards are proposed for organic meat and dairy products. Amendments to chapter 16-156 WAC, Organic producer and transition to organic producer certification, are also proposed that will allow producers of organic meat and dairy products to be certified by the department of agriculture.

Reasons Supporting Proposal: Production standards for organic meat and dairy products are needed under chapter 15.86 RCW, Organic food products. These proposed standards represent the organic food industry's consensus on production standards for organic meat and dairy products.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Miles McEvoy, 2627B Parkmont Lane S.W., Olympia, 664-0351.

Name of Proponent: Washington Department of Agriculture, Food Safety and Animal Health Division, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will clarify the production standards for meat and dairy products labeled and sold as "organic" or "organically produced." The production standards specify feed requirements, living conditions, record-keeping requirements, and disease prevention and treatment strategies that must be complied with for organic meat and dairy producers. The rule will allow those producers meeting these standards to be certified as organic meat and/or dairy producers and to label and sell their products as organic as long as they comply with other state and federal laws.

Proposal Changes the Following Existing Rules: Chapter 16-156 WAC, Organic food producer and transition to organic food producer certification, is amended to include producers of organic meat and dairy products. Changes are also proposed that clarify application, sampling, inspection, certification and decertification procedures.

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

Hearing Location: General Administration Building, Room 150, 11th and Columbia, Olympia, Washington 98504, on April 21, 1992, at 1:00 p.m.

Submit Written Comments to: Miles McEvoy, P.O. Box 42560, Olympia, WA 98504-2560, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 11, 1992

John Daly

Assistant Director

#### Chapter 16-162 WAC ANIMAL PRODUCTION STANDARDS FOR ORGANIC MEAT AND DAIRY PRODUCTS

#### NEW SECTION

WAC 16-162-010 PURPOSE. This chapter is promulgated pursuant to RCW 15.86.060 wherein the director is authorized to adopt rules for the proper administration of the Organic Food Products Act. This chapter provides standards for the production of organic meat and dairy products.

#### NEW SECTION

WAC 16-162-025 CERTIFICATION. Producers of organic animal products seeking certification as an organic food producer may apply for certification under chapter 16-156 WAC.

#### NEW SECTION

WAC 16-162-030 DEFINITIONS. As used in this chapter:

(1) "Approved" means any material or practice which meets the required criteria or standards for use in the production of organic animal products.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department of agriculture or his or her duly authorized representative.

(4) "Drug" means any chemical substance or noninfectious biological substance, which may be administered to or used on or for animals, as an aid in the diagnosis, treatment, or prevention of disease or other abnormal condition, for the relief of pain or suffering, to control or improve any physiological or pathological condition, or to affect the structure or function of the animal.

(5) "Material" means any substance or mixture of substances that is used internally or externally in the production of animals or animal products.

(6) "Prohibited" means any material or practice which is disallowed in the production of organic animal products.

(7) "Recommended" means that the stated materials or practices are encouraged.

(8) "Remedy" means anything that relieves or cures a disease.

(9) "Required" means any material or practice which must be used or followed for the production of organic animal products.

#### NEW SECTION

WAC 16-162-031 "ORGANICALLY PRODUCED MEAT." Meat and meat products that have been produced from an animal which has, along with its mother, been raised in compliance with the provisions of this chapter from the date of its birth through slaughter may be labeled and sold as "organic" or "organically produced."

In addition:

(1) Meat and meat products that have been produced from an animal raised for beef which has been raised in compliance with the provisions of this chapter for at least twelve months prior to slaughter may be labeled and sold as "organic" or "organically produced"; and

(2) Meat and meat products that have been produced from birds which have been raised in compliance with the provisions of this chapter from one day after hatching may be labeled and sold as "organic" or "organically produced."

#### NEW SECTION

WAC 16-162-032 "ORGANICALLY PRODUCED MILK." Milk produced from an animal which has been raised in compliance with this chapter since the conception of the offspring which causes lactation may be labeled and sold as "organic" or "organically produced."

#### NEW SECTION

WAC 16-162-033 "ORGANICALLY PRODUCED EGGS." Eggs produced from hens which have been raised in compliance with this chapter since one day after hatching may be labeled and sold as "organic" or "organically produced."

#### NEW SECTION

WAC 16-162-050 LIVING CONDITIONS. (1) Required:

(a) Organic producers must provide, when appropriate, their animals with access to fresh air and daylight.

(b) Every animal must have enough room to get up, lie down, turn around, groom, and stretch its limbs.

(c) Stock facilities must be clean and sanitary.

(2) Prohibited:

Practices that are contrary to humane treatment guidelines, good sanitation practices, and good animal health programs.

#### NEW SECTION

WAC 16-162-060 FEED. (1) Required:

Animals must be pasture or range fed or fed organic feed. The pasture and range must be managed in compliance with organic food production standards. Feed must be organically produced as specified under chapter 15.86 RCW and chapter 16-154 WAC.

(2) Prohibited:

(a) Feed that contains urea, plastic pellets, and other synthetic ingredients.

(b) The maintenance of animals on diets deficient in nutrients or purposely producing pathology in the animals (ex. anemia).

(c) Reforeeding of manure.

#### NEW SECTION

WAC 16-162-070 DISEASE PREVENTION AND CONTROL. A proper herd health program should include strategies for disease prevention, parasite control, and disease treatment. Producers of organic animal products shall market only healthy animals and animal products, and shall never deny treatment to an animal in order that it may be labeled or sold as organic. Producers of organic animal or dairy products shall provide a quarterly veterinary certificate of freedom from disease.

(1) The following practices are recommended:

(a) Quarantine and fecal exams for all incoming stock.

(b) Adequate pasture rotation and good pasture management.

(c) Maintaining and cleaning facilities regularly.

(d) Periodic fecal exams and the culling of seriously infested animals.

(e) Vector and intermediate host control.

(f) Biological control methods.

(g) Maintaining dusting wallows for poultry.

(2) The following materials or practices are approved for use in the production of organic animal products:

(a) Rotenone and pyrethrum insecticides for external parasite control and for fly management, only if labeled for such use.

(b) Natural materials used in homeopathic, naturopathic, and herbal remedies.

(c) Tamed iodine, alcohol, and/or hydrogen peroxide as a disinfectant.

(d) Vaccinations against endemic disease.

(e) Sodium hypochlorite (bleach), for use on machinery and facilities.

(f) Steam sterilization of equipment.

(3) Prohibited materials and practices. The disease prevention and control materials and practices that are prohibited for use in the production of organic animal products includes but is not limited to the following:

(a) Administration of hormones or subtherapeutic levels of antibiotics.

(b) The use of synthetic internal parasiticides on a routine basis.

(c) Synthetic internal parasiticides used within twelve months of slaughter, milk production, or egg production.

(d) Antibiotics used within thirty days or twice the FDA withdrawal time, whichever is longer, in the production of organic milk.

(e) Antibiotics used within twelve months in the production of organic meat or eggs.

#### NEW SECTION

WAC 16-162-100 RECORDKEEPING. (1) All organic stock must be ear tagged or individually marked with the exception of poultry, which may be identified by flock.

(2) Records must be kept of:

(a) All medications administered (including dates, dosages, and sources);

(b) All feeds bought and fed;

(c) All feed supplements used; and

(d) The weight of slaughter animals at slaughter.

(3) All records must be kept from birth or purchase and for two years after sale or slaughter.

(4) Receipts for stock and materials must be kept to insure a complete audit trail.

(5) Inadequate recordkeeping may constitute cause for the director to prohibit labeling or marketing animal products as "organic" or "organically produced."

#### AMENDATORY SECTION (Amending WSR 90-02-001, filed 12/21/89, effective 1/21/90)

WAC 16-156-001 APPLICATION. Organic food producers and transition to organic food producers who ((wish)) desire to obtain certification under this chapter must submit an application and pay prescribed fees to the department on an annual basis. This application must include a sworn statement that they have over the past year, and will continue throughout the year for which the application is made, fully comply with the statute and rules for production of organic and /or transition to organic food.

((Transition to organic food producers who wish certification under this chapter must also submit an application and pay prescribed fees to the department on an annual basis. This application must include a sworn statement that they have since last harvest and will continue throughout the year for which application is made, fully comply with the statute and rules for production of organic food.))

Each application shall be accompanied by a completed grower information form which will remain on file at the department of agriculture office.

#### NEW SECTION

WAC 16-156-003 PURPOSE. This chapter is promulgated pursuant to RCW 15.86.070 wherein the director is authorized to adopt rules establishing a certification program for producers of organic or transition to organic food.

AMENDATORY SECTION (Amending WSR 91-09-028, filed 4/11/91, effective 5/12/91)

WAC 16-156-005 STANDARDS FOR CERTIFICATION. Standards for organic food producer and transition to organic food producer certification shall be as set forth in RCW 15.86.030 and rules adopted pursuant to chapter ~~((16-154 WAC))~~ 15.86 RCW.

AMENDATORY SECTION (Amending WSR 90-02-001, filed 12/21/89, effective 1/21/90)

WAC 16-156-010 SAMPLING. A sample representative of a ~~((crop grown))~~ food product grown, raised, or produced by organic food producers and transition to organic food producers under the organic food certification program may be tested for pesticide residues or other contaminants whenever the director deems it necessary ~~((for))~~ to grant, renew, deny, or revoke certification. ~~((These samples shall be collected by the department of agriculture in a representative manner at the producer's farm.))~~

It shall be the producer's responsibility to arrange for and bear the costs for any additional testing which is deemed necessary by the director ~~((for))~~ to grant, renew, deny, or revoke certification.

AMENDATORY SECTION (Amending WSR 91-09-028, filed 4/11/91, effective 5/12/91)

WAC 16-156-020 INSPECTION. The department of agriculture shall make at least one announced visit and ~~((any unannounced))~~ may make additional visits ~~((deemed))~~ as the director deems necessary to each organic food producer and transition to organic food producer under the organic food certification program each year for the purpose of inspection for compliance with the standards for certification which are found in chapter 15.86 RCW (Organic food products) and ~~((chapter 16-154 WAC (Organic crop production standards)))~~ rules adopted pursuant to chapter 15.86 RCW.

~~((This))~~ Inspections may entail survey of required records, examination of crops and fields, and any other information deemed necessary to the requirements of ~~((this chapter))~~ chapter 15.86 RCW or any rules adopted thereunder.

It shall be the producer's responsibility to arrange for and bear the costs for any additional inspections which are deemed necessary by the director ~~((for))~~ to grant, renew, deny, or revoke certification.

AMENDATORY SECTION (Amending WSR 90-02-001, filed 12/21/89, effective 1/21/90)

WAC 16-156-030 CERTIFICATION. Washington state department of agriculture certification of organic food producers and transition to organic food producers means that any analysis of the representative samples taken by the department of agriculture showed no ~~((illegal pesticide))~~ prohibited material usage or other contaminants and inspection of the producer by the department of agriculture showed no ~~((illegal))~~ prohibited practices being followed as defined in chapter 15.86 RCW or rules adopted thereunder.

Organic food producers who apply under this program will be able to use the words, "produced under Washington state department of agriculture organic food certification program" in their labeling as long as their practices comply with ~~((this chapter and))~~ chapter ~~((s))~~ 15.86 RCW ~~((and 16-154 WAC))~~ or any rules adopted thereunder.

Food produced under this organic food certification program may be identified by the use of the attached logo. This logo shall only be used for food produced ~~((under))~~ by producers who have been certified by the Washington state department of agriculture organic food certification program.

Transition to organic food producers who apply under this program will be able to use the words "produced under Washington department of agriculture transition to organic food certification program" in their labeling as long as their practices comply with this chapter and chapter 15.86 RCW and ~~((chapter 16-154 WAC))~~ rules adopted thereunder.

Food produced under this transition to organic food certification program may be identified by use of the attached logo. This logo shall only be used for food produced ~~((under))~~ by producers who have been certified by the Washington state department of agriculture's transition to organic food certification program.

In no event shall food be sold as Washington certified organic or Washington certified transition to organic prior to an on-site inspection ~~((being))~~ made by the department of agriculture and a grower information form being ~~((on file))~~ filed with the department of agriculture and organic food producer certification being granted for that crop year.

The logos to identify organic food and transition to organic food produced under this certification program ~~((s))~~ shall not be changed except for increases or decreases in size, as appropriate.

AMENDATORY SECTION (Amending WSR 91-09-028, filed 4/11/91, effective 5/12/91)

WAC 16-156-035 DECERTIFICATION. Whenever the director finds that a producer who has been certified under this program has:

- (1) Violated the standards for certification which are set forth in RCW 15.86.030 or any rules adopted under chapter 15.86 RCW;
- (2) ~~((Has))~~ Filed an application for certification which is false or misleading in any particular;
- (3) ~~((Has))~~ Violated any of the provisions of this chapter; or
- (4) ~~((Has))~~ Failed to provide records as required by WAC 16-154-060 or 16-162-100;

The director may issue an order revoking that producer's certification under this program or he may issue an order directing the producer to take other appropriate action to correct the violation. If appropriate action is taken, the producer will be returned to its previous status under the program.

Any producer who has received notice that its certification may be revoked under this section may apply for a hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW. ~~((Such application must be in writing, addressed to the director of the Washington department of agriculture and be received in the Olympia administrative offices not later than twenty days from the date of the notice of the opportunity to apply for a hearing.))~~

AMENDATORY SECTION (Amending WSR 90-02-001, filed 12/21/89, effective 1/21/90)

WAC 16-156-050 APPLICATION FOR CERTIFICATION. Organic food producers and transition to organic food producers who wish to apply for the ~~((producer inspection))~~ organic food certification program must apply to the department by January 15 of each year. The application ~~((and fees))~~, accompanied by the appropriate fee shall be ~~((forwarded))~~ submitted to the department on forms furnished by the department.

Applications made after the set deadline may be processed as the department can schedule the initial inspections, provided that the producer may still conduct business as provided in RCW 15.86.050.

**WSR 92-07-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**

[Filed March 12, 1992, 4:29 p.m.]

Continuance of WSR 92-03-147.

Title of Rule: WAC 388-95-360 Allocation of income—Institutionalized recipient.

Purpose: Amendment of Social Security Act, Section 1924 (d)(3)(a), effective July 1, 1991. Amendment of the community spouse maintenance needs allowance to ensure compliance with the above federal regulation that became effective July 1, 1991.

Hearing Location: OB-2 Auditorium, 12th and Franklin, Olympia, Washington, on April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Department of Social and Health

Services, Mailstop 5805, Olympia, Washington 98504, by April 21, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992  
Fred Stephens  
Assistant Secretary  
for Management  
for Leslie F. James, Director  
Administrative Services

**WSR 92-07-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF ECOLOGY**  
**(Water Resources Program)**

[Order 92-19—Filed March 13, 1992, 12:01 p.m.]

Date of Adoption: March 13, 1992.

Purpose: This emergency rule establishes a new chapter to withdraw from appropriation the unappropriated waters of the Snake River main stem and to direct the disposition of pending and future water right applications.

Statutory Authority for Adoption: Chapters 34.05, 43.21A, 43.27A, and 90.54 RCW.

Other Authority: Chapter 173-500 WAC.

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

Reasons for this Finding: The department has determined that it is lacking sufficient information to determine whether water is available for further appropriation and whether the public interest will be impaired by such appropriation. The proposed rule is needed immediately to provide notice to the public that water right applications will not be acted upon until sufficient information is available to make water right decisions. Additionally, the United States has listed Snake River sockeye salmon as an endangered species, resulting in the need for immediate action by the state.

Effective Date of Rule: Immediately.

March 13, 1992  
Fred Olson  
Deputy Director

**Chapter 173-564 WAC**

**WATER RESOURCES MANAGEMENT PROGRAM FOR THE  
MAIN STEM OF THE SNAKE RIVER IN WASHINGTON STATE**

**NEW SECTION**

**WAC 173-564-010 BACKGROUND AND PURPOSE.** *The Snake River is an interstate river with waters subject to laws of five states and the federal government. The flows and levels of the river in Washington State are heavily influenced by the operation of federally owned and federally licensed dams located upstream from Washington and within Washington, as well as by water diversions in the various states. The waters of the*

*river support extensive irrigation, navigation, municipal, industrial and power generation uses as well as nationally significant anadromous fish runs. These fish runs require for their survival clean, flowing water assured by minimum flows and special actions by all agencies sharing in the management of the river.*

*The provisions of this chapter apply to water right permits issued under the state water rights codes. The department of ecology of the state of Washington recognizes that, under our federal constitutional system, regulatory power over the Snake River is shared between the United States and the states and that by various federal actions the state's powers may in some cases be superseded through the mandates of the Supremacy Clause of the United States Constitution.*

*This chapter is adopted to promote the proper utilization of the water resources of the Snake River and to protect and insure the viability of the instream resource values associated with the main stem of the river in the future.*

**NEW SECTION**

**WAC 173-564-020 AUTHORITY** *These rules are adopted under the authority of chapters 34.05, 43.21A, 43.27A, and 90.54 RCW, and in relation to chapter 173.500 WAC.*

**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 173-564-030 APPLICABILITY.** *(1) This chapter applies to public surface waters of the main stem of the Snake River in Washington and to any ground water the withdrawal of which is determined by the department of ecology to be in hydraulic continuity with the surface waters of the main stem of the Snake River. For purposes of this chapter, the main stem of the Snake River extends from the Idaho, Oregon and Washington border, in the extreme southeastern corner of the state of Washington, at river mile 175, to the confluence with the Columbia River near Pasco, Washington at river mile 0.*

*(2) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, including existing water right permits and certificates.*

**NEW SECTION**

**WAC 173-564-040 WITHDRAWAL OF UNAPPROPRIATED WATERS** *(1) New information and changing conditions place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from the main stem of the Snake River. These changing conditions include the listing on December 20, 1991 of Snake River Sockeye Salmon as endangered under the federal Endangered Species Act and related federal, regional and state activities to assure the protection of Columbia basin salmon runs.*

(2) Pursuant to subsection 1 of this section, the waters of the main stem of the Snake River that are unappropriated by water rights that have been or will be granted with priority dates preceding December 20, 1991 are withdrawn from further appropriation. These waters shall remain withdrawn from appropriation until such time as sufficient information and data is available to make sound decisions on further appropriation and this chapter has been amended, if necessary, to be consistent with this new information.

(3) All water right applications for diversion or pumping of surface water and ground water in hydraulic continuity from the main stem of the Snake River with dates of priority preceding December 20, 1991 shall be processed in accordance with existing policies and procedures and are not subject to this withdrawal of waters.

(4) All water right applications for diversion or pumping of surface water and ground water in hydraulic continuity from the main stem of the Snake River with dates of priority of December 20, 1991 or later are subject to this withdrawal of waters and will be acted upon, without loss of priority date, after the repeal of the withdrawal of waters.

(5) The department shall inform applicants of the status of their applications under this section.

**WSR 92-07-055**  
EMERGENCY RULES  
DEPARTMENT OF ECOLOGY  
(Water Resources Program)

[Order 92-18—Filed March 13, 1992, 12:04 p.m.]

Date of Adoption: March 13, 1992.

Purpose: This emergency rule amends chapter 173-563 WAC adding a section to withdraw from appropriation the unappropriated waters of the Columbia River main stem and to direct the disposition of pending and future water right applications.

Citation of Existing Rules Affected by this Order: Amending chapter 173-563 WAC.

Statutory Authority for Adoption: Chapters 34.05, 43.21A, 43.27A, and 90.54 RCW.

Other Authority: Chapter 173-500 WAC and WAC 173-563-075.

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

Reasons for this Finding: The department has determined that it is lacking sufficient information to determine whether water is available for further appropriation and whether the public interest will be impaired by such appropriation. The proposed rule is needed immediately to provide notice to the public that water right

applications will not be acted upon until sufficient information is available to make water right decisions. Additionally, the United States has listed Snake River sockeye salmon as an endangered species, resulting in the need for immediate action by the state.

Effective Date of Rule: Immediately.

March 13, 1992  
Fred Olson  
Deputy Director

**NEW SECTION**

**WAC 173-563-015 WITHDRAWAL OF UNAPPROPRIATED WATERS** 1) New information and changing conditions place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from the main stem of the Columbia River. These changing conditions include the listing on December 20, 1991 of Snake River Sockeye Salmon as endangered under the federal Endangered Species Act and related federal, regional and state activities to assure the protection of Columbia basin salmon runs.

2) Pursuant to subsection 1 of this section, the waters of the main stem of the Columbia River that are unappropriated by water rights that have been or will be granted with priority dates preceding December 20, 1991 are withdrawn from further appropriation. These waters shall remain withdrawn from appropriation until such time as sufficient information and data is available to make sound decision on further appropriation and this chapter has been amended, if necessary, to be consistent with this new information.

3) All water right applications for diversion or pumping of surface water and ground water in hydraulic continuity from the main stem of the Columbia River with dates of priority preceding December 20, 1991 shall be processed in accordance with WAC 173-563-010 through 100 and 173-563-900 and are not subject to this withdrawal of waters.

4) All water right applications for diversion or pumping of surface water and ground water in hydraulic continuity from the main stem of the Columbia River with dates of priority of December 20, 1991 or later are subject to this withdrawal of waters and will be acted upon, without loss of priority date, after the repeal of the withdrawal of waters.

5) The department shall inform applicants of the status of their applications under this section.

**WSR 92-07-056**  
NOTICE OF PUBLIC MEETINGS  
CONVENTION AND TRADE  
CENTER

[Memorandum—March 11, 1992]

The design committee of the Washington State Convention and Trade Center will meet on Wednesday, March 18, 1992, at 12:00 noon in Room 601 of the Convention Center, 800 Convention Place, Seattle.



The Washington State Convention and Trade Center board of directors will also meet on Wednesday, March 18, 1992, at 2:00 p.m. in the 5th Floor Board Room of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding these meetings, please call 447-5000.

**WSR 92-07-057**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**

[Filed March 13, 1992, 2:00 p.m.]

**Reviser's note:** The following material has not been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

The above named agency gives notice of hearing.

**HEARINGS TO BE HELD:** April 28, 1992, 10:00 a.m., Mid-Columbia Medical Office Plaza, 1810 East 19th, The Dalles, OR 97058.

Hearings Officer(s): Stafford Hansell, Chair.

Pursuant to the statutory authority of RCW 43.97.015 the following action is proposed: Adopt 350-40; and amend 350-20-004.

350-20-004

**SUMMARY:** The rule would allow a modification to a structure from its premodification appearance. The rule would allow a modification to an existing structure which already protrudes above a cliff, bluff or skyline upon showing that no alternative modification would avoid the protrusion, that the additional protrusion would not increase more than 50 percent, and that mitigation measures would reduce the contrast of the finished structure below that of the premodification structure.

**STATEMENT OF NEED:** Failure to amend the rule as proposed will deprive the commission of an opportunity to enhance the scenic resources of the gorge by reducing the contrast of existing development otherwise exempt from regulation under commission rule. Failure to amend the rule will also result in serious prejudice to owners of some properties who could not otherwise make additions to residences built before passage of the Scenic Area Act and who have no alternative way to modify them which will not protrude above a cliff, bluff or skyline.

**Authority:** 16 USC § 544 et seq., ORS 196.150 to ORS 196.165, and RCW 43.97.015 to 49.97.035 [43.97.035].

**Documents Relied Upon:** Columbia River Gorge National Scenic Area Act (P.L. 99-663) and final interim guidelines. The proposed amendment to the rule is based upon three years of experience applying the existing rule.

**FISCAL IMPACT:** The rule will allow certain applications for additions to be approved, that would otherwise have to be denied. This will reduce appeals to the commission, and therefore reduce costs to the commission and applicants.

350-40

**SUMMARY:** The rule sets out the procedures a county must follow in order to prepare an application for an urban area revision.

**STATEMENT OF NEED:** The process for submitting an application for an urban area revision is not described in the National Scenic Act; each county that is affected needs guidance as soon as possible to prepare the requisite applications; a delay in adoption of the rule will hold up the entire process and cause more work at more cost to build up; and an emergency rule will allow the process to begin and at the same time allow for modification when the permanent rule is adopted.

**Authority:** 16 USC § 544 et seq., ORS 196.150 to ORS 196.165, and RCW 43.97.015 to 49.97.035 [43.97.035].

**Documents Relied Upon:** The Columbia River Gorge National Scenic Area Final Draft Management Plan and Gorge Commission deliberations on November 19, 1991, December 17, 1991, and January 14 and 28, 1992.

**FISCAL IMPACT:** The rule should expedite the urban area revision process and therefore, reduce costs.

**EMERGENCY FINDINGS:** The urban area revision rule should be adopted on an emergency basis because the gorge commission has good cause based on the following findings: Immediate adoption is necessary for the preservation of the general welfare; observing the traditional time requirements of notice and opportunity to comment on adoption of a permanent rule would be contrary to the public interest; the opportunity to comment on adoption of a permanent rule will still come up at a later date; the emergency rule is necessary to immediately clarify the urban area revision process so each county can proceed with its application; the emergency rule should reduce costs by promoting clarity, defining terms and offering guidance on legally mandated standards contained in the National Scenic Act; and failure to act promptly is contrary to the public interest and the needs of each county in the national scenic area.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by April 24, 1992, will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from: Columbia River Gorge Commission, Address: 288 East Jewett, P.O. Box 730, White Salmon, WA 98672, Attn: Jan Brending, Rules Coordinator, phone (509) 493-3323.

March 11, 1992  
Allen Bell

COLUMBIA RIVER GORGE COMMISSION  
PROPOSED RULE AMENDMENT  
350-20

350-20-004. Review Standards and Guidelines.

(1) The Columbia River Gorge National Scenic Area Final Interim Guidelines, published by the Forest Service and dated June 30, 1987, are adopted by reference as amended in paragraph (2) below and declared to be a part of this rule. In reviewing major development actions and new residential development for consistency with the standards of section 6 and the purposes of P.L. 99-663,

Chapter 3 of the Final Interim Guidelines, as amended in paragraph (2) below, shall be utilized.

(2) The Final Interim Guidelines identified in paragraph (1) above are amended as follows:

(a) The definition of agricultural lands shall be revised to read as follows: "Agricultural lands are those lands which are primarily used or are suitable for the production of crops, fruits or Christmas trees or the pasturing, grazing or feeding of livestock. Lands designated as open space by the Commission shall not be considered agricultural lands."

(b) The definition of forest lands shall be revised to read as follows: "Forest lands are those lands which are used for growing forest products or capable of producing in excess of twenty (20) cubic feet per acre per year of Douglas fir, Ponderosa pine or other merchantable tree species. Lands designated as open space by the Commission shall not be considered forest lands."

(c) The guidelines for existing uses shall be revised as follows: "When a structure is destroyed or partially destroyed, it will be considered an existing use when replaced in kind and in the same location within one year. The exterior color and reflectivity of replacement structures must be consistent with the scenic guidelines in Chapter III. Replacement of a structure or use that differs in size or location from the original shall be subject to a consistency determination. Replacement of a mobile home in a special management area with a modular or site-built home, to be used in the same manner and for the same purposes, shall be considered the continuation of an existing use except that it shall be subject to review for consistency with the guidelines on scenic resources in section B(1).

(d) An alteration to a structure which was built prior to November 17, 1986, and which already protrudes above the line of a bluff, cliff or skyline, may itself protrude above the line provided that:

1. the alteration does not increase the protrusion more than 50 percent as viewed from the key viewing area from which the structure is most prominently seen;
2. the altered structure through a combination of color, landscaping and other mitigation measures, contracts less with its setting than before the alteration; and
3. there is no practicable alternative way to alter the structure without increasing the protrusion.

COLUMBIA RIVER GORGE COMMISSION  
PROPOSED RULE  
Chapter 350  
Division 40  
Revision of Urban Area Boundaries

350-40-000. Purpose.

This division specifies the process that will be used by the Columbia River Gorge Commission (Commission) when it considers minor revisions to the boundaries of any Urban Area.

350-40-010. Definitions.

The definitions in Chapter 350, Division 20, Section 002 shall apply to this division.

350-40-020. Authority.

The Commission may make "minor revisions" to the boundaries of an Urban Area [Scenic Area Act, Section 4(f)]. Such revisions must comply with procedural requirements and criteria in the Scenic Area Act.

Three procedural requirements are included in Section 4 (f)(1) of the Scenic Area Act:

(1) Requests to revise an Urban Area boundary must be submitted to the Commission by a county government;

(2) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

(3) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve any revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

Section 4 (f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(1) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(2) Revision of Urban Area boundaries would be consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(3) Revision of Urban Area boundaries would result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(4) Revision of Urban Area boundaries would not result in the significant reduction of agricultural lands, forest lands, or open spaces.

**Reviser's note:** The brackets and enclosed material in the text above occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

350-40-030. Application for Revision.

Applications to revise the boundaries of any Urban Area shall contain the following information:

(1) A statement from the county sponsoring the Urban Area boundary revision, signed by the county commissioners.

(2) A statement that the senior-elected or appointed official(s) of any affected municipality or special district have been notified.

(3) A statement that explains why the proposed Urban Area boundary revision is needed. The statement shall describe the anticipated land uses that would occur in the affected area and demonstrates how the proposed revision complies with the criteria in the Scenic Area Act.

(4) A map of the area that would be added to the existing Urban Area. The map shall be drawn to scale and shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. It shall include the following elements:

- (a) North arrow;
  - (b) Map scale;
  - (c) Boundaries of all parcels within the subject area, with labels showing the name of each property owner and the size of each parcel;
  - (d) Current municipal zoning designations, where applicable;
  - (e) Significant terrain features or landforms;
  - (f) Bodies of water and watercourses;
  - (g) Existing roads and railroads;
  - (h) Existing dwellings and other structures; and
  - (i) Location of existing services, including water systems, sewage systems, and power and telephone lines.
- (5) For incorporated areas, a map of the current boundary of the municipality.
- (6) A map of adopted land use designations and zoning for the existing Urban Area.
- (7) For Oregon applications, a map of currently approved urban growth boundaries.
- (8) An analysis based on criteria in the Scenic Area Act. (For guidance see Urban Areas Boundary Revisions Handbook, Gorge Commission 1992).

#### 350-40-040. Processing of Application.

Each application to revise the boundaries of an Urban Area will be reviewed according to the priorities established by the Commission in the Management Plan [see Part IV, Chapter 1, section Revision of Urban Area Boundaries, Policy 5]. Within priority categories established in the Management Plan, applications will be reviewed in the order received.

**Reviser's note:** The brackets and enclosed material in the text above occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### 350-40-050. Submission and Acceptance of Application.

(1) Applications to revise the boundaries of an Urban Area shall be submitted directly to the office of the Commission by a county government. An original and fifteen copies of each application are required. Only two copies of the large scale maps are required.

(2) Within ten (10) working days of receiving an application, the Director shall review the application for completeness and adequacy. No application shall be accepted as complete until all omissions and deficiencies noted by the Director have been corrected by the applicant.

#### 350-40-060. Notice of Application.

(1) Public notice of the completed application will be posted at Commission and U.S. Forest Service offices and shall be made available for posting at the applicable county or city planning office(s).

(2) Copies of the complete application will be available for inspection at the Commission office during normal office hours.

(3) Interested persons shall have twenty (20) working days from the date the notice was posted to submit written comments to the Director. Written comments should

address whether the proposed Urban Area boundary revision would be consistent with the criteria in the Scenic Area Act.

#### 350-40-070. Report of the Director.

The Director will prepare a report, which may include recommendations, within thirty (30) working days of the date an application has been accepted as complete. Upon application of the Director, the Commission may extend the time for submission of the report. The report will analyze the proposed Urban Area boundary revision based on the criteria in 350-20-004.

#### 350-40-080. Hearings.

(1) The Commission will conduct hearings on every application accepted as complete by the Director.

(2) A general hearing on all current applications for the year, to consider public testimony and opinion on applications, may be set by the Commission. Any person may comment on the applications within time limits set by the Commission.

(3) A separate hearing will be conducted on the merits of each application. This hearing will be quasi-judicial in nature and will allow the parties, including intervenors, to present the application in a format that follows the contested case rules of the Commission [see Chapter 350, Division 16]. Any person who submitted comments on an Urban Area boundary revision application pursuant to 350-40-007(3) may participate in the Urban Area boundary revision hearing by filing a Notice of Intervention with the Director within 20 working days of the date the Director's report is prepared, pursuant to 350-40-008. The Notice of Intervention shall also be served by mail upon the applicable county. The Notice of Intervention shall show that the person filing the Notice has submitted comments on the proposed boundary revision. The applicant shall be afforded an opportunity for rebuttal argument. The length of the hearing will vary depending on the complexity of the application.

(4) The Commission may seek additional information from any applicant before and during the hearing.

**Reviser's note:** The brackets and enclosed material in the text above occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

### **WSR 92-07-058**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF HEALTH**

#### **(Medical Disciplinary Board)**

[Order 254B—Filed March 13, 1992, 2:30 p.m.]

Date of Adoption: March 10, 1992.

Purpose: Adding new section requiring licensees and their attorneys to cooperate with an investigation.

Statutory Authority for Adoption: RCW 18.72.150.

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: In order to protect the public it is imperative that licensees cooperate with the board's investigations.

Effective Date of Rule: Immediately.

March 10, 1992  
Traci Troutman  
Program Manager

### NEW SECTION

[AMENDATORY SECTION (Amending Order 105B, filed 12/1/90, effective 1/21/91)]

**WAC 246-920-030 COOPERATION WITH INVESTIGATION.** (1) A licensee must comply with a request, under RCW 70.02.050, for health care records or documents from an investigator who is acting on behalf of the disciplining authority pursuant to RCW 18.130.050(2) by submitting the requested items within fourteen (14) calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen (14) calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven (7) calendar days. Other requests for extension may be granted by the Board Chairman or the Board's designee.

(b) If the licensee fails to comply with the request within three (3) business days after the receipt of the written reminder a Statement of Charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, those charges may be included in the Statement of Charges.

(2) A licensee must comply with a request for non-health care records or documents from an investigator who is acting on behalf of the Board pursuant to RCW 18.130.050(2) by submitting the requested items within fourteen (14) calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen (14) calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven (7) calendar days. Other requests for extension may be granted by the Board Chairman or the Board's designee.

(b) If the licensee fails to comply with the request within three (3) business days after the receipt of the reminder, then a subpoena shall be served upon the licensee to obtain the requested items.

(c) If the licensee fails to comply with the subpoena, a Statement of Charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the Statement of Charges.

(3) A licensee must comply with a request for information from an investigator who is acting on behalf of the Board pursuant to RCW 18.130.050(2). This information may include, but is not limited to an explanation of the matter under investigation, curriculum vitae, continuing medical education credits, malpractice action summaries, or hospital affiliations. The licensee will submit the requested information within fourteen (14) calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen (14) calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven (7) calendar days. Other requests for extension may be granted by the Board Chairman or the Board's designee.

(b) If the licensee fails to comply with the written reminder with three (3) business days after the receipt of the reminder, a Statement of Charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the Statement of Charges.

(4) In negotiating a settlement on a Statement of Charges based on RCW 18.130.180(8), the Reviewing Board Member may take into consideration whether the licensee has complied with the request after the Statement of Charges has been issued. Any settlement proposal shall be presented to the Board or a duly constituted panel of the Board for a decision on ratification and until ratified, the settlement is not final.

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

**Reviser's note:** This emergency order has been superseded by WSR 92-07-096 filed by the Department of Health on March 17, 1992.

### WSR 92-07-059

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed March 13, 1992, 3:15 p.m.]

Supplemental Notice to WSR 92-07-005.

Title of Rule: Application of pesticides in Benton County and portions of Franklin and Walla Walla counties in chapters 16-230 and 16-231 WAC.

Purpose: To place additional restrictions on the use of restricted use pesticides in the area under order in the Tri-Cities area.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Summary: See Explanation of Rule below.

Reasons Supporting Proposal: During the 1991 spray season herbicide drift on grapes was experienced in the area under order.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cliff Weed, P.O. Box 42589, Olympia, WA, (206) 753-5062.

Name of Proponent: Washington State Department of Agriculture, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules differ enough from the department's original proposal discussed at the February 25, 1992, hearing, that an additional public hearing will be held.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules will create specific nozzling and pressure requirements for ground and aerial apparatus; will prohibit the use of application of all restricted use pesticides when the mean sustained wind velocity is over ten miles per hour in the entire area under order; will create specific morning and evening cut-off times with some exemptions; limit the use of low volatile ester formulations of herbicides to certain times of the year in certain areas; creates an Area 1A (North Horse Heaven Hills) which is the most restrictive area; creates a buffer zone in southwest Horse Heaven Hills; and will create additional weather requirements concerning all restricted use herbicides in the entire area under order. Additional restrictions on the application of pesticides are proposed due to herbicide damage on grapes.

Proposal Changes the Following Existing Rules: Rules relating to restricted use herbicides in Benton County in chapter 16-231 WAC are repealed and combined with these proposed rules in chapter 16-230 WAC.

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

Hearing Location: Red Lion Inn, 2525 North 20th, Pasco, WA, on May 27, 1992, at 7:00 p.m.

Submit Written Comments to: Hearing Record, P.O. Box 42589, Olympia, WA 98504-2589, by May 27, 1992.

Date of Intended Adoption: June 10, 1992.

March 13, 1992  
Michael V. Schwisow  
Deputy Director  
for C. Alan Pettibone  
Director

AMENDATORY SECTION (Amending Order 2014, filed 7/31/89, effective 8/31/89)

WAC 16-230-810 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE PESTICIDES. For the purposes of WAC 16-230-800 through ((WAC 16-230-865)) 16-230-870, the following pesticides are declared to be restricted use pesticides:

- (1) Restricted use herbicides:
  - (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort)
  - (b) Desiccants and defoliants (such as Paraquat, Diquat, Endothal)
  - (c) Glyphosate (such as Roundup, Landmaster)
  - (d) Phenoxy type herbicides (such as 2,4-D, MCPA)
  - (e) dicamba (such as Banvel)
  - (f) Bromoxynil (such as Brominal, Buctril, ME4 Brominal)

(2) Restricted use insecticides:

- (a) All Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations;
- (b) Additionally, all insecticides, except granular and pellet formulations, are declared to be restricted use in Area 1 and Area 1A as described in WAC 16-230-835.

NEW SECTION

WAC 16-230-813 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—OIL TYPE CARRIERS. On and after April 5 through October 31, oil type carriers are prohibited for brush control: PROVIDED, That oil type carriers may be used in invert systems the entire year.

AMENDATORY SECTION (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-825 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—PERMITS. The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through ((16-230-865)) 16-230-870.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 2015 S. 1st Street, Yakima, Washington 98903. Applications may also be taken in person or by phone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

AMENDATORY SECTION (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-835 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1. (1) Area 1 description (North Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the northwest corner of Section ((T9; T8N, R24E; thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E; thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E; thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E; thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E; thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E; thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E; thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E; thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E; thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E; thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E; thence north approximately one mile along the section line to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E)) 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence

east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence south approximately ((five and one-half)) two miles along the Columbia River to the south section line of Section 5, T6N, R31E; thence west approximately eight miles along section lines to the southwest corner of Section 1, T6N, R29E; thence north two miles along section lines to the southwest corner of Section 25, T7N, R29E; thence west thirteen miles along section lines to the southeast corner of Section 27, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 27, T7N, R27E; thence west one mile along the section line to the northeast corner of Section 16, T7N, R27E; thence west one mile along the section line to the southeast corner of Section 8, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 8, T7N, R27E; thence west approximately twenty miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E; thence north ((four)) two miles along the county line to the point of beginning.

(2) Area 1 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset to sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset restrictions: PROVIDED FURTHER, That applications of restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset restrictions.

**AMENDATORY SECTION** (Amending Order 2014, filed 7/31/89, effective 8/31/89)

WAC 16-230-840 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 2. (1) Area 2 description. Tri-Cities, Benton City area. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one-half mile along the Columbia River to the south section line of Section 8, T7N, R31E; thence east approximately three miles across the Columbia River to the intersection with U.S. Highway 12 at the south section line of Section 10, T7N, R31E; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along Interstate 182

to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of restricted use herbicides for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-845 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 3. (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the northwest corner of Section 19, T8N, R24E; thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E; thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E; thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E; thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E; thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E; thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E; thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E; thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E; thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E; thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E; thence north six miles along section lines to the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately eleven miles along the Benton-Yakima county line to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence

east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approximately five miles along the Columbia River to the point of beginning.

(c) Horse Heaven Hills southwest buffer zone. An area near Patterson starting at the southeast corner of Section 7, T5N, R26E following section lines north five miles to the northeast corner of Section 19, T6N, R26E; thence west two miles to the northwest corner of Section 24, T6N, R25E; thence south one-half mile along section line; thence west two miles to the common boundary of Sections 21 and 22, T6N, R25E; thence north one-half mile to the northeast corner of Section 21, T6N, R25E; thence west three miles to the northwest corner of Section 19, T6N, R25E; thence south three miles to the southwest corner of Section 31, T6N, R25E; thence east three miles to the southeast corner of Section 33, T6N, R25E; thence south three miles to the southeast corner of Section 16, T5N, R25E; thence west one mile to the northwest corner of Section 21, T5N, R25E; thence south one mile to the southwest corner of Section 21, T5N, R25E; thence east two miles to the southeast corner of Section 22, T5N, R25E; thence north one mile to the northeast corner of Section 22, T5N, R25E; thence east two miles to the southeast corner of Section 13, T5N, R25E; thence north one mile to the northeast corner of Section 13, T5N, R25E; thence east one mile to the point of origin.

(2) Area 3 restrictions.

(a) Application by air of restricted use herbicides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-850 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 4. (1) Area 4 description.

(a) Tri-cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatel Diversion Channel drain and the Columbia River; thence east along the Esquatel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles

along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

AMENDATORY SECTION (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-855 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 5. (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) Horse Heaven Hill southwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 13, T6N, R24E; thence south five miles along section lines to the southwest corner of Section 1, T5N, R24E; thence east three miles

along the section lines to the northeast corner of Section 8, T5N, R25E; thence south one mile along the section line to the southeast corner of Section 8, T5N, R25E; thence west one mile along the section line to the southwest corner of Section 8, T5N, R25E; thence south approximately five miles to the Washington Oregon border; thence northeasterly along the Washington Oregon border until its intersection with the eastern section line of Section 8, T5N, R26E; thence north approximately six miles along section lines to the northeast corner of Section 17, T6N, R26E; thence west nine miles to the point of beginning.

(2) Area 5 restrictions.

(a) Application by air of restricted use herbicides as defined by WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-860 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 6. (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset to sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset restrictions: PROVIDED FURTHER, That applications of restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset restrictions.

(c) On and after April 5 through October 31 of each year, aerial applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-861 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—WIND CONDITIONS. The use or application of all herbicides and class 1 and 2 insecticides are prohibited in the area under order listed in WAC 16-230-800 when the mean sustained wind velocity is over ((twelve)) ten miles per hour throughout the year: PROVIDED, That applications shall be allowed in higher velocity winds when an approved ground apparatus is used. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: PROVIDED FURTHER, That applications of granular and pellet formulations of restricted use pesticides defined in WAC 16-230-810 as well as applications made to structures shall be exempt from the wind restrictions.

#### NEW SECTION

WAC 16-230-862 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1A. (1) Area 1A description. All lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 15, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence north approximately three miles to the Kennewick Irrigation District (K.I.D.) Division Four Canal in Section 8, T7N, R31E; thence westerly along the K.I.D. Division Four Canal to the intersection with the K.I.D. Main Irrigation Canal at the Amon Pumping Station located in Section 7, T8N, R29E; thence westerly along the K.I.D. Main Irrigation Canal to its intersection with the east section line of Section 14, T9N, R26E; thence south approximately one mile along the section line to the northwest corner of Section 25, T9N, R26E; thence northwest approximately one and four tenths miles diagonally across Section 23 to the northwest corner of Section 23, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 21, T9N, R26E; thence southwest approximately one and four tenths miles diagonally across Section 20 to the northwest corner of Section 29, T9N, R26E; thence west one mile along section lines to the northwest corner of Section 30, T9N, R26E; thence south one mile along section lines to the northwest corner of Section 31, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 35, T9N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 34 to the northwest corner of Section 3, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 4, T8N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 5 to the northwest corner of Section 8, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 7, T8N, R25E; thence south one mile along section lines to the northwest corner of Section 18, T8N, R25E; thence west two miles along section lines to the northwest corner of Section 14, T8N, R24E; thence south one mile along section lines to the northwest corner of Section 23, T8N, R24E; thence west four miles to the northwest corner of Section 19, T8N, R24E; thence south two miles along the county line to the point of beginning.

(2) Area 1A restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of



the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of restricted use herbicides for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

#### NEW SECTION

WAC 16-230-863 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES GROUND APPARATUS NOZZLE REQUIREMENTS. Ground applications of restricted use herbicides in the area under order listed in WAC 16-230-800 shall be made, throughout the year, using nozzles having a single orifice and minimum diameter of .052 inches or a LP 8002 nozzle. Pressure shall not exceed twenty-five pounds per square inch at the nozzle for .052 and other orifice openings and pressure shall not exceed fifteen pounds per square inch at the nozzle for LP 8002 or equivalent nozzle. Pressure up to fifty pounds per square inch at the nozzle may be used for equipment with hand-guns and up to ninety pounds per square inch at the nozzle manifold for an inert system: PROVIDED, That the department may issue a permit for other nozzles and pressure combinations that are equal or better. Prior to issuing such permits, the request shall be reviewed by a scientific committee established by the director: PROVIDED FURTHER, That when Glyphosate is the only restricted use herbicide being used during an application for weed control in reduced tillage cropping any nozzles may be used that delivers at a minimum ten gallons of water carrier or greater per treated acre at a pressure not exceeding twenty-five pounds per square inch at the nozzle: PROVIDED FURTHER, That Glyphosate applications using a .052 nozzle at twenty-five pounds of pressure or less at the nozzle, and a LP 8002 nozzle at fifteen pounds of pressure or less at the nozzle shall be exempt from the ten-gallon minimum volume: PROVIDED FURTHER, That pressurized handsized household devices used to apply restricted use herbicides, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such herbicide applications shall be exempt from nozzle requirements.

#### NEW SECTION

WAC 16-230-864 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES, AIRCRAFT BOOM LENGTH, PRESSURE, AND NOZZLE REQUIREMENTS. The aerial application of restricted use herbicides in the area under order listed in WAC 16-230-800 shall be made in accordance with the following requirements:

(1) The working boom length on fixed wing aircraft shall not exceed three-fourths of the wing span and the working boom length shall not exceed six-sevenths of the total rotor length where the rotor length exceeds forty feet.

(2) Pressure for aerial equipment shall not exceed twenty-five psi at the nozzles.

(3) Nozzles for aircraft:

(a) Fixed wing:

(i) Minimum nozzle orifice of .075 inches (no core plate) provided, that RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward one hundred seventy degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter:

(i) Minimum nozzle orifice of .063 inches (no core plate) provided, that RD8 nozzles with orifice size of .125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward ninety degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

#### NEW SECTION

WAC 16-230-866 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES—TEMPERATURE CONDITIONS. All phenoxy compounds and Banvel shall not be applied when the temperature is above eighty-five degrees F. or above at the point of application: PROVIDED, That application at the rate of fifty gallons or more per acre using nozzles

having a minimum orifice diameter of .072 inches shall be exempt from the eighty-five degrees F. temperature requirement: PROVIDED FURTHER, That when using the invert system, applications may continue up to ninety-five degrees F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

#### NEW SECTION

WAC 16-230-868 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDE WEATHER CONDITIONS. Restricted use herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: PROVIDED, That applications of restricted use herbicides shall be exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre while using no greater than fifteen pounds of pressure per square inch at the nozzle.

#### NEW SECTION

WAC 16-230-870 OTHER RULES. Provisions of WAC 16-230-800 through 16-230-868 shall take precedence over all existing, less restrictive rules of the department affecting the application of pesticides in Benton, Franklin, or Walla Walla counties. No provision of WAC 16-230-800 through 16-230-868 shall be construed as relieving any requirement of existing rules except those in direct conflict.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-230-865 OTHER RULES.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-231-001 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA UNDER ORDER.

WAC 16-231-005 RESTRICTED USE HERBICIDES.

WAC 16-231-010 OIL-TYPE CARRIERS.

WAC 16-231-015 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA 1.

WAC 16-231-020 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA 2.

WAC 16-231-025 AREA 3.

WAC 16-231-030 RESTRICTED USE HERBICIDES—BENTON COUNTY—WIND CONDITIONS.

### **WSR 92-07-060**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed March 13, 1992, 3:18 p.m.]

Date of Adoption: March 13, 1992.

Purpose: To place additional restrictions on the use of restricted use pesticides in the area under order in Benton County and portions of Franklin and Walla Walla counties.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-231-001 through 16-231-030; and amending WAC 16-230-810, 16-230-825, 16-230-835, 16-230-840, 16-230-845, 16-230-850, 16-230-855, 16-230-860, and 16-230-861.

Statutory Authority for Adoption: Chapters 17.21 and 15.58 RCW.

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

Reasons for this Finding: Herbicide drift was experienced on grapes in the area under order during 1991. The department held a hearing on proposed rules February 25, 1992. These rules differ enough from the department's original proposal, that an additional hearing is planned for permanent adoption, however the peak spray season has already begun.

Effective Date of Rule: Immediately.

March 13, 1992  
Michael V. Schwisow  
Deputy Director  
for C. Alan Pettibone  
Director

**AMENDATORY SECTION** (Amending Order 2014, filed 7/31/89, effective 8/31/89)

WAC 16-230-810 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE PESTICIDES. For the purposes of WAC 16-230-800 through (~~WAC 16-230-865~~) 16-230-870, the following pesticides are declared to be restricted use pesticides:

(1) Restricted use herbicides:

- (a) Sulfonylurea herbicides (such as Glean, Telar, Finesse, Escort)
- (b) Desiccants and defoliants (such as Paraquat, Diquat, Endothall)
- (c) Glyphosate (such as Roundup, Landmaster)
- (d) Phenoxy type herbicides (such as 2,4-D, MCPA)
- (e) dicamba (such as Banvel)
- (f) Bromoxynil (such as Brominal, Buctril, ME4 Brominal)

(2) Restricted use insecticides:

- (a) All Category I insecticides with the signal words danger/poison on the label, except granular and pellet formulations;
- (b) Additionally, all insecticides, except granular and pellet formulations, are declared to be restricted use in Area 1 and Area 1A as described in WAC 16-230-835.

#### **NEW SECTION**

WAC 16-230-813 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—OIL TYPE CARRIERS. On and after April 5 through October 31, oil type carriers are prohibited for brush control: PROVIDED, That oil type carriers may be used in invert systems the entire year.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-825 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS

OF FRANKLIN AND WALLA WALLA COUNTIES—PERMITS. The following conditions will apply to all permits issued under the authority of WAC 16-230-800 through (~~16-230-865~~) 16-230-870.

(1) Application for a permit may be made to the Washington State Department of Agriculture, Compliance Branch, 2015 S. 1st Street, Yakima, Washington 98903. Applications may also be taken in person or by phone.

(2) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk of drift. In determining whether the situation at the application site creates an unreasonable risk of drift, the representative may consider all relevant factors such as temperature, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

(3) No permit shall be issued to apply any pesticide unless that permit is consistent with existing department laws and rules.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-835 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1. (1) Area 1 description (North Horse Heaven Hills). An area including all lands lying within a boundary line beginning at the northwest corner of Section (~~19, T8N, R24E, thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E, thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E, thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E, thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E, thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E, thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E, thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E, thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E, thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E, thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E, thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E, thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E, thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E, thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E, thence north approximately one mile along the section line to the intersection with the Kennewick Irrigation District~~

(K.I.D.) main canal, thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E)) 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence south approximately (~~five and one-half~~) two miles along the Columbia River to the south section line of Section 5, T6N, R31E; thence west approximately eight miles along section lines to the southwest corner of Section 1, T6N, R29E; thence north two miles along section lines to the southwest corner of Section 25, T7N, R29E; thence west thirteen miles along section lines to the southeast corner of Section 27, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 27, T7N, R27E; thence west one mile along the section line to the northwest corner of Section 27, T7N, R27E; thence north two miles along section lines to the northeast corner of Section 16, T7N, R27E; thence west one mile along the section line to the southeast corner of Section 8, T7N, R27E; thence north one mile along the section line to the northeast corner of Section 8, T7N, R27E; thence west approximately twenty miles along section lines to the Benton-Yakima County line at the southwest corner of Section 6, T7N, R24E; thence north (~~four~~) two miles along the county line to the point of beginning.

(2) Area 1 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on

and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset to sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset restrictions: PROVIDED FURTHER, That applications of restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset restrictions.

AMENDATORY SECTION (Amending Order 2014, filed 7/31/89, effective 8/31/89)

WAC 16-230-840 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 2. (1) Area 2 description. Tri-Cities, Benton City area. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence south approximately five miles along section lines to the intersection with the Kennewick Irrigation District (K.I.D.) main canal; thence easterly along the K.I.D. main canal to the Amon pumping station located in Section 7, T8N, R29E; thence southeasterly along the K.I.D. Division Four Canal to the Columbia River in Section 8, T7N, R31E; thence south approximately one-half mile along the Columbia River to the south section line of Section 8, T7N, R31E; thence east approximately three miles across the Columbia River to the intersection with U.S. Highway 12 at the south section line of Section 10, T7N, R31E; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along Interstate 182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the United States Department of Energy Hanford Site south boundary line; thence west approximately one mile and south approximately two and one-half miles along the south boundary line to the southeast corner of Section 27, T10N, R28E; thence west seven miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(2) Area 2 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of restricted use herbicides for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-845 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 3. (1) Area 3 description.

(a) Eastern Yakima Valley. An area including all lands lying within a boundary line beginning at the northwest corner of Section 19, T8N, R24E; thence east four miles along section lines to the southwest corner of Section 14, T8N, R24E; thence north one mile along the section line to the northwest corner of Section 14, T8N, R24E; thence east two miles along section lines to the southwest corner of Section 7, T8N, R25E; thence north one mile along the section line to the northwest corner of Section 7, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 5, T8N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 5 to the northeast corner of Section 5, T8N, R25E; thence east one mile along the section line to the southwest corner of Section 34, T9N, R25E; thence northeast approximately one and four-tenths of a mile diagonally across Section 34 to the northeast corner of Section 34, T9N, R25E; thence east two miles along section lines to the southwest corner of Section 30, T9N, R26E; thence north one mile along the section line to the northwest corner of Section 30, T9N, R26E; thence east one mile along the section line to the southwest corner of Section 20, T9N, R26E; thence northeast approximately one and four-tenths of a mile diagonally across Section 20 to the northeast corner of Section 20, T9N, R26E; thence east two miles along section lines to the northwest corner of Section 23, T9N, R26E; thence southeast approximately one and four-tenths of a mile diagonally across Section 23 to the southeast corner of Section 23, T9N, R26E; thence north six miles along section lines to the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section

29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E; thence south approximately eleven miles along the Benton-Yakima county line to the point of beginning.

(b) Cold Creek Area. An area including all lands lying within a boundary line beginning at the intersection of the Benton-Yakima County line and the Columbia River in Section 7, T13N, R24E; thence south approximately six and one-half miles along the Benton-Yakima County line to the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence west approximately five miles along the Columbia River to the point of beginning.

(c) Horse Heaven Hills southwest buffer zone. An area near Patterson starting at the southeast corner of Section 7, T5N, R26E following section lines north five miles to the northeast corner of Section 19, T6N, R26E; thence west two miles to the northwest corner of Section 24, T6N, R25E; thence south one-half mile along section line; thence west two miles to the common boundary of Sections 21 and 22, T6N, R25E; thence north one-half mile to the northeast corner of Section 21, T6N, R25E; thence west three miles to the northwest corner of Section 19, T6N, R25E; thence south three miles to the southwest corner of Section 31, T6N, R25E; thence east three miles to the southeast corner of Section 33, T6N, R25E; thence south three miles to the southeast corner of Section 16, T5N, R25E; thence west one mile to the northwest corner of Section 21, T5N, R25E; thence south one mile to the southwest corner of Section 21, T5N, R25E; thence east two miles to the southeast corner of Section 22, T5N, R25E; thence north one mile to the northeast corner of Section 22, T5N, R25E; thence east two miles to the southeast corner of Section 13, T5N, R25E; thence north one mile to the northeast corner of Section 13, T5N, R25E; thence east one mile to the point of origin.

(2) Area 3 restrictions.

(a) Application by air of restricted use herbicides as defined in WAC 16-230-810 is prohibited.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by

persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-850 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 4. (1) Area 4 description.

(a) Tri-cities northwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence north two miles along section lines to the northwest corner of Section 13, T10N, R26E; thence east one mile along the section line to the northeast corner of Section 13, T10N, R26E; thence north approximately one-half mile along the section line to the United States Department of Energy Hanford Site south boundary line; thence easterly approximately ten miles and south approximately two and one-half miles along the south boundary line to the south section line of Section 27, T10N, R28E; thence west approximately six and three-fourths miles along section lines to the southwest corner of Section 27, T10N, R27E; thence north one mile along the section line to the northwest corner of Section 27, T10N, R27E; thence west four miles along section lines to the point of beginning.

(b) Tri-cities northeast buffer zone. An area including all lands lying within a boundary line beginning at the intersection of the Esquatzel Diversion Channel drain and the Columbia River; thence east along the Esquatzel Channel to its intersection with Road 68; thence southeasterly approximately one mile along Road 68 to its intersection with Fraser Drive near the northeast corner of Section 24, T10N, R28E; thence south approximately four miles along section lines and portions of Fraser Drive and Dent Road to the southwest corner of Section 6, T9N, R29E; thence east approximately eight and one-half miles along section lines and a portion of Foster Wells Road to its intersection with the Bonneville Power Administration power line in Section 4, T9N, R30E; thence southeasterly approximately seven miles along the power line to its intersection with SR 124 in Section 32, T9N, R31E; thence easterly approximately two and one-half miles along SR 124 to the east section line of Section 34, T9N, R31E near the intersection of SR 124 and the Union Pacific Railroad; thence south approximately three miles along section lines to the southeast corner of Section 15, T8N, R31E; thence west approximately one-fourth mile along the section line to the Union Pacific Railroad; thence southerly approximately four and one-half miles along the railroad to its intersection with U.S. Highway 12 near the Boise Cascade paper mill; thence northwesterly along Highway 12 to its intersection with Interstate 182; thence westerly along I-182 to the west shoreline of the Columbia River; thence northerly approximately six and one-half miles along the Columbia River to the U.S. Department of Energy Hanford Site south boundary line in Section 14, T10N, R28E; thence east approximately one-half mile across

the Columbia River to its east shoreline; thence northerly approximately one-half mile to the point of beginning.

(2) Area 4 restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of restricted use herbicides is prohibited: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

WAC 16-230-855 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 5. (1) Area 5 description.

(a) Cold Creek buffer zone. An area including all lands lying within a boundary line beginning at the southwest corner of Section 7, T12N, R24E; thence east five miles along section lines to the southeast corner of Section 11, T12N, R24E; thence north approximately seven miles along section lines to the Columbia River; thence easterly approximately two miles along the Columbia River to the east section line of Section 6, T13N, R25E, near the Vernita Bridge; thence south approximately eight and one-half miles along section lines to the southeast corner of Section 18, T12N, R25E; thence west seven miles along section lines to the Benton-Yakima County line at the southwest corner of Section 18, T12N, R24E; thence north one mile along the county line to the point of beginning.

(b) Roza buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 25, T10N, R26E; thence west four miles along section lines to the northwest corner of Section 29, T10N, R26E; thence south one mile along the section line to the southwest corner of Section 29, T10N, R26E; thence west eleven miles along section lines to the southeast corner of Section 29, T10N, R24E; thence north one mile along the section line to the intersection with Anderson Road at the northeast corner of Section 29, T10N, R24E; thence west two miles along Anderson Road and section lines to the Benton-Yakima County line at the northwest corner of Section 30, T10N, R24E;

thence north two miles along the county line to the northwest corner of Section 18, T10N, R24E; thence east four miles along section lines to the northeast corner of Section 15, T10N, R24E; thence south one mile along the section line to the southeast corner of Section 15, T10, R24E; thence east seven miles along section lines to the southwest corner of Section 13, T10N, R25E; thence north one mile along the section line to the northwest corner of Section 13, T10N, R25E; thence east six miles along section lines to the northwest corner of Section 13, T10N, R26E; thence south two miles along section lines to the point of beginning.

(c) Horse Heaven Hill southwest buffer zone. An area including all lands lying within a boundary line beginning at the northwest corner of Section 13, T6N, R24E; thence south five miles along section lines to the southwest corner of Section 1, T5N, R24E; thence east three miles along the section lines to the northeast corner of Section 8, T5N, R25E; thence south one mile along the section line to the southeast corner of Section 8, T5N, R25E; thence west one mile along the section line to the southwest corner of Section 8, T5N, R25E; thence south approximately five miles to the Washington Oregon border, thence northeasterly along the Washington Oregon border until its intersection with the eastern section line of Section 8, T5N, R26E; thence north approximately six miles along section lines to the northeast corner of Section 17, T6N, R26E; thence west nine miles to the point of beginning.

(2) Area 5 restrictions.

(a) Application by air of restricted use herbicides as defined by WAC 16-230-810 may be made by written permit only.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of the restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

**WAC 16-230-860 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS**

**OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 6.** (1) Area 6 description. All remaining lands in the area under order.

(2) Area 6 restrictions.

(a) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(b) On and after April 5 through October 31 of each year all applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset to sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset restrictions: PROVIDED FURTHER, That applications of restricted use herbicides on small experimental plots for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset restrictions.

(c) On and after April 5 through October 31 of each year, aerial applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning.

**AMENDATORY SECTION** (Amending Order 2046, filed 6/29/90, effective 7/30/90)

**WAC 16-230-861 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—WIND CONDITIONS.** The use or application of all herbicides and class 1 and 2 insecticides are prohibited in the area under order listed in WAC 16-230-800 when the mean sustained wind velocity is over ((~~twelve~~)) ten miles per hour throughout the year: PROVIDED, That applications shall be allowed in higher velocity winds when an approved ground apparatus is used. Ground apparatus shall be approved by the department prior to application. Approval shall be based on research data: PROVIDED FURTHER, That applications of granular and pellet formulations of restricted use pesticides defined in WAC 16-230-810 as well as applications made to structures shall be exempt from the wind restrictions.

**NEW SECTION**

**WAC 16-230-862 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—AREA 1A.** (1) Area 1A description. All lands lying within a boundary line beginning at the northwest corner of Section 31, T8N, R24E; thence east two miles along section lines to the northwest corner of Section 33, T8N, R24E; thence north one mile along section lines to the northwest corner of Section 28, T8N, R24E; thence east seven miles along section lines to the northwest corner of Section 27, T8N, R25E; thence north two miles

along section lines to the northwest corner of Section 15, T8N, R25E; thence east eight miles along section lines to the northwest corner of Section 13, T8N, R26E; thence south two miles along section lines to the northwest corner of Section 25, T8N, R26E; thence east two miles along section lines to the northwest corner of Section 29, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 32, T8N, R27E; thence east three miles along section lines to the northwest corner of Section 35, T8N, R27E; thence south one mile along section lines to the northwest corner of Section 2, T7N, R27E; thence east one mile along section lines to the northwest corner of Section 1, T8N, R27E; thence south two miles along section lines to the northwest corner of Section 13, T7N, R27E; thence east four miles along section lines to the northwest corner of Section 15, T7N, R28E; thence south one mile along section lines to the northwest corner of Section 22, T7N, R28E; thence east ten miles along section lines to the northwest corner of Section 20, T7N, R30E; thence south two miles along section lines to the northwest corner of Section 32, T7N, R30E; thence east seven miles along section lines to the Columbia River in Section 29, T7N, R31E; thence north approximately three miles to the Kennewick Irrigation District (K.I.D.) Division Four Canal in Section 8, T7N, R31E; thence westerly along the K.I.D. Division Four Canal to the intersection with the K.I.D. Main Irrigation Canal at the Amon Pumping Station located in Section 7, T8N, R29E; thence westerly along the K.I.D. Main Irrigation Canal to its intersection with the east section line of Section 14, T9N, R26E; thence south approximately one mile along the section line to the northwest corner of Section 25, T9N, R26E; thence northwest approximately one and four tenths miles diagonally across Section 23 to the northwest corner of Section 23, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 21, T9N, R26E; thence southwest approximately one and four tenths miles diagonally across Section 20 to the northwest corner of Section 29, T9N, R26E; thence west one mile along section lines to the northwest corner of Section 30, T9N, R26E; thence south one mile along section lines to the northwest corner of Section 31, T9N, R26E; thence west two miles along section lines to the northwest corner of Section 35, T9N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 34 to the northwest corner of Section 3, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 4, T8N, R25E; thence southwest approximately one and four tenths miles diagonally across Section 5 to the northwest corner of Section 8, T8N, R25E; thence west one mile along section lines to the northwest corner of Section 7, T8N, R25E; thence south one mile along section lines to the northwest corner of Section 18, T8N, R25E; thence west two miles along section lines to the northwest corner of Section 14, T8N, R24E; thence south one mile along section lines to the northwest corner of Section 23, T8N, R24E; thence west four miles to the northwest corner of Section 19, T8N, R24E; thence south two miles along the county line to the point of beginning.

(2) Area 1A restrictions.

(a) Application by air of restricted use pesticides as defined in WAC 16-230-810 is prohibited: PROVIDED, That the department may issue written permits for application of insecticides not containing the signal words danger/poison on the label.

(b) The use or application of low volatile ester formulations of restricted use herbicides shall be prohibited on and after April 5 through October 31 of each year: PROVIDED, That hormone sprays may be applied by aircraft to orchards for the prevention of fruit drop.

(c) On and after April 5 through October 31 of each year, applications of restricted use herbicides shall be prohibited daily from three hours prior to sunset until two hours after sunrise the following morning: PROVIDED, That applications of restricted use herbicides shall be exempt from the sunset and sunrise restrictions when using an application rate of forty gallons of water carrier or greater per treated acre at twenty pounds of pressure or less at the nozzle: PROVIDED FURTHER, That applications of granular and pellet formulations of the restricted use herbicides shall be exempt from the sunset and sunrise restrictions: PROVIDED FURTHER, That applications of restricted use herbicides for research purposes by persons licensed in the demonstration and research category shall be exempt from the sunset and sunrise restrictions.

#### NEW SECTION

WAC 16-230-863 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES GROUND APPARATUS NOZZLE REQUIREMENTS. Ground applications of restricted use herbicides in the area under order listed in WAC 16-230-800 shall be made, throughout the year, using nozzles having a single orifice and minimum diameter of .052 inches or a LP 8002 nozzle. Pressure shall not exceed twenty-five pounds per square inch at the nozzle for .052 and other orifice openings and pressure shall not exceed fifteen pounds per square inch at the nozzle for LP 8002 or equivalent nozzle. Pressure up to fifty pounds per square inch at the nozzle may be used for equipment with handguns and up to ninety pounds per square inch at the nozzle manifold for an inert system: PROVIDED, That the department may issue a permit for other nozzles and pressure combinations that are equal or better. Prior to issuing such permits, the request shall be reviewed by a scientific committee established by the director: PROVIDED FURTHER, That when Glyphosate is the only restricted use herbicide being used during an application for weed control in reduced tillage cropping any nozzles may be used that delivers at a minimum ten gallons of water carrier or greater per treated acre at a pressure not exceeding twenty-five pounds per square inch at the nozzle: PROVIDED FURTHER, That Glyphosate applications using a .052 nozzle at twenty-five pounds of pressure or less at the nozzle, and a LP 8002 nozzle at fifteen pounds of pressure or less at the nozzle shall be exempt from the ten-gallon minimum volume: PROVIDED FURTHER, That pressurized handsized household devices used to apply restricted use herbicides, or

any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such herbicide applications shall be exempt from nozzle requirements.

#### NEW SECTION

**WAC 16-230-864 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES, AIRCRAFT BOOM LENGTH, PRESSURE, AND NOZZLE REQUIREMENTS.** The aerial application of restricted use herbicides in the area under order listed in WAC 16-230-800 shall be made in accordance with the following requirements:

(1) The working boom length on fixed wing aircraft shall not exceed three-fourths of the wing span and the working boom length shall not exceed six-sevenths of the total rotor length where the rotor length exceeds forty feet.

(2) Pressure for aerial equipment shall not exceed twenty-five psi at the nozzles.

(3) Nozzles for aircraft:

(a) Fixed wing:

(i) Minimum nozzle orifice of .075 inches (no core plate) provided, that RD8 nozzles with orifice size of 0.125 inches and No. 46 core plates may be used. Nozzles shall be directed downward and backward one hundred seventy degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

(b) Helicopter:

(i) Minimum nozzle orifice of .063 inches (no core plate) provided, that RD8 nozzles with orifice size of .125 inches and core plate No. 46 may be used. Nozzles shall be directed downward and backward ninety degrees or more from the direction of flight.

(ii) No flat fan nozzles shall be allowed.

#### NEW SECTION

**WAC 16-230-866 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDES—TEMPERATURE CONDITIONS.** All phenoxy compounds and Banvel shall not be applied when the temperature is above eighty-five degrees F. or above at the point of application: **PROVIDED**, That application at the rate of fifty gallons or more per acre using nozzles having a minimum orifice diameter of .072 inches shall be exempt from the eighty-five degrees F. temperature requirement: **PROVIDED FURTHER**, That when using the invert system, applications may continue up to ninety-five degrees F. with a maximum wind velocity of fifteen miles per hour and with water carrier at twelve or more gallons per acre.

#### NEW SECTION

**WAC 16-230-868 APPLICATION OF PESTICIDES IN BENTON COUNTY AND PORTIONS**

**OF FRANKLIN AND WALLA WALLA COUNTIES—RESTRICTED USE HERBICIDE WEATHER CONDITIONS.** Restricted use herbicides shall not be applied throughout the year in the entire area under order when there is a temperature inversion present or weather conditions are such that damage could result to adjacent and nearby towns, susceptible crops, and plantings through physical drift or volatilization: **PROVIDED**, That applications of restricted use herbicides shall be exempt from the inversion requirements when using one hundred gallons or greater of water carrier per treated acre while using no greater than fifteen pounds of pressure per square inch at the nozzle.

#### NEW SECTION

**WAC 16-230-870 OTHER RULES.** Provisions of WAC 16-230-800 through 16-230-868 shall take precedence over all existing, less restrictive rules of the department affecting the application of pesticides in Benton, Franklin, or Walla Walla counties. No provision of WAC 16-230-800 through 16-230-868 shall be construed as relieving any requirement of existing rules except those in direct conflict.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

**WAC 16-230-865 OTHER RULES.**

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

**WAC 16-231-001 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA UNDER ORDER.**

**WAC 16-231-005 RESTRICTED USE HERBICIDES.**

**WAC 16-231-010 OIL-TYPE CARRIERS.**

**WAC 16-231-015 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA 1.**

**WAC 16-231-020 RESTRICTED USE HERBICIDES—BENTON COUNTY—AREA 2.**

**WAC 16-231-025 AREA 3.**

**WAC 16-231-030 RESTRICTED USE HERBICIDES—BENTON COUNTY—WIND CONDITIONS.**

**WSR 92-07-061**

**RULES COORDINATOR  
HEALTH CARE AUTHORITY**

[Filed March 16, 1992, 9:30 a.m.]

This is to inform you that Elin Meyer, Internal Audit Manager, will be replacing Kristen West as the rules coordinator for the Health Care Authority.

Margaret T. Stanley  
Administrator



**WSR 92-07-062**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed March 16, 1992, 9:51 a.m.]

**Original Notice.**

**Title of Rule:** Fees for copying public documents in WAC 352-40-090.

**Purpose:** Lowers fee from 50 cents per single document or 25 cents for multiple document, to 10 cents per page per document.

**Statutory Authority for Adoption:** Chapter 43.51 RCW.

**Summary:** Lowers fee from 50 cents per single document or 25 cents for multiple documents, to 10 cents per page per document.

**Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Nina Carter, 7150 Cleanwater Lane, Olympia, WA 98504, 753-6179.

**Name of Proponent:** Richard Welsh, National Association of Reversionary Property Owners, private.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** Lowers cost of copying public records or documents from 50 cents for a single document or 25 cents for multiple documents to 10 cents per page.

**Proposal Changes the Following Existing Rules:** Same as above.

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

**Hearing Location:** BPO Elks Club, 351 East Rose, Walla Walla, WA, on April 24, 1992, at 9:00 a.m.

**Submit Written Comments to:** Nina Carter, State Parks, KY-11, 7150 Cleanwater Lane, Olympia, 98504, by April 15, 1992.

**Date of Intended Adoption:** April 24, 1992.

March 6, 1992

Nina Carter

Executive Assistant

**AMENDATORY SECTION** (Amending Order 15, filed 7/25/73)

WAC 352-40-090 **COPYING.** No fee shall be charged for the inspection of public records. The commission shall charge a fee of ~~((fifty)) ten~~ cents ~~((per page of copy for single page documents and twenty-five cents))~~ per page ~~((of))~~ per copy for ~~((multiple page document copies of))~~ public records and for use of the commission copy equipment. This charge is the amount necessary to reimburse the commission for its ~~((actual))~~ costs ~~((incident to such))~~ for copying.

**WSR 92-07-063**  
**PROPOSED RULES**  
**GRAYS HARBOR COLLEGE**

[Filed March 16, 1992, 1:40 p.m.]

**Continuance of WSR 92-01-056.**

**Title of Rule:** Chapter 132B-108 WAC, Practice and procedure.

**Purpose:** Continues public hearing for adoption of proposed chapter 132B-108 WAC from March 16, 1992 to March 23, 1992.

**Hearing Location:** Grays Harbor College, Boardroom, 200 Building, Aberdeen, WA 98520, on March 23, 1992, at 3:30 p.m.

**Submit Written Comments to:** Dr. Jewell Manspeaker, Grays Harbor College, Aberdeen, Washington 98520, by March 23, 1992.

**Date of Intended Adoption:** March 23, 1992.

March 10, 1992

Dr. Jewell C. Manspeaker

President

**WSR 92-07-064**  
**PROPOSED RULES**  
**GRAYS HARBOR COLLEGE**

[Filed March 16, 1992, 1:41 p.m.]

**Continuance of WSR 92-01-057.**

**Title of Rule:** Chapter 132B-104 WAC, Board of trustees; and chapter 132B-133 WAC, Organization.

**Purpose:** Continues public hearing for adoption of proposed chapters 132B-104 and 132B-133 WAC from March 16, 1992, to March 23, 1992.

**Hearing Location:** Grays Harbor College, Boardroom, 200 Building, Aberdeen, WA 98520, on March 23, 1992, at 3:30 p.m.

**Submit Written Comments to:** Dr. Jewell Manspeaker, Grays Harbor College, Aberdeen, Washington 98520, by March 23, 1992.

**Date of Intended Adoption:** March 23, 1992.

March 10, 1992

Dr. Jewell C. Manspeaker

President

**WSR 92-07-065**  
**PROPOSED RULES**  
**GRAYS HARBOR COLLEGE**

[Filed March 16, 1992, 1:42 p.m.]

**Continuance of WSR 92-01-058.**

**Title of Rule:** Chapter 132B-130 WAC, Tuition and fee schedules; chapter 132B-131 WAC, Scholarships; and chapter 132B-132 WAC, Financial aid.

**Purpose:** Continues public hearing for adoption of proposed chapters 132B-130, 132B-131, and 132B-132 WAC from March 16, 1992, to March 23, 1992.

**Hearing Location:** Grays Harbor College, Boardroom, 200 Building, Aberdeen, Washington 98520, on March 23, 1992, at 3:30 p.m.

**Submit Written Comments to:** Dr. Jewell Manspeaker, Grays Harbor College, Aberdeen, Washington 98520, by March 23, 1992.

**Date of Intended Adoption:** March 23, 1992.

March 10, 1992

Dr. Jewell C. Manspeaker

President

**WSR 92-07-066**  
**PERMANENT RULES**  
**SPOKANE COUNTY AIR**  
**POLLUTION CONTROL AUTHORITY**  
 [Filed March 16, 1992, 1:47 p.m.]

Date of Adoption: March 12, 1992.

Purpose: To comply with requirements of the 1991 amendments to the Washington Clean Air Act, chapter 70.94 RCW.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Section 1.01, Policy.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Pursuant to notice filed as WSR 92-04-045 on January 31, 1992.

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

March 13, 1992

Fred O. Gray  
 Environmental Engineer

January 28, 1992

Section 1.01 POLICY

The Spokane County Air Pollution Control Authority, co-extensive with the boundaries of Spokane County, having been activated by the Washington Clean Air Act, ~~((RCW))~~ Chapter 70.94 RCW as amended, adopts the following Regulation~~((s))~~ to control the emissions of air contaminants from all sources within the jurisdiction of the Authority; to provide for the uniform administration and enforcement of this Regulation; and to carry out the requirements and purposes of the Washington Clean Air Act.

It is hereby declared to be the public policy of the Spokane County Air Pollution Control Authority to secure and maintain such levels of air quality ~~((as with))~~ that protect human health and safety, ~~((and))~~ including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to ~~((the greatest degree practicable,))~~ prevent injury to plant and animal life and to property, to foster the comfort and convenience of its inhabitants, to promote the economic and ~~((industrial))~~ social development of the County and ~~((enhance the recreational potential within))~~ to facilitate the enjoyment of the natural attractions of the County.

It is further the intent of this Regulation to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Wherever this Regulation Constitutes a restatement of the requirements and purposes of Chapter 70.94 RCW it is the intent of the Authority that the Regulation be interpreted in the same manner as the statute adopted by the Legislature. Any deviation from the statute, except where the statute allows an Authority to be more stringent, is intended for purposes of clarity.

**WSR 92-07-067**  
**PERMANENT RULES**  
**SPOKANE COUNTY AIR**  
**POLLUTION CONTROL AUTHORITY**  
 [Filed March 16, 1992, 1:49 p.m.]

Date of Adoption: March 12, 1992.

Purpose: To comply with requirements of the 1991 amendments to the Washington Clean Air Act, chapter 70.94 RCW.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Section 2.03, Confidential Information.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Pursuant to notice filed as WSR 92-04-046 on January 31, 1992.

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

March 13, 1992

Fred O. Gray  
 Environmental Engineer

January 28, 1992

SECTION 2.03 CONFIDENTIAL INFORMATION

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Authority, pursuant to ~~((any sections in RCW))~~ Chapter 70.94 RCW, relate to processes or production unique to the owner or operator, or is likely to adversely affect ~~((adversely))~~ the competitive position of such owner or operator if released to the public or to a competitor and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Department of Ecology or the Authority. (RCW 70.94.205)

SECTION 2.04 VIOLATIONS

A. ~~((Whenever the Board or Control Officer has reason to believe that any provision of the State Law or any ordinance, regulation, rule or order relating to the control or prevention of air pollution has been violated, he may))~~ At least thirty days prior to the commencement of any formal enforcement action under Chapter 70.94.430 RCW or Chapter 70.94.431 RCW the Authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the State Law or of this Regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order the Board or the Control Officer may require that the alleged violator or violators appear before the Hearings Board ~~((as provided for in Chapter 43.21B RCW))~~ for a hearing. ~~((pursuant to the provisions of Chapter 34.04 RCW as now or hereafter amended, or in addition to or in place of an order or hearing, the Hearings Board, the local Board or the Control Officer may initiate action pursuant to RCW 70.94.425, RCW 70.94.430, and RCW 70.94.435. ~~((RCW 70.94.211))~~ Every Notice of Violation shall offer to the alleged violator an opportunity to meet with~~

the Authority prior to the commencement of enforcement action.

B. The Control Officer may, in place of an order or hearing after service of a notice of violation and expiration of reasonable and/or required period of time without correction, request the County Prosecutor to prosecute a criminal action against the violator.

**WSR 92-07-068**

**PERMANENT RULES**

**SPOKANE COUNTY AIR  
POLLUTION CONTROL AUTHORITY**

[Filed March 16, 1992, 1:52 p.m.]

Date of Adoption: March 12, 1992.

Purpose: To comply with the requirements of the 1991 amendments to the Washington Clean Air Act, chapter 70.94 RCW.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Section 2.04, Violations.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Pursuant to notice filed as WSR 92-04-047 on January 31, 1992.

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

March 13, 1992

Fred O. Gray  
Environmental Engineer

January 28, 1992

**SECTION 2.03 CONFIDENTIAL INFORMATION**

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Authority, pursuant to ~~((any sections in RCW))~~ Chapter 70.94 RCW, relate to processes or production unique to the owner or operator, or is likely to adversely affect ~~((adversely))~~ the competitive position of such owner or operator if released to the public or to a competitor and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Department of Ecology or the Authority. (RCW 70.94.205)

**SECTION 2.04 VIOLATIONS**

A. ~~((Whenever the Board or Control Officer has reason to believe that any provision of the State Law or any ordinance, regulation, rule or order relating to the control or prevention of air pollution has been violated, he may))~~ At least thirty days prior to the commencement of any formal enforcement action under Chapter 70.94.430 RCW or Chapter 70.94.431 RCW the Authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of the State Law or of this Regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order the Board or the Control Officer may

require that the alleged violator or violators appear before the Hearings Board ~~((as provided for in Chapter 43.21B RCW))~~ for a hearing. ~~((pursuant to the provisions of Chapter 34.04 RCW as now or hereafter amended, or in addition to or in place of an order or hearing, the Hearings Board, the local Board or the Control Officer may initiate action pursuant to RCW 70.94.425, RCW 70.94.430, and RCW 70.94.435. (RCW 70.94.211)))~~ Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Authority prior to the commencement of enforcement action.

B. The Control Officer may, in place of an order or hearing after service of a notice of violation and expiration of reasonable and/or required period of time without correction, request the County Prosecutor to prosecute a criminal action against the violator.

**WSR 92-07-069**

**PERMANENT RULES**

**SPOKANE COUNTY AIR  
POLLUTION CONTROL AUTHORITY**

[Filed March 16, 1992, 1:54 p.m.]

Date of Adoption: March 12, 1992.

Purpose: To comply with the requirements of the 1991 amendments to the Washington Clean Air Act, chapter 70.94 RCW.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Section 2.11, Penalties.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Pursuant to notice filed as WSR 92-04-048 on January 31, 1992.

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

March 13, 1992

Fred O. Gray  
Environmental Engineer

January 28, 1992

**SECTION 2.11 PENALTIES**

**A. Criminal Penalties**

1. Any person who knowingly violates any of the provisions of Chapter 70.94 RCW or any regulation, ordinance, or resolution ~~((, rule or order))~~ in force pursuant thereto, ~~((shall be))~~ is guilty of a ~~((misdemeanor))~~ crime and upon conviction ~~((thereof shall be punished))~~ is subject to punishment by a fine ~~((of not more than one thousand dollars,))~~ or by imprisonment in the county jail ~~((for not more than ninety days,))~~ or by both fine and imprisonment as provided by Chapter 70.94 RCW for each separate violation.

~~((2.))~~ ~~((Any person who willfully violates any of the provisions of Chapter 70.94 RCW or any regulation, ordinance, resolution, or order in force pursuant thereto shall be guilty of a gross misdemeanor. Upon conviction the offender shall be punished by a fine of not less than one hundred dollars for each offense, or by imprisonment~~

for a term of not more than one year or by both fine and imprisonment:))

((3)) ((In case of a continuing violation, whether or not willfully committed, each day's continuance shall be separate and distinct violation:))

2. Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a crime and upon conviction is subject to punishment by a fine or by imprisonment or both as provided by Chapter 70.94 RCW.

3. Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a crime and upon conviction is subject to punishment by a fine or by imprisonment or both as provided by Chapter 70.94 RCW.

4. Any person who knowingly fails to disclose a potential conflict of interest under Chapter 70.94.100 RCW is guilty of a gross misdemeanor, and upon conviction thereof, is subject to a fine as provided by Chapter 70.94 RCW.

#### B. Other Penalties

1. a. In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of Chapter 70.94 RCW or any of the rules and regulations of the Department of Ecology or this ((Board)) Authority ((shall)) in force under this chapter may incur a civil penalty ((in the form of a fine)) in an amount not to exceed ((one thousand dollars per day)) that provided by Chapter 70.94 RCW for each violation. Each such violation is ((shall be)) a separate and distinct offense, and in case of a continuing violation, each day's continuance is ((shall be)) a separate and distinct violation. ((For the purposes of this paragraph, the maximum daily fine imposed by the Board for violations of standards by a specific emissions unit is one thousand dollars:))

b. Any person who fails to take action as specified by an order issued pursuant to Chapter 70.94 RCW or this Regulation is liable for a civil penalty in an amount not to exceed the penalty authorized by Chapter 70.94 RCW for each day of continued noncompliance.

2. Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by 19.52.020 RCW on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

((2. a.)) ((Further, the person is subject to a fine of up to five thousand dollars to be levied by the Director of the Department of Ecology if requested by the Board or if the Director of the Department of Ecology determines that the penalty is needed for effective enforcement of

Chapter 70.94 RCW. The Board shall not make such a request until notice of violation and compliance order procedures have been exhausted, if such procedures are applicable. For the purposes of this paragraph the maximum daily fine imposed by the Department of Ecology for violation of standards by a specific emissions unit is five thousand dollars:))

((b.)) ((If a penalty is levied under this paragraph 2 of subsection B, the Director of the Department of Ecology or said Director's authorized delegate may, upon written application therefor received by the person incurring the penalty, and when deemed in the best interest to carry out the purposed of Chapter 70.94 RCW, remit or mitigate any penalty provided in this section upon such terms as the Director of the Department of Ecology deems proper, and may ascertain the facts upon all such applications in such manner and under such regulations as the Director of the Department of Ecology deems proper. The mitigation shall not affect or reduce the penalty imposed by the Authority. The appeal procedure for penalties imposed under this paragraph 2 shall be as set forth in subsection (4) of Chapter 70.94-431 RCW:))

((c.)) ((If a prior penalty for the same violation has been paid to the Authority, the penalty imposed under paragraph 2 of Subsection B shall be reduced by the amount of the payment:))

3. Each act of commission or omission which procures, aids, or abets in the violation is ((shall be considered)) a violation under the provisions of this section and subject to the same penalty.

4. ((Except as provided in paragraph 2.b. of subsection B, the)) The penalty ((shall become)) is due and payable when the person incurring the same receives a notice in writing from the Control Officer of the Authority or his designee describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the Pollution Control Hearings Board as provided in Chapter 43.21B RCW. When a request is made for a hearing, the penalty ((shall become)) is due and payable only upon completion of all review proceedings and the issuance of a final order affirming the penalty in whole or part. If the amount of such penalty is not paid within thirty days after it becomes due and payable, and a request for a hearing has not been made, the ((attorney for the local authority, upon request of the)) Board or Control Officer, shall bring an action to recover such penalty. ((in the Superior Court of the county in which the violation occurred:)) The penalties provided by Chapter 70.94 RCW and this section are imposed pursuant to Chapter 43.21B.300 RCW.

5. All penalties recovered under this section by the Authority ((under subsection B shall be paid into)) are payable to the treasury of the Authority and credited to its funds. ((Notwithstanding any other provisions of this regulation, no penalty may be levied for the violation of any opacity standard in an amount exceeding four hundred dollars per day:))

((4)) ((In all actions brought in the Superior Court for the recovery of penalties hereunder, the procedure

~~and rules of evidence shall be the same as in an ordinary civil action:))~~

6. ((5)) To secure the penalty incurred under this section, the State or the Authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in Chapter 60.36-.050 RCW.

7. In addition to other penalties provided by this section, persons falsifying emission data or other information used to set fees, or persons required to pay emission, registration, permit, or any other fee payable to the Authority who are more than ninety days late with such payments are subject to a penalty equal to three times the amount of the original fee owed.

**WSR 92-07-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed March 16, 1992, 2:03 p.m.]

Date of Adoption: March 16, 1992.

Purpose: To implement collection on new fees for food processor's licenses as provided under RCW 69.07.040. This will enable us to increase our surveillance and inspection of food processors and distributors.

Statutory Authority for Adoption: RCW 69.07.040.

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

Reasons for this Finding: To implement collection of fees as provided under RCW 69.07.040 as amended March 9, 1992. Fees will provide additional inspectional and sampling activities on food processors and food products to ensure compliance with food safety laws and rules.

Effective Date of Rule: Immediately.

March 16, 1992  
 Michael Schwisow  
 Deputy Director  
 for C. Alan Pettibone  
 Director

**Chapter 16-141 WAC**  
**FOOD PROCESSING PLANT LICENSES**

**NEW SECTION**

**WAC 16-141-010 FOOD PROCESSING PLANT LICENSE EXPIRATION DATE AND FEES.** (1) The annual food processing plant license issued pursuant to RCW 69.07.040 for 1991-92 shall expire on June 30, 1992.

(2) License fees from March 31, 1992, to June 30, 1992, shall be prorated on a monthly basis to accommodate the new expiration date and shall be billed to the licensee at the time of renewal of the 1992-93 license.

The prorated fee shall be based on the 1991-92 license fee.

(3) Persons applying for a food processing plant license after March 31, 1992, but prior to June 30, 1992, shall pay only the twenty-five dollar annual license fee and will not be charged a prorated amount for the period from March 31, 1992, until June 30, 1992.

**WSR 92-07-071**  
**EMERGENCY RULES**  
**BELLEVUE COMMUNITY COLLEGE**  
 [Filed March 16, 1992, 2:07 p.m.]

Date of Adoption: March 12, 1992.

Purpose: Repealing chapter 132H-105 WAC, Bylaws and standing orders of Community College District VIII; and adopting chapter 132H-106 WAC, Bylaws and standing orders of Community College District VIII.

Citation of Existing Rules Affected by this Order: Repealing chapter 132H-105 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

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

Reasons for this Finding: It is necessary for the preservation of the general welfare because current practices are inconsistent with WAC as filed.

Effective Date of Rule: Immediately.

March 13, 1992  
 Phyllis C. Hudson  
 Secretary  
 Board of Trustees

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 132H-105 Bylaws and standing orders of Community College District VIII

BYLAWS AND STANDING ORDERS OF COMMUNITY  
 COLLEGE DISTRICT VIII  
 Chapter 132H-106 WAC

**WAC**

132H-106-010 Introduction.  
 132H-106-020 Offices of the board of trustees.  
 132H-106-030 Meetings of the board of trustees.  
 132H-106-040 Officers of the board.  
 132H-106-050 Seal and name of the college.  
 132H-106-060 Bylaws of the board of trustees.

[NEW SECTION]

**WAC 132H-106-010 BOARD OF TRUSTEES.** The board of trustees is an agency of the state and derives its authority as described in chapter 8, Laws of 1967 ex. sess. It shall be the responsibility of the board of trustees to establish policy and to evaluate the total college program. The board of trustees shall appoint a college president to administer the college and shall delegate to him/her the authority and responsibility for implementation of board policy.

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

[NEW SECTION]

**WAC 132H-106-020 OFFICES OF THE BOARD OF TRUSTEES.** The board of trustees shall maintain an office at Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, Washington 98007-6484, where all records, minutes, and the official college seal shall be kept.

Persons may obtain information from and submit written comments or requests to the secretary of the board who is located in this office.

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

[NEW SECTION]

**WAC 132H-106-030 MEETINGS OF THE BOARD OF TRUSTEES.** Meetings may be held upon request by the chair or by a majority of the members of the board.

The board of trustees customarily holds a regular meeting on the second Tuesday of each month at such time and place as it may designate.

(1) All regular and special meetings of the board of trustees shall be announced and held in accordance with chapter 42.30 RCW (the Open Public Meetings Act).

(2) No official business shall be conducted by the board of trustees except during a regular or special meeting.

(3) The board of trustees may convene in executive session whenever it is deemed necessary pursuant to RCW 42.30.110.

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

[NEW SECTION]

**WAC 132H-106-040 OFFICERS OF THE BOARD.** Annually, at its June meeting the board elects from its membership a chair and vice chair to serve for the ensuing year. In addition, the president of Bellevue Community College or the president's designee serves as secretary to the board of trustees as specified by state law.

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

[NEW SECTION]

**WAC 132H-106-050 SEAL AND NAME OF THE COLLEGE.** The board of trustees of Community College District VIII shall maintain an official seal for

use upon any or all official documents of the board. The seal shall have inscribed upon it the name of the college which shall be: *Bellevue Community College.*

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

[NEW SECTION]

**WAC 132H-106-060 BYLAWS OF THE BOARD OF TRUSTEES.** Bylaws of the board may be revised by majority vote of the board.

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

**WSR 92-07-072**

**EMERGENCY RULES**

**BELLEVUE COMMUNITY COLLEGE**

[Filed March 16, 1992, 2:09 p.m.]

Date of Adoption: March 12, 1992.

Purpose: Repealing chapter 132H-128 WAC, Reduction of force.

Citation of Existing Rules Affected by this Order: Repealing chapter 132H-128 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

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

Reasons for this Finding: It is necessary for the preservation of the general welfare because current practices are inconsistent with WAC as filed.

Effective Date of Rule: Immediately.

March 13, 1992  
Phyllis C. Hudson  
Secretary  
Board of Trustees

REPEALER

The following chapter of the Washington Administrative Code is repealed:

**WAC 132H-128 REDUCTION IN FORCE POLICY**

**WSR 92-07-073**

**EMERGENCY RULES**

**BELLEVUE COMMUNITY COLLEGE**

[Filed March 16, 1992, 2:15 p.m.]

Date of Adoption: March 12, 1992.

Purpose: Repealing chapter 132H-148 WAC, Affirmative action.

Citation of Existing Rules Affected by this Order: Repealing chapter 132H-148 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

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

Reasons for this Finding: It is necessary for the preservation of the general welfare because current practices are inconsistent with WAC as filed.

Effective Date of Rule: Immediately.

March 13, 1992  
Phyllis C. Hudson  
Secretary  
Board of Trustees

**REPEALER**

*The following chapter of the Washington Administrative Code is repealed:*

**WAC 132H-148 AFFIRMATIVE ACTION PROGRAM**

**WSR 92-07-074**

**EMERGENCY RULES**

**BELLEVUE COMMUNITY COLLEGE**

[Filed March 16, 1992, 2:21 p.m.]

Date of Adoption: March 12, 1992.

Purpose: Repealing chapter 132H-112 WAC, Rules for selection of a bargaining agent.

Citation of Existing Rules Affected by this Order: Repealing chapter 132H-112 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

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

Reasons for this Finding: It is necessary for the preservation of the general welfare because current practices are inconsistent with WAC as filed.

Effective Date of Rule: Immediately.

March 13, 1992  
Phyllis C. Hudson  
Secretary  
Board of Trustees

**REPEALER**

*The following chapter of the Washington Administrative Code is repealed:*

**WAC 132H-112 RULES FOR SELECTION OF A BARGAINING AGENT**

**WSR 92-07-075**

**PREPROPOSAL COMMENTS**

**BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed March 16, 1992, 4:37 p.m.]

Subject of Possible Rule Making: WAC 296-116-075 Qualifications for pilot applicants, the board has been legally advised that the present rule would allow fish processor service time under subsection (2). The board intends to clarify the regulation on this issue.

Persons may comment on this subject in the following ways: Written or oral comments. Washington State Board of Pilotage Commissioners, Pier 52, Colman Dock, 801 Alaskan Way, Seattle, WA 98104-1488, by mail - up until a hearing date; or in person, at any regularly scheduled board meeting through hearing.

March 16, 1992  
Marjorie T. Smitch  
Assistant Attorney General

**WSR 92-07-076**

**PROPOSED RULES**

**BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed March 16, 1992, 4:40 p.m.]

Original Notice.

Title of Rule: WAC 296-116-300 Pilotage rates for the Puget Sound pilotage district.

Purpose: To amend the pilotage tariff rate.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: RCW 88.16.035.

Summary: The proposed amendment reflects a 13.66 percent increase in the Puget Sound pilotage district tariff.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Chet Richmond, Pier 52, Colman Dock, Seattle, 464-7818.

Name of Proponent: Puget Sound Pilot's Association, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule would increase the tariff for pilotage services in the Puget Sound pilotage district by 13.66 percent.

Proposal Changes the Following Existing Rules: The proposed rule is a 13.66 percent increase over the existing rule.

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

Hearing Location: Conference Room, Pier 52, Colman Dock, Seattle, Washington 98104, on May 14, 1992, at 9:00 a.m.

Submit Written Comments to: Chet Richmond, by May 1, 1992.

Date of Intended Adoption: May 14, 1992.

March 16, 1992  
Marjorie T. Smitch  
Assistant Attorney General

**AMENDATORY SECTION** (Amending WSR 91-11-074, filed 5/20/91, effective 6/20/91)

**WAC 296-116-300 PILOTAGE RATES FOR THE PUGET SOUND PILOTAGE DISTRICT.**

CLASSIFICATION	RATE
Ship length overall (LOA) Charges:	per LOA rate schedule in this section
Boarding fee:	(( <del>\$-28.00</del> )) <u>\$ 32.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Dead ship towing charge: LOA of tug + LOA of tow + beam of tow Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	Double LOA Zone
Waterway and bridge charges: Ships up to 90' beam: A charge of \$(( <del>+53.00</del> )) <u>174.00</u> shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle, south of Eleventh Street Bridge in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$(( <del>+73.00</del> )) <u>83.00</u> per bridge.	
Ships 90' beam and/or over: A charge of \$(( <del>+206.00</del> )) <u>234.00</u> shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle and south of Eleventh Street Bridge in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$(( <del>+44.00</del> )) <u>164.00</u> per bridge. (The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)	
Two or three pilots required: In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.	
Compass adjustment	(( <del>\$205.00</del> )) <u>\$233.00</u>
Radio direction finder calibration	(( <del>\$205.00</del> )) <u>\$233.00</u>
Launching vessels	(( <del>\$309.00</del> )) <u>\$351.00</u>
Trial trips, 6 hours or less (Minimum \$(( <del>582.00</del> )) <u>660.00</u> )	(( <del>\$-97.00</del> )) <u>\$110.00</u> per hr.
Trial trips, over 6 hours (two pilots)	(( <del>\$+94.00</del> )) <u>\$220.00</u> per hr.
Shilshole Bay — Salmon Bay	(( <del>\$+20.00</del> )) <u>\$136.00</u>
Salmon Bay — Lake Union	(( <del>\$-94.00</del> )) <u>\$107.00</u>
Lake Union — Lake Washington (plus LOA zone from Webster Point)	(( <del>\$+20.00</del> )) <u>\$136.00</u>
Cancellation charge	LOA Zone I
Cancellation charge — Port Angeles (when a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for pilot or when a pilot order is cancelled less than twelve hours prior to the original ETA.)	LOA Zone <u>((<del>+</del>))II</u>

CLASSIFICATION	RATE
Docking delay after anchoring:	(( <del>\$-97.00</del> )) <u>\$110.00</u> per hr.
Applicable harbor shift rate to apply, plus \$(( <del>97.00</del> )) <u>110.00</u> per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$(( <del>97.00</del> )) <u>110.00</u> for every hour or fraction thereof.	
Sailing delay:	(( <del>\$-97.00</del> )) <u>\$110.00</u> per hour
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$(( <del>97.00</del> )) <u>110.00</u> for every hour or fraction thereof.	
Slowdown:	(( <del>\$-97.00</del> )) <u>\$110.00</u> per hour
When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$(( <del>97.00</del> )) <u>110.00</u> per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.	
Super ships: 20,000 to 50,000 gross tons: Additional charge to LOA zone mileage of \$(( <del>0-05+2</del> )) <u>0.0582</u> a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.  50,000 gross tons and up: In excess of 50,000 gross tons, the charge shall be \$(( <del>0-06+3</del> )) <u>0.0697</u> per gross ton.	
For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.	
Delayed arrival-Port Angeles:	(( <del>\$-97.00</del> )) <u>\$110.00</u> per hour
When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$(( <del>97.00</del> )) <u>110.00</u> for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.	
<u>When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.</u>	
Transportation to vessels on Puget Sound:	
March Point or Anacortes	\$ (( <del>+13.00</del> )) <u>128.00</u>
Bangor	(( <del>66.00</del> )) <u>75.00</u>
Bellingham	(( <del>+25.00</del> )) <u>142.00</u>
Bremerton	(( <del>35.00</del> )) <u>40.00</u>
Cherry Point	(( <del>+47.00</del> )) <u>167.00</u>
Dupont	(( <del>66.00</del> )) <u>75.00</u>
Edmonds	(( <del>24.00</del> )) <u>27.00</u>
Everett	(( <del>43.00</del> )) <u>49.00</u>
Ferndale	(( <del>+35.00</del> )) <u>153.00</u>
Manchester	(( <del>52.00</del> )) <u>59.00</u>
Mukilteo	(( <del>42.00</del> )) <u>48.00</u>
Olympia	(( <del>85.00</del> )) <u>97.00</u>
Point Wells	(( <del>24.00</del> )) <u>27.00</u>
Port Gamble	(( <del>61.00</del> )) <u>69.00</u>



CLASSIFICATION

RATE

Table with 2 columns: Classification (Port Townsend, Seattle, Semiahmoo, Tacoma, Tacoma Smelter, Winslow) and Rate ((86.00), 98.00, (11.00), 13.00, (154.00), 175.00, (44.00), 50.00, (50.00), 57.00, (35.00), 40.00)

- (a) Intraharbor transportation for the Port Angeles port area...
(b) Interport shifts: Transportation paid to and from both points.
(c) Intraharbor shifts: Transportation to be paid both ways.
(d) Cancellation: Transportation both ways unless notice of cancellation is received...
(e) Any new facilities or other seldom used terminals...

Delinquent payment charge: 1 1/2% per month after 45 days from first billing.

Nonuse of pilots: Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees...

LOA rate schedule

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

Table with 7 columns: LOA, ZONE I (Intra Harbor), ZONE II (0-30 Miles), ZONE III (31-50 Miles), ZONE IV (51-75 Miles), ZONE V (76-100 Miles), ZONE VI (101 Miles & Over). Rows range from (Up to 449) to 920-939.

Table with 7 columns: LOA, ZONE I (Intra Harbor), ZONE II (0-30 Miles), ZONE III (31-50 Miles), ZONE IV (51-75 Miles), ZONE V (76-100 Miles), ZONE VI (101 Miles & Over). Rows range from 940-959 to 1000 & over.

WSR 92-07-077
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed March 17, 1992, 10:02 a.m.]

Original Notice.

Title of Rule: Standards for community health clinics.
Purpose: For eligibility determination and fund distribution for medical and dental services to community health clinics.

Statutory Authority for Adoption: Section 214(3), chapter 19, Laws of 1989 1st ex. sess.

Statute Being Implemented: Section 214(3), chapter 19, Laws of 1989 1st ex. sess.

Summary: Defines the procedures for eligibility determination and fund distribution to community health clinics.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Max McMullen, Industrial Park, Building #14, Mailstop LP-21/7831, Olympia, Washington 98504-7831, 753-5469.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To establish procedures for determining eligibility and distribution.

Proposal Changes the Following Existing Rules: Adds language to limit the fluctuations in fund distribution.

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

Hearing Location: General Administration Auditorium, 11th and Columbia, Olympia, Washington 98504, on April 22, 1992, at 1:00 p.m.

Submit Written Comments to: Leslie Baldwin, Rules Coordinator, 1300 S.E. Quince Street, P.O. Box 47902, Olympia, WA 98504-7902, by April 20, 1992.

Date of Intended Adoption: April 29, 1992.

March 13, 1992

Kristine M. Gebbie  
Secretary

#### NEW SECTION

WAC 246-510-400 LIMITATIONS ON AWARDS. Specific to the medical and dental base as referenced in WAC 246-510-200 (1)(b) and (2)(b):

(1) Any approved contractor shall initially receive no more than one hundred ten percent of that contractor's previous year's initial allotment.

(2) Any approved contractor shall initially receive no less than ninety percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to provide ninety percent, criteria shall be established to equitably allocate the available funds.

(3) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 246-510-200.

**WSR 92-07-078**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
**(State Board of Health)**

[Filed March 17, 1992, 10:06 a.m.]

Original Notice.

Title of Rule: Drinking water certification rules, chapter 246-390 WAC.

Purpose: To establish and maintain a state drinking water program for the certification of laboratories conducting analytical measurement of drinking water contaminants pursuant to the requirements of the state primacy agreement between EPA and the state. Required by 40 CFR 142.10, July 1, 1990, and P.L. 99-339, the Federal Safe Drinking Water Act.

Statutory Authority for Adoption: RCW 43.20.050.

Summary: The proposed rule list all the requirements for certification and the conditions under which certification may be downgraded, revoked, or denied.

Reasons Supporting Proposal: Adoption is required under the Federal Safe Drinking Water Act.

Name of Agency Personnel Responsible for Drafting: Dave Bingham, PHL, 1610 N.E. 150th Street, Seattle, Mailstop K17-9, 245-2822 scan; Implementation: Dr.

Jon Counts, PHL, 1610 N.E. 150th Street, Seattle, Mailstop K17-9, 245-2816 scan; and Enforcement: Jac Davies, PHL, 1610 N.E. 150th Street, Seattle, Mailstop K17-9, 245-2910 scan.

Name of Proponent: State Board of Health, governmental.

Rule is necessary because of federal law, 40 CFR Part 142.10.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule implements the Federal [Safe] Drinking Water Act requirements. Laboratories will be certified for analysis of parameters selected by the laboratory to comply with requirements set forth in the EPA *Manual for Certification of Laboratories Analyzing Drinking Water*, EPA/570/9-90/008, 4/90. Approximately 50 laboratories in the state will be affected by the certification program.

Proposal does not change existing rules.

This is a new rule.

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

Small Business Economic Impact Statement: The department has considered whether this rule is subject to the Regulatory Fairness Act and has determined that it is not for the following reasons: The rule does not affect more than 10% of one industry or 20% of all industries; the rule being adopted is solely to comply with federal laws and regulation, to satisfy the intent of the primacy agreement between the United States Environmental Protection Agency and the state, in compliance with 40 CFR 142.10, July 1, 1990; and the rule will have minor or negligible economic impact on the industry as a whole.

Summary: The proposed regulation will not have an economic impact on more than 20% of all industries or more than 10% of the businesses in any one industry. We estimated there are approximately one thousand commercial analytical laboratories doing business in the state of Washington and only approximately fifty commercial laboratories will be affected by the rule. We also estimated the fee charge for processing the application and submitting the proper fees to help operate the program on a yearly basis would not exceed three-tenths of one percent of the annual gross income of the five percent of the smallest businesses impacted by the fee charge. The fees charged are based on the number and type of tests for which a laboratory request certification. Smaller businesses which do fewer types of tests would pay a lower fee.

Background: The proposed regulations would establish specific state of Washington rules and regulation for analytical laboratories analyzing drinking water for the state, to comply with United States Environmental Protection Agency requirements in 40 CFR 142.10. Presently, specific standards and limitations are only in the federal regulations. The proposed regulation is similar to the federal requirements with a few additional constraints. Any laboratory wanting to test Washington drinking water must be certified. This includes commercial analytical labs, university labs and local governments labs such as local health departments. The basic

requirements for certification involve using EPA approved analytical methods and following guidelines established for good laboratory practices, quality assurance, facilities, and qualified personnel to operate the laboratory.

**Impact Analysis:** As a result of this regulation, laboratory doing testing will have to pay a fee. This fee would not exceed three-tenths of one percent of the annual gross income of the five percent of smallest businesses affected. There may be other cost to a laboratory associated with certification, such as capital improvements necessary to use EPA approved methods or follow good laboratory practices. These other cost come as a result of the federal requirement, and would affect laboratories in this program regardless of the existence of state regulations.

**Hearing Location:** Spokane County Health District, West 1101 College Avenue, Spokane, WA 99201-2095, on May 13, 1992, at 11:00 a.m.

**Submit Written Comments to:** Leslie Baldwin, (206) 586-6894, Department of Health, Rules Management, 1300 S.E. Quince Street, P.O. Box 67902 [47902], Olympia, WA 98504-7902, by May 8, 1992.

**Date of Intended Adoption:** May 13, 1992.

March 13, 1992

Sylvia I. Beck

Executive Director

#### Chapter 246-390 WAC DRINKING WATER CERTIFICATION RULES

##### NEW SECTION

WAC 246-390-001 **PURPOSE—OBJECTIVES.** (1) The purpose of this chapter is to establish a state drinking water program for certification of laboratories analyzing public drinking water under RCW 43.20.050. The certification program is designed to satisfy the intent of the primacy agreement with United States Environmental Protection Agency and the state, in compliance with 40 C.F.R. 142.10, 7/1/90.

(2) The department certification program:

- (a) Requires laboratories to demonstrate capability to accurately analyze drinking water samples;
- (b) Aids laboratories in improving quality assurance; and
- (c) Offers technical assistance in all drinking water analyses.

##### NEW SECTION

WAC 246-390-010 **DEFINITIONS.** Definitions in this section shall apply throughout this chapter, unless clearly indicated otherwise.

(1) "Administrative Procedure Act" means the adjudicative proceedings governed by chapter 34.05 RCW and chapter 246-08 WAC.

(2) "Analytical data" means the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, or radiological determination.

(3) "Certification" means the formal contractual agreement between the department and the certified laboratory indicating a laboratory is capable of producing accurate analytical data and is authorized to test drinking water compliance samples. The department will issue a certificate to the laboratory indicating the contaminants the laboratory is authorized to analyze. Certification does not guarantee validity of analytical data submitted by a certified laboratory.

(4) "Certification authority" means the designated official or a representative of the official authorized by the department as the head of the certification program.

(5) "Certification manual" means the most recent revision of the procedural and technical criteria of the drinking water certification rules. This document, entitled "Certification Manual for Laboratories Analyzing Washington State Drinking Water," is available from the Department of Health, Public Health Laboratory, Drinking Water

Certification Program, 1610 NE 150th St., Seattle, Washington 98155-7224.

(6) "Certification official (CO)" means the designated official authorized by the department to certify drinking water laboratories.

(7) "Compliance sample" means a drinking water sample collected in accordance with WAC 246-290-300 and/or 246-290-320 and submitted to a state certified laboratory for analysis.

(8) "Department" means the Washington state department of health.

(9) "EMSL-CI" means the EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio.

(10) "EMSL-LV" means the EPA Environmental Monitoring System Laboratory, Las Vegas, Nevada.

(11) "EPA" means United States Environmental Protection Agency.

(12) "Intercomparison studies" means a series of cross check samples sent to radiochemistry laboratories by EPA to compare the results between participating laboratories.

(13) "Laboratory" means any facility under the ownership and technical management of a single entity in a single geographical locale. A laboratory is where scientific examinations are performed on drinking water samples.

(14) "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the location identified under WAC 246-290-300, Table 4.

(15) "Official methods" means methodologies specified by EPA drinking water regulations under 40 C.F.R. 141.21 - 141.30, 141.41 - 141.42, 7/1/90 and approved by the department.

(16) "Parameter" means a single determination or group of related determinations using a specific written official method.

(17) "Performance evaluation (PE)" means an evaluation of the results of analysis of samples from an external testing source whose true values are unknown to the laboratory conducting the analysis. The external testing service must be approved by the department and/or CO if other than EPA sources are used.

(18) "On-site audit" means an on-site inspection performed by the department to determine a laboratory's capabilities and facilities.

(19) "Quality assurance (QA)" means all those planned and systematic actions necessary to provide confidence that an analysis, measurement, or surveillance program produces data of known and defensible quality.

(20) "Quality controls (QC)" means internal written procedures and routine analyses of laboratory reference materials, samples, and blanks to insure precision and accuracy of methodology, equipment and results.

(21) "State advisory level (SAL)" means a department-established value for a chemical without an existing MCL. The SAL represents a level which when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

##### NEW SECTION

#### WAC 246-390-020 REQUIREMENT FOR CERTIFICATION.

(1) Certification officers are required to meet EPA requirements for drinking water certification as described in the latest version of the Manual for the Certification of Laboratories Analyzing Drinking Water, EPA/570/9-90/008,4/90.

(2) Applicants for laboratory certification shall submit to the department:

(a) An application fee as specified in WAC 246-390-990;

(b) A written application which includes one of the following:

(i) A request for first-time certification;

(ii) A request for certification to analyze additional or newly regulated contaminants; or

(iii) A request to reapply for certification after correction of deficiencies which resulted in the downgrading or revocation of certification status, or after lapse of previous contract; and

(c) A QA plan as specified in subsection (6) of this section.

(3) Applicants for routine renewal shall submit to the department at least three months before expiration of the contract:

(a) A renewal fee as specified in WAC 246-390-990;

(b) A written application which includes:

(i) Name and address of each laboratory or testing site;

(ii) Owner's name, address, and contact person;

(iii) List of parameters to be certified;

(iv) Completed personnel training and experience forms;

(v) List of methods used;

- (vi) Copy of QA manual; and
- (vii) List of equipment;
- (c) Verification of the successful performance of PE studies as specified in subsection (4) of this section; and
- (d) A QA plan, if changes have been made since the plan was last submitted to the department.

(4) Laboratory approved personnel shall participate in EPA Water Supply, EMSL-CI, EMSL-LV, or other department approved PE studies at least once annually for microbiological and twice annually for chemistry and radiochemistry laboratories as described in the certification manual. Radiochemistry laboratories must also participate in two intercomparison studies per year.

(5) Laboratory directors shall allow on-site audit by the CO as follows:

- (a) At least every three years;
- (b) Announced or unannounced;
- (c) At contract renewal; or
- (d) At the discretion of the CO.

(6) Laboratory directors shall submit a QA plan with a section specific to drinking water with initial application; at contract renewal, if changes have been made; or at the discretion of the CO. The QA plan or manual shall follow EPA and state requirements, as described in the certification manual.

(7) Laboratory personnel shall notify the CO in writing within thirty days of major changes to analytical staff management including:

- (a) Moving facilities;
  - (b) Loss or replacement of the laboratory supervisor;
  - (c) A situation in which a trained and experienced analyst no longer is available to analyze a particular parameter for which certification had been granted;
  - (d) Loss or replacement of major equipment; and
  - (e) Any other situation described in the certification manual that would affect laboratory operations.
- (8) Laboratories shall meet the following minimum workload requirements for each certified parameter:

(a) Microbiological laboratories to analyze a minimum of fifteen water samples per quarter that are positive for both total and fecal coliform.

(b) Chemistry and radiochemistry laboratories to analyze five water samples per quarter. These workload requirements shall not include PE samples. Laboratories must assure the CO that proper QA/QC was followed, and official drinking water methods were used. See certification manual for further explanation.

(9) Laboratory personnel shall follow official EPA methods, or EPA approved alternate analytical techniques, as described in the certification manual.

(10) Laboratory personnel shall accurately report analytical results of compliance samples in a timely manner as described in the certification manual using:

- (a) The department specified format; and
- (b) Electronic or hard copy transmission.

(11) Laboratories shall follow the standard of quality requirements as described in the certification manual.

#### NEW SECTION

WAC 246-390-030 **CERTIFICATION.** (1) The department may grant certification to a laboratory after conducting a complete assessment of the laboratory's capabilities, including:

- (a) Submission of a completed application;
- (b) Submission of the proper fees;
- (c) Satisfactory performance on PE studies, and intercomparison samples where necessary;
- (d) Submission of an updated QA plan; and
- (e) Successful completion of an on-site inspection.

(2) The department may grant less than full certification based on terms and conditions incorporated in the contractual agreement between the laboratory and the department.

#### NEW SECTION

WAC 246-390-040 **PROVISIONAL CERTIFICATION.** Laboratories which have deficiencies requiring corrective action but which can produce valid analytical data as determined by the CO may be given provisional certification. The department may downgrade a laboratory to provisional certification for failure to:

(1) Analyze a PE sample and/or an intercomparison sample, or any other unknown test sample within the acceptance limits established by

the EPA and/or the department. Failure on a mandatory PE sample is defined as a failure on any concentration provided, unless otherwise specified by the EPA and/or the department. The laboratory shall be given an opportunity to request a make up PE or QC sample before the CO takes action.

(2) Notify the CO in writing within thirty days of major change impairing analytical capability, such as personnel, equipment, or location.

(3) Demonstrate that the laboratory maintains the required standard of quality, based upon an on-site evaluation. See certification manual for minimum standard of quality requirements.

(4) Promptly send reports of analysis to the department as described in the certification manual.

(5) Promptly notify the public water system by the end of the business day, or the department if the public water system can not be notified, of results exceeding MCL or SAL. For all results exceeding MCL or SAL the laboratory must notify the department as soon as possible.

#### NEW SECTION

WAC 246-390-050 **REVOKING OR DENYING CERTIFICATION.** Action shall be taken consistent with the contract, with 40 C.F.R. 142.10 7/1/90, EPA Manual, RCW 43.20.050, and chapter 246-08 WAC. The department may immediately downgrade laboratories from certified or provisionally certified to not certified, or may deny certification for a particular contaminant analysis or group of contaminants, for the following reasons:

(1) Two consecutive failures to analyze a PE sample or intercomparison sample or any other unknown test sample for a particular contaminant within the acceptance limits established by EPA and/or the department. The laboratory shall be given an opportunity to request a make-up PE or QC sample before the CO takes final action. The decision to revoke certification shall be made at the discretion of the CO after examination of all information.

(2) Failure to demonstrate to the CO that the laboratory has corrected deficiencies identified during an on-site evaluation within:

(a) Three months to correct a procedural or administrative deficiency; and

(b) Six months to correct an equipment deficiency. If the equipment or instrument involved is the only instrument available for a particular analysis, certification may be downgraded immediately, at the discretion of the CO.

(3) Submission of a PE sample to another laboratory for analysis and reporting data as its own.

(4) Failure to use analytical methodology specified in the certification manual.

(5) Failure to submit an appropriate application and associated fees to the department.

(6) Failure to pass a re-audit and correct deficiencies if the laboratory is found deficient in its ability to provide accurate analytical data.

(7) Justifiable evidence of falsification of data or any other practice considered deceptive by the department.

(8) Failure to comply with other provisions of the contractual agreement between the department and the laboratory.

(9) Failure to correct deficiencies quoted in a revoked certificate before reapplying for certification.

(10) Failure to permit entry of a CO or CO's representative for an on-site audit to examine methods, facilities, equipment, and analytical data.

#### NEW SECTION

WAC 246-390-060 **RECIPROCITY.** The department may recognize certification of an out-of-state laboratory by another primary state with which the department has an established mutual reciprocity agreement. The laboratory shall submit an application and a fee as specified in WAC 246-390-990; perform approved PE studies; follow the workload requirements; and follow drinking water methods per WAC 246-390-020. A laboratory accepted under the reciprocity agreement shall enter into a contract with the department.

#### NEW SECTION

WAC 246-390-070 **THIRD-PARTY CERTIFICATION.** The department shall recognize only the certification officials authorized and approved by the department. See certification manual for recognized and approved certification officials. Laboratories requesting third

party certification shall submit an application; perform approved PE studies; follow the workload requirements; and follow drinking water methods per WAC 246-390-020.

#### NEW SECTION

WAC 246-390-100 APPEALS. A laboratory manager may appeal any certification action such as denial and revocation in writing to the CO. If the question is not satisfactorily resolved, the laboratory manager may appeal in writing by certified mail to the certification authority within thirty days of the decision of the CO. Decisions of the certification authority may be appealed to the secretary of the department within thirty days of notification of final action. The adjudication procedure is governed by the Administrative Procedure Act, this chapter, and chapter 246-08 WAC. Laboratories may be allowed to maintain certification during the appeal process.

**WSR 92-07-079**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed March 17, 1992, 10:09 a.m.]

#### Original Notice.

Title of Rule: Continuing education requirements, WAC 246-930-410. Housekeeping on the additional chapter 246-930 WAC.

Purpose: To establish continuing education for renewal of certification of sex offender treatment providers.

Statutory Authority for Adoption: RCW 18.155.040.

Statute Being Implemented: Chapter 18.155 RCW.

Summary: Program implementation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanne Redmond, 1300 Quince Street, Mailstop EY-23, 753-0712.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To establish continuing education for renewal of certifications of sex offender treatment providers.

Proposal Changes the Following Existing Rules: Housekeeping and editing the current rules for sex offender treatment providers.

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

Hearing Location: General Administration Auditorium, 11th and Columbia, Olympia, Washington 98504, on April 28, 1992, at 1:00 p.m.

Submit Written Comments to: Leslie Baldwin, Rules Coordinator, 1300 S.E. Quince Street, P.O. Box 47902, Olympia, WA 98504-7902, by April 24, 1992.

Date of Intended Adoption: May 5, 1992.

March 12, 1992

Kristine M. Gebbie

Secretary

#### AMENDATORY SECTION (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-010 GENERAL DEFINITIONS. Whenever used in these rules, unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the following meanings:

(1) "Department" means the department of health, professional licensing services division.

(2) "Secretary" means the secretary of the department of health, or designee.

(3) "Provider" means sex offender treatment provider.

(4) "Affiliate" means affiliate sex offender treatment provider.

(5) "Committee" means the sex offender treatment providers advisory committee.

(6) "Credential" or its derivative means the process of licensing, registration, certification((+)) or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(7) ~~((For purposes of determining eligibility for certification,))~~ For purposes of determining eligibility for certification, "evaluation" is defined as the direct provision of comprehensive evaluation and assessment services to persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. Such services ~~((must))~~ shall have resulted in preparation of a formal written report. To qualify, the individual ~~((must))~~ shall have had primary responsibility for interviewing the offender and ~~((must))~~ shall have completed the written report. Only face-to-face contact with a client may be counted for evaluation credit. Evaluation hours performed by affiliate providers under the supervision of fully certified providers count toward certification under this definition. Note that limited assessments for the purpose of institution classification, treatment monitoring, and reporting do not qualify for evaluation credit under this definition. ~~((Standards for evaluation by certified providers are set forth in WAC 246-930-320.))~~ Standards for evaluation by certified providers are set forth in WAC 246-930-320.

(8) ~~((For purposes of determining eligibility for certification,))~~ For purposes of determining eligibility for certification, "treatment" is defined as the direct provision of face-to-face individual, group, or family therapy with persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. The professional ~~((must))~~ shall have had formal responsibility for provision of primary treatment services, and such services ~~((must))~~ shall have had direct relevance to a client's offending behavior. Treatment hours performed by affiliate providers under the supervision of fully certified providers count toward certification under this definition. "Co-therapy hours" are defined as the actual number of hours the applicant spent facilitating a group session. Co-therapists may both claim credit for therapy hours as long as both persons have formal responsibility for the group sessions. Time spent in maintaining collateral contacts and written case/progress notes can not be counted under this definition.

(9) A "fully certified sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for full certification, has satisfactorily passed the examination, and has been issued a certification to evaluate and treat sex offenders pursuant to chapter 18.155 RCW.

(10) An "affiliate sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for affiliate certification applicants, and has satisfactorily passed the examination. An affiliate sex offender treatment provider evaluates and treats sex offenders pursuant to chapter 18.155 RCW under the supervision of a fully certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(11) "SSOSA" is special sex offender sentencing alternative.

(12) "SSODA((+))" is special sex offender disposition alternative.

~~((13))~~ "Supervising officer" means the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, under the sentence or disposition order, e.g., community correction officer.

~~((14))~~ "Evaluation treatment plan" the plan set forth in the evaluation detailing how the treatment needs of the client might be met and the community protected during the course of treatment:

~~((15))~~ "Provider-client contract" the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.)) (13) "Supervising officer" means the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, under the sentence or disposition order, e.g., community correction officer.

(14) "Evaluation treatment plan" means the plan set forth in the evaluation detailing how the treatment needs of the client might be met and the community protected during the course of treatment.

(15) "Provider-client contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-020 REQUIREMENT FOR UNDERLYING CREDENTIAL AS A HEALTH PROFESSIONAL. (1) Under RCW 18.155.020(1), only credentialed health professionals may be certified as providers.

(2) A person who is credentialed as a health professional in a state or jurisdiction other than Washington ((must)) shall satisfy this requirement by submitting the following:

(a) A copy of the current nonexpired credential issued by the credentialing state;

(b) A copy of the statute, administrative regulation, or other official document of the issuing state which sets forth the minimum requirements for the credential;

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

(ii) That there is no disciplinary action currently pending; and

(iii) Listing any formal discipline actions taken by the issuing authority with regard to the credential;

(d) A statement signed by the applicant, on a form provided by the department, submitting to the jurisdiction of the Washington state courts for the purpose of any litigation involving his or her practice as a sex offender treatment provider;

(e) A statement signed by the applicant, on a form provided by the department, that the applicant does not intend to practice the health profession for which he or she is credentialed by another state within the state of Washington without first obtaining an appropriate credential to do so from the state of Washington, except as may be authorized by Washington state law; and

(f) Evidence to show compliance with the AIDS education requirement:

(i) Education and training shall be consistent with the model curriculum available from the office on AIDS within the department of health pursuant to chapter 70.24 RCW. Such education and training shall be a minimum of four clock hours and shall include, but not be limited to, the following: Etiology and epidemiology; testing and counseling; infection control guidelines; clinical manifestations and treatment; legal and ethical issues to include confidentiality; and psychosocial issues to include special population considerations.

(ii) Documentation. The applicant shall:

(A) Certify, on forms provided, that the minimum education and training has been completed after January 1, 1987;

(B) Keep records for two years documenting attendance and description of the learning; and

(C) Be prepared to validate, through submission of these records, that attendance has taken place.

(3) Underlying registration, certification, or licensure ((must)) shall be maintained in good standing. If underlying registration, certification, or licensure is not renewed or is revoked, certification as a sex offender treatment provider, affiliate sex offender treatment provider, or temporary or provisional treatment provider ((with)) shall be immediately revoked.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-030 EDUCATION REQUIREMENT FOR FULL CERTIFICATION APPLICANTS. (1) An applicant(s)) shall have completed:

(a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a fully accredited college or university; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A master's or doctoral degree in a closely related field when there is documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content. Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in (c)(i) and (ii) of this subsection and five graduate semester hours or seven graduate quarter hours in at least two additional content areas from the entire list:

(i) Counseling and psychotherapy.

(ii) Personality theory.

(iii) Research.

(iv) Psychopathology/personality disorders.

(v) Assessment/tests and measurement.

(vi) Group therapy/family therapy.

(vii) Human growth and development/sexuality.

(viii) Corrections/criminal justice.

(2) Transcripts of all graduate work ((must)) shall be submitted directly to the department from the college or university where earned.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-040 PROFESSIONAL EXPERIENCE REQUIREMENT FOR FULL CERTIFICATION APPLICANTS. (1) In order to qualify for examination, the applicant shall have at least two thousand hours of direct treatment and evaluation experience, as defined in WAC 246-930-010. These two thousand hours shall include at least two hundred fifty ((of these)) hours ((must-be)) of evaluation experience and at least five hundred ((of these)) hours ((must-be)) of treatment experience.

(2) All of the prerequisite experience ((must)) shall have been within the seven-year period preceding application for certification as a provider.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-050 EDUCATION REQUIREMENT FOR AFFILIATE CERTIFICATION APPLICANTS. (1) An applicant(s)) shall have completed:

(a) A bachelor's, master's, or doctorate degree in social work, psychology, counseling, or educational psychology from a fully accredited institution of higher education; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A bachelor's, master's, or doctorate degree in a closely related field when there is documentation of thirty semester hours or forty-five quarter hours in approved subject content. Approved subject content includes at least five semester hours or seven quarter hours in (c)(i) and (ii) of this subsection and five semester hours or seven quarter hours in at least two additional content areas from the entire list:

(i) Counseling and psychotherapy.

(ii) Personality theory.

(iii) Research.

(iv) Psychopathology/personality disorders.

(v) Assessment/tests and measurement.

(vi) Group therapy/family therapy.

(vii) Human growth and development/sexuality.

(viii) Corrections/criminal justice.

(2) Transcripts of all academic work ((must)) shall be submitted directly to the department from the college or university where earned.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-060 PROFESSIONAL EXPERIENCE REQUIREMENT FOR AFFILIATE CERTIFICATION APPLICANTS. (1) An applicant(s)) meeting only the minimal academic requirements for affiliate status (bachelor's degree), ((must)) shall have a total of two thousand hours of experience in evaluation and/or treatment as defined in WAC 246-930-010. No specific minimum number of hours in either category is required for an affiliate applicant(s)).

(2) All of the prerequisite experience ((must)) shall have been within the seven-year period preceding application for certification as a provider.

(3) If the applicant for affiliate status meets the academic requirements for full certification, post-graduate degree as outlined in WAC 246-930-030, no experience requirement applies.

AMENDATORY SECTION (Amending Order 201, filed 10/10/91, effective 11/10/91)

WAC 246-930-075 SUPERVISION OF AFFILIATES. Supervision of affiliates is considerably different than consultation. Consultation is solely advisory; ((the)) consultants ((does)) do not assume responsibility for those individuals to whom they consult. Supervision of

affiliates requires that the provider take full ethical and legal responsibility for the professional work and for the quality of work of the affiliate. The following rules apply to providers and affiliates when service is being provided to SSOSA and SSODA clients:

(1) Whether providing training, consultation, or supervision, sex offender treatment providers shall avoid presenting themselves as having qualifications in areas where they do not have expertise.

(2) The supervisor shall provide sufficient training and supervision to the affiliate to insure the health and safety of the client and community. The supervisor shall have the expertise and knowledge to directly supervise the work of the affiliate.

(3) The supervisor shall insure that any person he or she supervises has sufficient education, background, and preparation for the work they will be doing.

(4) Supervision of an affiliate shall require that the supervisor and supervisee enter into a formal written contract defining the parameters of the professional relationship. This supervision contract shall be submitted to the department for approval and ~~((with))~~ shall be renewed on a yearly basis. This document shall include, but is not limited to:

(a) The areas of professional activity for which supervision will occur~~((:));~~

(b) The amount of supervision time and frequency of supervisory meetings to be provided. This information ~~((can))~~ may be presented as a ratio of supervisory time to clinical work conducted by the affiliate~~((:));~~

(c) The supervisory fees and business arrangements, when applicable~~((:));~~

(d) The nature of the supervisory relationship and the anticipated process of supervision~~((:));~~

(e) The manner in which clinical cases will be selected and reviewed~~((:));~~

(f) The methodology for recordkeeping, evaluation of the affiliate, and feedback~~((:));~~ and

(g) The manner in which the affiliate shall be represented to the public.

(5) Supervision of affiliates shall involve regular, direct, on-site supervision. Supervision shall include a reasonable degree of direct observation by means of the supervisor sitting in sessions, audio tape recording, videotape, etc. However, it is recognized that certain geographic locales do not have sufficient resources to enable immediate, direct supervision of affiliates. In these cases special flexible supervision arrangements which deviate from the standard are encouraged; these special supervision contracts shall be submitted to the department for approval.

(6) The level of supervision provided shall insure the affiliate's preparedness to conduct his or her professional work and provide adequate oversight. There shall be a minimum of one hour of supervision time for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(7) A certified sex offender provider shall undertake no supervision which exceeds the provider's ability to comply with supervision standards. A supervisor shall not supervise more than thirty hours of SSOSA and SSODA case clinical work each week.

(8) Generally, a supervisor shall not provide supervision for more than two affiliates. However, the special needs of certain locales, particularly rural areas, are recognized. Where appropriate, deviation from the standards for amount of supervision time, frequency of supervision, and limitations on supervision by a supervisor are encouraged if quality of supervision can be maintained. Special supervisory arrangements shall be submitted for approval as part of the supervision contract to the department. As necessary, a supervisor ~~((can))~~ may adjust a supervision plan, but shall notify the department of the amendment to the contract.

(9) The status of the affiliate's relationship to the supervisor is to be accurately communicated to the public, other professionals, and to all clients served.

(10) An affiliate sex offender treatment provider shall represent ~~((themselves))~~ himself or herself as an affiliate only when ~~((they are))~~ doing clinical work supervised by ~~((their))~~ the contracted sex offender treatment provider. If the affiliate is providing unsupervised clinical services to clients who are not SSOSA or SSODA cases, the individual shall not utilize the title "affiliate" in that context.

(11) All written reports and correspondence conducted by the affiliate under SSOSA or SSODA shall be cosigned by the supervisor, indicating the supervisory relationship. The work ~~((with))~~ shall be represented as conducted by the affiliate and with oversight provided by the supervisor.

(12) All work relating to SSOSA and SSODA clients, conducted by the affiliate, ~~((with))~~ shall be the responsibility of the supervisor. The supervisor ~~((with))~~ shall have full authority over the practice of the affiliate involving SSOSA and SSODA clients.

(13) Supervision ~~((with))~~ shall include, but is not limited to:

(a) Discussion of services provided by the affiliate~~((:));~~

(b) Case selection, service plan, and review of each case or work unit of the affiliate~~((:));~~

(c) Discussions regarding theory and practice regarding the work being conducted~~((:));~~

(d) Review of Washington statutes, rules, and criminal justice procedures relevant to the work being conducted~~((:));~~

(e) Discussion of the standards of practice for providers as adopted by the department and the ethical issues involved in providing professional services for sex offenders~~((:));~~

(f) Discussion regarding coordination of work with other professionals~~((:));~~

(g) Discussion of relevant professional literature and research~~((:));~~ and

(h) Periodic review of the supervision itself.

(14) Both the supervisor and affiliate shall maintain full documentation of the work done and supervision provided.

(15) Timely evaluation of the affiliate's work and professional progress shall be provided by the supervisor.

(16) If the work of the supervisee does not meet sufficient standards to protect the best interests of the clients and the community, it is the responsibility of the supervisor to ~~((remediate))~~ remedy the problems or terminate the supervision contract. If a supervision contract is terminated, the supervisor shall notify the department and provide the department with a letter of explanation.

(17) Supervision is a power relationship and the supervisee-supervisor relationship is not to be exploited. This standard in no way precludes reasonable compensation for supervisory services.

(18) It is the responsibility of the supervisor to provide, on request, accurate and objective letters of reference and work documentation regarding the affiliate, when requested by affiliate.

(19) If a supervisee is in the employ of a provider it is the responsibility of the supervisor to provide:

(a) Appropriate working conditions~~((:));~~

(b) Opportunities to further ~~((their))~~ the supervisee's skills and professional development~~((:));~~ and

(c) Consultation in all areas of professional practice appropriate to ~~((their))~~ the supervisee's employment.

(20) All records of both affiliate and supervisor shall be subject to audit to determine compliance with appropriate statutes and rules.

#### AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

##### WAC 246-930-200 APPLICATION AND EXAMINATION.

(1) In order to be certified to practice under this chapter as a provider or affiliate provider in the state of Washington all applicants ~~((must))~~ shall pass an examination approved by the secretary.

(2) An applicant ~~((must))~~ shall meet all education, experience, and training requirements and be a health care provider before being allowed to sit for the examination.

(3) Examinations ~~((with))~~ shall be given twice annually at a time and place determined by the secretary.

(4) A completed application with the appropriate fee for certification ~~((must))~~ shall be received in the office of the department, no later than sixty days prior to the examination administration. All supporting documentation ~~((must))~~ shall be received no later than twenty days prior to the scheduled examination date.

(5) Any applicant who fails to follow written or oral instructions relative to the conduct of the examination, is observed talking or attempting to give or receive information, or attempting to remove materials from the examination or using or attempting to use unauthorized materials during any portion of the examination ~~((with))~~ shall be terminated from the examination and not permitted to complete it.

(6) The department shall approve the method of grading each examination, and shall apply such method uniformly to all applicants taking the examination.

(7) An applicant ~~((with))~~ shall be notified in writing of his or her examination score.

(8) An applicant's examination score shall not be disclosed to anyone other than the applicant, unless requested to do so in writing by the applicant.

(9) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a reexamination fee for each subsequent examination determined by the secretary. Upon failure of three examinations, the secretary may require remedial education before admission to future examinations.

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-210 EXAMINATION APPEAL PROCEDURES. (1) Any candidate who takes and does not pass the sex offender treatment provider examination(;) may request review of the results of the examination.

(a) The examination results ((with)) shall not be modified unless the candidate presents clear and convincing evidence of error in the examination content or procedure, or bias, prejudice, or discrimination in the examination process.

(b) Any challenges to examination scores ((with)) shall not be considered unless the total of the potentially revised score would result in issuance of a certificate.

(2) The procedure for requesting an informal review of examination results is as follows: The request ((must)) shall be in writing and ((must)) shall be received by the department within thirty days of the date on the letter of notification of examination results sent to the candidate.

~~((The request must be in writing and must be received by the department within thirty days of the date on the letter of notification of examination results sent to the candidate.))~~

(3) The advisory committee ((with)) shall schedule a closed session meeting to review the failed examination questions and forms completed by the candidate. The candidate ((with)) shall be notified in writing of the decision.

(a) The candidate ((with)) shall be identified only by candidate number for the purpose of this review.

(b) Letters of referral or requests for special consideration ((with)) shall not be read or considered.

(4) Any candidate not satisfied with the results of the informal examination review may request a formal hearing before the secretary to challenge the informal review decision. The procedures for requesting a formal hearing are as follows:

(a) The candidate ((must)) shall complete the informal review process before requesting a formal hearing.

(b) The request for formal hearing ((must)) shall be received by the department within twenty days of the date on the notice of the results of the informal review.

(c) The written request ((must)) shall specifically identify the challenged portion(s) of the examination and ((must)) shall state the specific reason(s) why the candidate believes the examination results should be modified.

(5) Before the hearing is scheduled the parties shall attempt by informal means to resolve the following:

(a) The simplification of issues;

(b) Amendments to the candidate's notice identifying the challenged portion(s) of the examination and the statement of the specific reason(s) why the candidate feels the results of the examination should be changed;

(c) The possibility of obtaining stipulations, admission of facts, and documents;

(d) The limitation of the number of expert witnesses;

(e) A schedule for completion of all discovery; and

(f) Such other matters as may aid in the disposition of the proceeding.

If the parties are unable to resolve any of these issues informally, either party may request a prehearing conference to be held before an administrative law judge.

(6) In the event there is a prehearing conference, the administrative law judge shall enter an order which sets forth the actions taken at the conference, the amendments allowed to the pleading, and the agreements made by the parties of their qualified representatives as to any of the matters considered, including the settlement or simplification of issues. The prehearing order limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.

(7) Candidates ((with)) shall receive at least twenty days' notice of the time and place of the formal hearing.

(8) The hearing ((with)) shall be restricted to the specific portion(s) of the examination the candidate had identified in the request for formal hearing.

(9) The formal hearing ((with)) shall be conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-220 REEXAMINATION. (1) An applicant for certification who has been previously certified shall retake the examination and achieve a passing score before recertification under any of the following circumstances:

(a) The applicant has been uncertified voluntarily for more than thirty-six calendar months; or

(b) The applicant's certificate has been revoked or suspended by reason of a disciplinary action by the secretary ((of the department of health)).

(2) The secretary may require reexamination in any disciplinary order as a condition of reissuing a certificate or confirming certification.

(3) Whenever reexamination is required, the applicant shall pay the appropriate fees set forth in WAC 246-930-990.

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-300 MANDATORY REPORTING. (1) Pursuant to RCW 18.130.070, the persons designated in subsection (2) of this section are required to report to the department:

(a) Any conviction, determination, or finding of which they have personal knowledge that any person certified as a provider or affiliate provider has committed an act which constitutes unprofessional conduct under RCW 18.130.180; ((or)) and

(b) Any information of which they have personal knowledge which indicates that any person certified as a provider or affiliate provider may not be able to practice with reasonable skill and safety to the public as a result of a mental or physical condition.

(2) The following persons are required to report the information identified in subsection (1) of this section:

(a) Persons certified as providers or affiliate providers;

(b) The president, chief executive officer, or designated official of any professional association or society whose members are certified providers or affiliate providers;

(c) Prosecuting attorneys and deputy prosecuting attorneys;

(d) Community corrections officers employed by the department of corrections;

(e) Juvenile probation or parole counselors who provide counseling or supervision to juveniles;

(f) The president, chief executive officer, or designated official of any public or private agency which employs certified providers or affiliate providers;

(g) The president, chief executive officer, or designated official of any credentialing agency for health professionals.

(3) Reports under this section ((must)) shall be made in writing, and must include the name, address, and telephone number of the person making the report, the name and address of the person about whom the report is made, and complete information about the circumstances giving rise to the report.

**AMENDATORY SECTION** (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-301 PURPOSE—PROFESSIONAL STANDARDS AND ETHICS. (1) The following standards apply to sex offender treatment providers (SOTP) while evaluating or treating SSOSA or SSODA clients.

(2) Sex offender treatment providers ((SOTP—must)) shall be otherwise credentialed health professionals, and are subject to the standards of practice of their primary field of practice. However, standards of practice vary from profession to profession, and sex offender evaluation and treatment represents significant differences in practice from general mental health interventions.

(3) Given the uniqueness of this area of practice, the degree of control that a provider exercises over the lives of clients, and the community protection issues inherent in this work, standards of practice specific to this area of specialization are necessary.

(4) The purpose of these rules is to establish standards of practice for sex offender treatment providers ((SOTP)). Failure to comply



with these standards in providing evaluation ~~((of or))~~ and/or treatment to clients sentenced under SSOSA or SSODA may constitute unprofessional conduct pursuant to RCW 18.130.180(7).

**AMENDATORY SECTION** (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-310 STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONSHIPS. (1) General considerations. Sex offender treatment providers ~~((SOTP/provider))~~ shall:

(a) Protect the public and report to the department of health unethical, incompetent and dishonorable practices by other sex offender treatment providers~~(:);~~

(b) Not discriminate against clients with regard to race, religion, gender or disability~~(:);~~ and

(c) Treat clients with dignity and respect, regardless of the nature of their crimes or offenses.

(2) Competence in practice. Providers shall:

(a) Be fully aware of the standards of their area of credentialing as ~~((a))~~ health professionals and adhere to those standards~~(:);~~

(b) Be knowledgeable of statutes and scientific data relevant to this area of specialized practice~~(:);~~

(c) Be familiar with the ~~((general))~~ statutory requirements for assessments, treatment plans and reports for the court for ~~((sex offender special sentencing alternative-))~~SSOSA~~(:))~~ and ~~((special sex offender disposition alternative-))~~SSODA~~(:))~~;

(d) Perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities~~(:);~~

(e) Be committed to community protection and safety~~(:);~~

(f) Not make claims regarding the efficacy of treatment that exceed what can be reasonably expected~~(:);~~

(g) Make appropriate referrals when they are not qualified or are otherwise unable to offer services to a client~~(:);~~ and

(h) Exercise due prudence and care in making referral to other professionals.

(3) Confidentiality. Providers shall:

(a) Insure that the client fully understands the scope and limits of confidentiality, and the relevance to the client's particular situation. The provider shall inform the client of the provider's method of reporting disclosures of the client and to whom disclosures are made, before evaluation and treatment commences, and update periodically, thereafter~~(:);~~

(b) Inform clients of any circumstances which may trigger an exception to the agreed upon confidentiality~~(:);~~

(c) Not require or seek waivers of privacy or confidentiality beyond the requirements of treatment, training, or community safety. Providers ~~((with))~~ shall evaluate the impact of authorizations for release of information upon their clients~~(:);~~ and

(d) Understand and explain to their juvenile clients the rights of their parents and/or guardians to obtain information relating to the client.

(4) Conflict of interest. Providers shall:

(a) Refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary fees~~(:);~~

(b) Avoid relationships with clients which may constitute a conflict of interest, impair professional judgment and risk exploitation. (For example, bartering, service for service, and/or treating individuals where a social, business, or personal relationship exists~~(:);~~) and

(c) Refrain from sexual relationships with a client.

(5) Fee-setting and client interaction. Providers shall:

(a) Prior to commencing service, fully inform the client of the scope of professional services to be provided and the fees associated with the services~~(:);~~

(b) Review any changes in financial arrangements and requirements with the client pursuant to the rules initially specified~~(:);~~ and

(c) Neither offer nor accept payment for referral.

(6) Termination or alteration of therapist/client relationship. Providers shall:

(a) Not withdraw services to clients in a precipitous manner and shall take care to minimize possible adverse effects on the client and the community~~(:);~~

(b) Notify clients promptly when termination or disruptions of services are anticipated, and provide for a transfer, referral ~~((r))~~, or continuation of service consistent with client needs and preferences, when appropriate~~(:);~~ and

(c) Refrain from knowingly providing treatment services to a client who is in treatment with another health care professional without initial consultation with the current provider.

(7) The department neither requires nor prohibits the use of ~~((plethysmographs))~~ plethysmographs or polygraphs. The choice of these and other treatment and evaluation techniques is at the discretion of the provider subject to the terms of the court order in a particular case. The following standards apply when such techniques are used.

(a) Use of plethysmography~~((-PLETHYSMOGRAPHY))~~: The use of physiological assessment measures, such as penile plethysmography, can yield valuable information regarding the sexual arousal patterns of sex offenders. This data can be useful in assessing therapy progress and in monitoring for community safety. When obtained, physiological assessment data shall not be used as the sole basis for offender risk assessment and shall not be used to determine if an individual has committed a specific sexually deviant act. Providers who utilize this data shall be aware of the limitations of ~~((the))~~ plethysmography and shall recognize that ~~((plethysmography))~~ plethysmographic data is only meaningful within the context of a comprehensive evaluation and/or treatment process. Sex offender treatment providers shall insure that physiologic assessment data is interpreted only by sex offender treatment providers who possess the necessary training and experience. Sex offender treatment providers shall insure that particular care is taken when performing physiological assessment with juvenile offenders and other special populations, due to concerns about exposure to deviant materials. Given the intrusiveness of this procedure, care shall be given to the dignity of the client.

~~((b))~~ (b) Use of polygraph~~((-POLYGRAPH))~~: The use of the polygraph examination may enhance the treatment and monitoring process by encouraging disclosure of information relevant and necessary to understanding the extent of present risk and compliance with treatment and court requirements. When obtained, the polygraph data achieved through periodic examinations is an important asset in monitoring the sex offender client in the community. Other alternative sources of verification may also be utilized. Sex offender treatment providers shall be knowledgeable of the limitations of the polygraph and shall take into account its appropriateness with each individual client and special client populations. Examinations shall be given in accordance with the treatment plan and the needs shown in the evaluation. Sex offender treatment providers shall not base treatment plan decisions solely on the results of the polygraph examination.

**AMENDATORY SECTION** (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-320 STANDARDS FOR ASSESSMENT AND EVALUATION REPORTS. (1) General considerations in evaluating SSOSA and SSODA clients. Providers shall:

(a) Be thoroughly familiar with assessment procedures. Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the offender~~(:);~~

(b) Be completely familiar with the client's legal status. Have a full understanding of the SSOSA and SSODA process and be knowledgeable of relevant criminal and legal considerations~~(:);~~

(c) Be impartial; provide an objective and accurate base of data~~(:);~~

(d) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator~~(:);~~

(e) Assure that their written reports are accurate, comprehensive and address all of the issues necessary for court disposition~~(:);~~

(f) Assure that their written reports present all knowledge relevant to the matters at hand in a clear and organized manner~~(:);~~

(g) Assure that their written reports include the referral sources, the conditions surrounding the referral and the referral questions addressed~~(:);~~ and

(h) Assure that their written reports state the sources of information utilized in the evaluation.

(2) Scope of assessment data.

(a) Comprehensive evaluations shall include a compilation of data from as many sources as reasonable and appropriate. When available, the following data should be considered in forming opinions and making recommendations:

(i) Collateral information (i.e. police reports, CPS information, criminal history and victim statements)~~(:);~~

(ii) Psychological testing information~~(:);~~

(iii) ~~((Physiologic))~~ Physiological testing information~~(:);~~

(iv) Interviews with the offender~~(:);~~

(v) Previous assessments conducted (i.e. medical, substance abuse, psychological, sexual deviancy)(:); and

(vi) Interviews with significant others.

(b) The written report shall reflect the information considered including:

(i) A description of the current offense(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancies between the official and offender's versions of the offenses(:);

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest(:);

(iii) Prior attempts to remediate and control offense behavior including prior treatment(:);

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts(:);

(v) Potentiators of offending behavior to include alcohol and drug abuse, stress, mood, sexual patterns, use of pornography, and social and environmental influences(:);

(vi) A personal history to include medical, marital/relationships, employment, education and military(:);

(vii) A family history(:);

(viii) History of violence and/or criminal behavior(:);

(ix) Mental health functioning to include coping abilities, adaptational styles, intellectual functioning and personality attributes(:); and

(x) The overall findings of psychological/((physiologic)) physiological/medical assessment when such assessments have been conducted.

(3) Conclusions and recommendations. The conclusions and recommendations shall flow from the data presented in the body of the report and include:

(a) The evaluator's conclusions regarding the appropriateness of community treatment(:);

(b) A summary of the clinician's diagnostic impressions(:);

(c) A specific assessment of risk factors, including the extent of the offender's dangerousness in the community at large(:);

(d) The client's amenability to outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(4) Evaluation treatment plan. The plan shall be described with sufficient detail and clarity and include:

(a) Anticipated length of treatment, frequency and type of contact with providers, supplemental or adjunctive treatment(:);

(b) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities(:);

(c) Recommendations for specific treatment prohibitions, requirements and restrictions on lifestyle that are necessary to the treatment process and community safety(:);

(d) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program(:); and

(e) If the evaluator will not be providing the ensuing treatment, a specific certified provider should be presented to the court.

**AMENDATORY SECTION** (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-330 STANDARDS FOR TREATMENT. Introduction-SSOSA/SSODA offender treatment: It is recognized that effective sexual deviancy treatment will involve a broad set of planned therapeutic experiences and interventions designed to reduce the risk of a client engaging in criminal sexual behavior. Such treatment shall be consistent with current professional literature and practices and shall maximize community safety.

(1) General considerations.

(a) Clients shall generally be seen a minimum of once per week for at least ((45)) forty-five minutes by a certified or affiliate sex offender treatment provider.

(b) Circumstances may make a reduction in duration or frequency of contacts appropriate and shall be determined on an individual case basis.

(c) Any reduction in frequency or duration of therapy sessions or changes in treatment plans shall not unduly compromise treatment effectiveness or public safety and shall be reported to the supervising officer.

(d) The treatment methods employed by the provider shall:

(i) Be supportable by the professional literature and practice(:);

(ii) Reflect concern for the well being of clients, victims and the safety of potential victims(:);

(iii) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review(:); and

(iv) Be individualized to meet the unique needs of each client.

(2) Planning and interventions.

(a) The treatment plan and the interventions used by the provider to achieve the goals of the plan shall:

((~~(a)~~)) (i) Be based on the needs detailed in the evaluation(:);

((~~(b)~~)) (ii) Include provisions for the protection for victims and potential victims(:);

((~~(c)~~)) (iii) Prioritize those therapy events most necessary to avoid sexual reoffense(:); and

((~~(d)~~)) (iv) Take reasonable care to not cause victims to have unsafe, or unwanted contact with their offenders(:);

((~~(3)~~)) (b) The provider client contract shall be presented to the client and to the supervising officer within ((90)) ninety days of the start of treatment and include treatment expectations and all of the rules of treatment agreed to by the offender and the provider.

(4) Treatment(:) methods. The methods used by the provider shall:

(a) Address clients' deviant sexual urges and recurrent deviant sexual fantasies as necessary to prevent sexual reoffense(:);

(b) Attempt to educate clients and the individuals who are part of their support systems about the objective risk of reoffense(:);

(c) Attempt to teach clients to utilize self control methods to avoid sexual reoffending where applicable(:);

(d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable(:);

(e) Address clients' thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors(:);

(f) Attempt to modify client thinking errors and cognitive distortions where possible(:);

(g) Attempt to enhance clients appropriate adaptive/legal sexual functioning(:);

(h) Attempt to insure that clients have accurate knowledge about the effect of sexual offending upon victims, their families, and the community(:);

(i) Assist clients to develop a sensitivity to the effects of sexual abuse upon victims(:);

(j) Address clients' personality traits and personality deficits which are related to increased reoffense potential(:);

(k) Address clients' deficits in coping skills in present life circumstances where applicable(:);

(l) Include and integrate ((~~a client's family~~)) clients' families into the therapy process when appropriate(:); and

(m) Attempt to maintain communication with clients' spouses and families where appropriate to assist in meeting treatment goals.

(5) Monitoring of treatment and sentence requirements. The monitoring of the client's compliance with treatment and sentence requirements by the provider shall:

(a) Recognize the reoffense potential of the sex offender client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self report by the sex offender client(:);

(b) Employ multiple sources of input regarding the client's out of office behavior when possible and utilize methods which are objective in nature(:);

(c) As a general principle, increase monitoring during those times of increased risk and notify the supervising officer:

(i) When a client is in crisis(:);

(ii) When visits with victims or potential victims are authorized(:); and

(iii) When clients are in high risk environments(:);

(d) Work in collaboration with the supervising officer in the independent verification of a client's:

(i) Compliance with sentence requirements and treatment directives;

(ii) Cessation of sexually deviant behaviors;

(iii) Reduction in those behaviors most likely to be related to sexual reoffense; and

(iv) Reports of living, work and social environments to insure that these environments have sufficient protection against ((~~clients~~)) the client's reoffense potential.

(6) Contacts with victims/vulnerable children. When ((~~the~~)) sex offender clients ((~~has~~)) have any contact with the victims or children, the provider shall:

(a) Consider victims' wishes about contact and ensure that all contact is safe and in accordance with any court directives(:);

(b) Limit child molester decision-making authority over vulnerable children(:);

(c) Collaborate with other relevant professionals and solicit their input regarding contact with victims, rather than make isolated decisions(;;);

(d) Consult with parents, custodial parents, or guardians prior to authorizing any contact between offenders and children(;;);

(e) Recognize that supervision during contact with children is critical for those offenders who have had crimes against children, or have the potential to abuse children(;;);

(f) Include educational experiences for chaperones/supervisors of child molester clients(;;); and

(g) Establish ((a)) plans/protocols for returning child molester clients to homes where children reside that insure((s)) child safety under this new situation when such a return home is appropriate.

(7) Documentation of treatment. Providers shall maintain client files in accordance with the professional standards of their individual disciplines and with Washington state law regarding health care records and shall:

(a) Document the goals of treatment, the methods used and the observed progress of clients towards reaching the goals(;;);

(b) Insure that the client files accurately reflect treatment progress, sessions attended and treatment plan change information necessary for completion of the required SSOSA/SSODA reports(;;); and

(c) Safeguard the confidentiality of client files in recognition of the sensitive nature of the contents(;;);

(8) Completion of court ordered treatment. ((SOTF)) The sex offender treatment provider shall make treatment completion decisions that logically follow the evaluation, treatment plan, course of treatment sequence. In addition to fulfilling the SSOSA/SSODA requirements for the end of court ordered treatment hearing, the treatment provider shall:

(a) Assess actual changes in a client's reoffense potential prior to recommending treatment termination(;;);

(b) Attempt to repeat, where appropriate, those assessments which might show client change(;;);

(c) Document how the goals of the treatment plan have been met, what actual changes in the client's reoffense potential have been accomplished, what risk factors remain(;;);

((fe)) (d) Seek input from others knowledgeable about a client's progress as part of the treatment completion/termination decision process(;;);

((ff)) (e) Recommend any further treatment and monitoring necessary to the court, and to the client(;;); and

((fg)) (f) Report to the court if the client is no longer amenable to treatment at the end of the court ordered treatment term.

**AMENDATORY SECTION** (Amending Order 212, filed 11/19/91, effective 12/20/91)

WAC 246-930-340 STANDARDS FOR COMMUNICATION WITH OTHER PROFESSIONALS. (1) Professional relationships with corrections/probation officers and other supervising agencies.

(a) The provider shall establish a cooperative and collaborative relationship with the supervising officer and/or responsible agency for purposes of the effective supervision and monitoring of an offender's behavior in the community.

(b) All violations of the provider client contract shall be reported immediately to the supervising officer.

(c) Quarterly progress reports documenting attendance, treatment activities and duration, changes in the treatment plan, and treatment progress shall be made in a timely manner to the supervising officer. Providers shall provide additional information regarding treatment progress when requested by the supervising officer.

(d) Specific plans for any and all contact with the victim, potential victims and plans for family reunification (where appropriate) should be reviewed with the supervising officer.

(e) The provider shall collaborate with the supervising officer when approving chaperones and knowledgeable supervisors for offender contact with children.

(2) Communication with the department of social and health services. When appropriate, the provider shall seek an authorization for release of information from the client to communicate with the department of social and health services.

(3) Communication with others. Where appropriate and consistent with the offender's informed consent, the provider(s) shall collaborate with the victim's therapist, guardian ad litem, custodial parent, guardian, caseworker, or other involved professional in making decisions regarding family reunification or victim contact with the offender.

(4) Reporting of additional victims.

(a) Providers are expected to comply with the mandatory reporting law, RCW 26.44.030.

(b) All clients shall be notified of the limits of confidentiality imposed on therapists by the mandatory reporting law (RCW 26.44.030).

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-400 ISSUANCE AND RENEWAL OF CERTIFICATION. (1) Individuals receiving an initial provider or affiliate provider certificate ((with)) shall be issued a certificate to expire on June 30th of the next calendar year.

(2) Individuals shall renew their certificate annually on or before June 30th. Failure to renew shall invalidate the certificate to practice as a provider. Any person practicing with an expired certificate shall be deemed to be engaging in uncertified practice.

(3) An individual ((with)) shall be considered to have made timely renewal application if the appropriate renewal fee and required accompanying documentation is received by the department on or before the expiration date.

**NEW SECTION**

WAC 246-930-410 CONTINUING EDUCATION REQUIREMENTS. (1) Purpose and scope. The aim of continuing education for sex offender treatment providers is to ensure that professionals practicing in this specialty field are knowledgeable of current scientific and practice principles that affect the supervision and treatment of sex offenders in community-based treatment. Since the treatment of sex offenders in communities raises significant public safety concerns, continuing education is required to help sex offender treatment providers deliver the highest quality of professional service by being familiar with current developments in a rapidly changing profession. Certified sex offender treatment providers, regardless of certification status (e.g., full, affiliate, or provisional), shall meet the continuing education requirements set forth in this section as a prerequisite to license renewal.

(2) General requirements. Certified sex offender treatment providers shall complete forty credit hours of continuing sexual deviancy education (hereafter referred to as CSDE) every two years. One clock hour of acceptable CSDE activity equals one credit hour. The number of creditable hours will be determined by counting the actual contact hours of instruction or, in the case of workshops or conferences, the formal hours of the workshop or conference. All certified sex offender treatment providers will have two years in which to accrue the required CSDE credit, and renewals of sex offender treatment provider certificates on alternate years will require documentation of forty credit hours of CSDE. This requirement will be implemented with the 1993 renewal year.

(3) Specific requirements.

(a) A minimum of thirty hours of the CSDE shall be earned through attendance at courses, workshops, institutes, and/or formal conference presentations with direct, specific relevance to the assessment and treatment of sex offenders.

(i) Consultative or supervisory training obtained from other certified sex offender treatment providers is not creditable under this CSDE definition.

(ii) Independent study of audio or video tapes of seminar presentations not actually attended are creditable under this definition, up to a maximum of ten hours in any two-year period. Credit for independent study will only be granted if accompanied by documentation of the learning activity, such as a written summary of the independent study activity.

(iii) CSDE credit for sexual deviancy training courses presented to other professionals may be claimed by the certified provider who provides the training one time only (usually the first time it is taught, unless there is substantial revision), up to a maximum of ten hours in any two-year period.

(iv) Courses specifically oriented toward assessment or treatment of sex offenders may be claimed as CSDE. The following are examples of subjects that qualify under this definition:

(A) Ethics and professional standards;

(B) Relapse prevention with sex offenders;

(C) Plethysmographic assessment;

(D) Sexual arousal assessment and reconditioning;

(E) Risk assessment with sex offenders;

(F) Psychopharmacological therapy with sex offenders;

(G) Family therapy with sex offenders;

- (H) Research concerning sexual deviancy;
  - (I) Sexual addiction; and
  - (J) Therapy/clinical methods specific to sex offenders.
- (b) In addition to the thirty hours of CSDE with direct, specific relevance to the assessment and treatment of sex offenders, ten hours of the total requirement may be earned through participation in training courses with indirect relevance to the assessment and treatment of sex offenders. The following subjects qualify under this definition:
- (i) Victimology/victim therapy;
  - (ii) General counseling methods;
  - (iii) Psychological test interpretation;
  - (iv) Addiction/substance abuse;
  - (v) Family therapy;
  - (vi) Group therapy; and
  - (vii) Legal issues.
- (4) Program or course approval. The department shall accept any CSDE that reasonably falls within the above categories and requirements. The department relies upon each individual provider's integrity with the intent and spirit of the CSDE requirements.
- (5) Enforcement. Failure to meet the CSDE requirements within each two-year time period will result in nonrenewal of the certificate.
- (6) Exemptions. In the event a provider fails to meet requirements because of illness, retirement (with no further provision of sex offender treatment provider services to clients), failure to renew, or other extenuating circumstances, the department may grant a time extension. The department shall review each case on an individual basis.
- (7) Proof of compliance. Every two years the sex offender treatment provider shall submit an affidavit and proof of compliance with the CSDE requirement with the annual renewal application. Documentation to prove compliance includes, but is not limited to, course or program certificates of training, transcripts, course or workshop brochure descriptions. It is the responsibility of the sex offender treatment provider to maintain such documentation. Year of collection is determined by year of birth, i.e., a provider born in an odd-numbered year shall submit proof of compliance each odd-numbered year; a provider born in an even-numbered year shall submit proof of compliance each even-numbered year.

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-499 TEMPORARY AND PROVISIONAL CERTIFICATE DURING INITIAL IMPLEMENTATION OF CERTIFICATION PROGRAM. In order to provide adequate time for applicants to prepare for initial examination and to avoid disruption of current service provision, a system of temporary and provisional certification as described below ((with)) shall be in effect for applicants whose applications are received by the department before September 1, 1991.

(1) Temporary full certification. An applicant who is a credentialed health professional and who meets all education, experience, and training prerequisites for full certification at the time of application ((with)) shall be issued temporary full certification in order to allow practice to continue pending satisfactory passage of the examination. The temporary full certification ((with)) shall expire on issuance of an initial certificate, or on June 30, 1992, whichever comes first. Temporary full certification ((with)) shall not be renewed.

(2) Temporary affiliate certification. An applicant who is a credentialed health professional and who meets all education, experience, and training prerequisites for affiliate certification at the time of application ((with)) shall be issued temporary affiliate certification in order to allow practice to continue pending satisfactory passage of the examination. The temporary affiliate certification ((with)) shall expire on issuance of an initial affiliate or full certificate, or on June 30, 1992, whichever comes first. Temporary affiliate certification ((with)) shall not be renewed.

(3) Provisional full certification.

(a) An applicant who is a credentialed health professional and who has at least one thousand hours of experience in treatment and/or evaluation accrued over the seven years immediately preceding application, and who has the equivalent of one year of graduate school credit toward satisfaction of the education requirements of WAC 246-930-030(1) may submit a plan to the department ((at application)) documenting how he/she plans to meet all remaining experience, education, or training requirements and pass the examination by June 30,

1992. If the plan is approved by the department, the applicant ((with)) shall be granted provisional full certification.

(b) An applicant who is a credentialed health professional and who otherwise meets all education and training prerequisites for full certification at the time of application and who has the requisite experience except that his or her experience has been primarily in the area of evaluation, or primarily in the area of treatment of offenders, may submit a plan documenting how he/she plans to obtain sufficient experience in evaluation or treatment necessary to qualify ((him or her)) for full certification no later than June 30, 1993. If the plan is approved by the department, the applicant ((with)) shall be granted a provisional full certification.

(c) Plans submitted under this subsection which call for obtaining additional experience in a practice area in which the applicant does not have the required minimum hours shall include an appropriate supervision component with a certified sex offender treatment provider.

(d) Providers practicing with provisional full certification status may not supervise affiliate providers.

(e) The provisional full certification ((with)) shall expire upon issuance of initial full or affiliate certification or on June 30, 1992, whichever comes first, except that if a provider who holds provisional certification pursuant to (b) of this subsection has passed the examination, demonstrated substantial progress in accordance with his or her approved plan, and paid the extension fee required by WAC 246-930-990, the termination date may be extended to June 30, 1993. Provisional full certification status ((with)) shall not be renewed.

(4) Provisional affiliate certification. An applicant who is a credentialed health professional, who meets the minimum educational requirements for affiliate certification set forth in WAC 246-930-050, and who has at least one thousand seven hundred hours of experience in treatment and/or evaluation accrued over the seven years immediately preceding application, may submit a plan to the department documenting how she/he plans to meet all remaining experience requirements and/or the training requirements set forth in WAC 246-930-070 and pass the examination by June 30, 1992. If the plan is approved by the department, the applicant ((with)) shall be granted provisional affiliate certification. Provisional affiliate certification ((with)) shall expire on issuance of an initial full or affiliate certificate, or June 30, 1992, whichever comes first. Provisional affiliate certification ((with)) shall not be renewed.

(5) The temporary and provisional certification system ((with)) shall be in effect from July 1, 1991, through June 30, 1992. On June 30, 1992, all provisional and temporary certificates expire, and only full certification or affiliate status certification ((with)) shall be issued, except that the approved provisional certificate may be extended to no later than June 30, 1993, in accordance with subsection (3)(b) of this section.

(6) Any temporary or provisional certification issued pursuant to this section shall be subject to disciplinary action pursuant to chapter 18.130 RCW.

**AMENDATORY SECTION** (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-990 SEX OFFENDER TREATMENT PROVIDER FEES. The following fees shall be charged by the professional licensing services division of the department of health:

Title of Fee	Fee
<b>Sex offender treatment provider:</b>	
Application and examination	\$ 650.00
Reexamination	325.00
Initial certification	100.00
Renewal	1,175.00
Late renewal penalty	200.00
Duplicate certificate	15.00
Extension fee	1,000.00
<b>Affiliate treatment provider:</b>	
Application and examination	300.00
Reexamination	150.00
Initial certification	50.00
Renewal	600.00
Late renewal penalty	200.00
Duplicate certificate	15.00

**WSR 92-07-080**

**PERMANENT RULES  
DEPARTMENT OF HEALTH**

[Order 253—Filed March 17, 1992, 10:12 a.m.]

Date of Adoption: March 12, 1992.

Purpose: Adopt permanent rules to comply with statutory requirements of RCW 70.02.050(3).

Statutory Authority for Adoption: RCW 70.02.050(3).

Pursuant to notice filed as WSR 92-01-062 on December 12, 1991.

Changes Other than Editing from Proposed to Adopted Version: Provision added to WAC 246-08-390(4) to clarify provision regarding public records to provide that patient identifying information will not be available for public inspection and copying under the Public Records Act. This was added to address concerns of the Psychology Board.

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

March 12, 1992  
Kristine M. Gebbie  
Secretary

**NEW SECTION**

WAC 246-08-390 ACQUISITION, RETENTION AND SECURITY OF HEALTH CARE INFORMATION. This section sets forth the process by which the department of health or disciplining authority obtains and protects health care information under RCW 70.02-.050. This section does not apply to health care information obtained by the department through other sources.

(1) Acquisition.

(a) The department shall request health care information in writing.

(b) Health care providers shall provide the requested information pursuant to RCW 70.02.050.

(2) Retention. The department shall maintain health care information obtained under this section as long as necessary to perform agency functions.

(3) Security. The department shall secure the records and protect confidentiality.

(a) The manager of the program within the department that requested the records shall act as the custodian of records, and shall provide access to the information only as necessary to perform agency responsibilities.

(b) The custodian shall monitor the location and security of the information.

(4) The department shall not make health care information obtained under RCW 70.02.050 available for public inspection and copying except as may be required by chapter 42.17 RCW. No health care information containing patient identifying data shall be made available for public inspection and copying under chapter 42-.17 RCW. Health care information obtained under this section may be released to public agencies or entities as required by law or upon agreement by the agency or entity that the health care information will be used only for authorized statutory purposes and will not be disclosed further.

**WSR 92-07-081**

**NOTICE OF PUBLIC MEETINGS  
EDMONDS COMMUNITY COLLEGE**

[Memorandum—March 17, 1992]

Thursday, March 19, 1992  
Lynnwood Hall, Room 424  
4:30 – 7:50

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 92-07-082**

**NOTICE OF PUBLIC MEETINGS  
BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—March 17, 1992]

Board of Trustees  
Regular Meeting  
Building G – 8 a.m.  
March 19, 1992

In keeping with RCW 42.30.110, the board of trustees will convene an executive session for one hour to review professional negotiations and personnel matters. Action may be taken, if necessary, as a result of items discussed in the executive session.

**WSR 92-07-083**

**PROPOSED RULES  
PARKS AND RECREATION  
COMMISSION**

[Filed March 17, 1992, 2:39 p.m.]

Original Notice.

Title of Rule: Environmental learning centers at state parks.

Purpose: Increase ELC and pool fees to cover operating and maintenance costs.

Statutory Authority for Adoption: Chapter 43.51 RCW.

Statute Being Implemented: Chapter 43.51 RCW.

Summary: Increase ELC and pool fees to cover operating and maintenance costs.

Reasons Supporting Proposal: To cover operating and maintenance cost.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mike Thornily, 7150 Cleanwater Lane, Olympia, WA 98504, 586-6022.

Name of Proponent: Washington State Parks and Recreation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Environmental learning centers (ELCs) are overnight facilities for school, family, and other special interest groups for outdoor learning and general recreation activities. The ten facilities, statewide, are provided on a

fee basis with the intention of being financially self sustaining. Fees are increased to keep revenue consistent with the inflating costs of utilities, maintenance, and staff salaries. Staff is recommending a 12% increase (.55 per person per night) in the standard ELC overnight fee. This will bring the standard fee to \$4.45. This is the amount that is needed for operation of the ELCs for the 1992-1993 use season. In a recent survey, seven camps with comparable facilities were contacted to find out what their overnight charge was for this year. The average charge is \$5.58. Staff is recommending a 60% increase (.70 per person per night) in the pool fee. This will bring the pool fee to \$1.00 per person per night in addition to the standard overnight fee of \$4.45. Staff is recommending a 100% increase in the day use fee. This will bring the day use fee, per person, to \$2.00. The day use fee of \$1.00 adopted in 1977 is outdated and does not cover operational costs of ELCs rentals. This is the amount needed for operation of the ELCs for the 1992-1993 use season in regards to day use.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

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

Hearing Location: BPO Elks Club, 351 East Rose, Walla Walla, WA, on April 24, 1992, at 9:00 a.m.

Submit Written Comments to: Mike Thornily, 7150 Cleanwater Lane, Olympia, WA 98504, by April 15, 1992.

Date of Intended Adoption: April 24, 1992.

March 12, 1992

Nina Carter

Executive Assistant

**AMENDATORY SECTION** (Amending WSR 91-09-001, filed 4/4/91, effective 5/15/91)

WAC 352-32-250 STANDARD FEES CHARGED. The following fees shall be charged in all parks operated by the Washington state parks and recreation commission:

- (1) Overnight camping - standard campsite: \$8.00 per night;
- (2) Overnight camping - utility campsite: \$12.00 per night. Payment for utility campsite will be collected whether utility hookups are actually used or not, except when otherwise specified by a ranger. The electrical hookup surcharge reference in WAC 352-32-252(3) shall be \$2.00 per night;
- (3) Overnight camping - primitive campsite: \$4.00 per night for nonmotorized vehicle and \$5.50 per night for motorized vehicle;
- (4) Overnight camping - reservation fee: As specified in WAC 352-32-035;
- (5) Overnight camping - multiple campsites: Where campsites are designated and posted as a "multiple campsite," an individual may rent the multiple campsite by paying the multiple campsite fee. The multiple campsite fee will be calculated by multiplying the standard utility or primitive campsite fee, as applicable, by the number of individual campsites to be used in the designated multiple campsite.
- (6) Group camping area - certain parks: \$.75 per person per day and/or night; nonrefundable reservation fee - \$10.00. Recreational vehicle campers must pay the primitive campsite fee or other appropriate fee based on facilities available;
- (7) Environmental learning center - overnight camping: (~~(\$3.65)~~) \$3.90 per camper per night: PROVIDED, HOWEVER, The fee shall be (~~(\$3.90)~~) \$4.45 per camper per night, effective June 15, (~~(+1991)~~) 1992;
- (a) Camp Wooten and Cornet Bay environmental learning centers during the season the swimming pools are operational: (~~(\$4.05)~~) \$4.30 per camper per night: PROVIDED, HOWEVER, The fee shall be (~~(\$4.30)~~) \$5.45 per camper per night, effective June 15, (~~(+1991)~~) 1992;

(b) Environmental learning center - day use only: \$1.00 multiplied by the minimum capacity established for each environmental learning center or \$1.00 for each member of the group - whichever is higher;

(8) Hot showers: \$.25 for a minimum of six minutes shower time;

(9) Electric stoves: \$.25 for thirty minutes cooking time;

(10) Adirondacks - not to include those located in ELC areas: Same as fee charged for full utility campsite. Occupancy shall be limited to the number of built-in bunks provided;

(11) Extra vehicle charge: \$4.00 per night for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: PROVIDED, An extra vehicle charge shall not be imposed when the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay;

(12) Marine park moorage facilities - see WAC 352-12-020 and 352-12-030;

(13) Overnight camping - emergency camp area: The fee shall be the standard campsite fee.

These fees do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended.

(14) Unattended vehicle overnight parking permit: Unoccupied vehicles parked overnight in designated areas must obtain a permit by registering and paying the \$4.00 per night permit fee. The permit must be prominently displayed in the vehicle.

(15) Campsite reservations - see WAC 352-32-035(6).

## WSR 92-07-084

### PERMANENT RULES

### DEPARTMENT OF AGRICULTURE

[Filed March 17, 1992, 2:47 p.m.]

Date of Adoption: March 17, 1992.

Purpose: To establish inspection and reporting criteria as required by HB 1156 which was passed by the 1991 legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 16-228-010 and 16-228-180.

Statutory Authority for Adoption: Chapter 15.58 RCW.

Other Authority: RCW 15.58.150.

Pursuant to notice filed as WSR 92-03-133 on January 22, 1992.

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

March 17, 1992

Michael V. Schwisow

Deputy Director

**AMENDATORY SECTION** (Amending Order 2022, filed 11/30/89, effective 12/31/89)

WAC 16-228-010 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Authorized agent" is any person who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

(3) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated synthetic material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized persons and domestic animals from gaining access to the bait. The cover shall be provided with a lock that can be unlocked only by a combination, key, special tool, or forced entry. Fragile materials are unacceptable.

(4) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

(5) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

(7) "Complete wood destroying organism inspection" means (a) an inspection of a structure for the purpose of determining (i) evidence of infestation(s), and (ii) damage, and (iii) conducive conditions; or (b) any wood destroying organism inspection which is conducted as the result of a telephone solicitation by an inspection firm or pest control business, even if the inspection would otherwise fall within the definition of a limited wood destroying organism inspection.

(8) "Conducive conditions" means those conditions which may lead to or enhance an infestation of wood destroying organisms.

(9) "Controlled disposal site" means any place where solid or liquid waste is disposed: PROVIDED, That the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency: PROVIDED FURTHER, That the site is fenced, barricaded or otherwise enclosed or attended by some person in charge to facilitate control-access of domestic animals, pets, and unauthorized persons.

((8)) (10) "Department" means the Washington state department of agriculture.

((9)) (11) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to field strength for adequate coverage (such as water).

((10)) (12) "Director" means the director of the department or a duly authorized representative.

((11)) (13) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

((12)) (14) "EPA" means the United States Environmental Protection Agency.

((13)) (15) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

((14)) (16) "Fertilizer" as included in this order means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

((15)) (17) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

((16)) (18) "Floor level" is considered to be the floor upon which people normally walk—not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

((17)) (19) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

((18)) (20) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

((19)) (21) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral inhalation or dermal toxicity.

((20)) (22) "Limited wood destroying organism inspection" means the inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms.

(23) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of (a) any EPA restricted use pesticide; or (b) any state restricted use pesticide restricted to use only by certified applicators by the director for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

((21)) (24) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide; or (b) any restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

((22)) (25) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW that are restricted to use only by certified applicators.

((23)) (26) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

((24)) (27) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or

suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

(28) "Wood destroying organisms" means those organisms including, but not limited to, subterranean termites, dampwood termites, carpenter ants, wood boring beetles of the family anobiidae (deathwatch beetle), and wood decay fungus (rot). Wood destroying organisms shall not include such organisms which occurred prior to the manufacturing or processing of the lumber, e.g., pocket rot.

(29) "Wood destroying organism inspection" means the service of inspecting a building for the presence of wood destroying organism pests destructive to its structural components, and/or their damage, and/or conducive conditions. For purposes of these rules a wood destroying organism inspection shall be either a "complete wood destroying organism inspection" or a "limited wood destroying organism inspection."

**AMENDATORY SECTION** (Amending Order 2022, filed 11/30/89, effective 12/31/89)

WAC 16-228-180 LICENSE DENIED, REVOKED OR SUSPENDED. (1) The director may deny, suspend, or revoke any provision of a license, registration, permit or certification issued under chapters 17.21 and 15.58 RCW if he finds that the applicant or the holder of the license, permit, or certification has committed any of the following acts each of which is declared to be a violation:

(a) Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be utilized;

(b) Made a pesticide recommendation or gave advice or used a pesticide inconsistent with the labeling, the EPA or Washington state registration for that pesticide, an EPA or Washington state experimental use permit for that pesticide, an exemption from registration under provisions of section 18 of FIFRA, or in violation of the EPA or Washington state restrictions on the use of that pesticide;

(c) Applied known ineffective or improper pesticides or materials;

(d) Operated a faulty or unsafe apparatus;

(e) Operated in a faulty, careless or negligent manner;

(f) Refused or neglected to comply with the provisions of the applicable sections of chapters 15.58 and 17.21 RCW, the rules adopted thereunder, or of any lawful order of the director;

(g) Refused or neglected to keep and maintain records required by chapters 15.58, 17.21 RCW, and rules adopted thereunder, or to make reports when and as required;

(h) Made false or fraudulent records, invoices, reports, and/or recommendations;

(i) Caused the application of a pesticide without having a licensed or certified applicator or operator in direct supervision;

(j) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus as provided for in chapter 17.21 RCW or failed to locate the apparatus license plate on the apparatus in a manner required by the department;

(k) Failed to properly display, when required, a department issued certified commercial ground applicator vehicle sticker;

(l) Used, or supervised the use of a pesticide which is restricted to use by certified applicators without having qualified as a certified applicator;

(m) Used fraud or misrepresentation in making an application for a license, permit, or certification or renewal of a license, permit or certification;

(n) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(o) Aided or abetted a certified applicator, or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW, conspired with such a certified applicator or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW or allowed one's license, permit, or certification to be used by another person;

(p) Made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or department investigation;

(q) Impersonated any state, county, or city inspector or official;

(r) Is not qualified to perform as a pest control consultant or pesticide dealer manager or certified applicator in the classifications in which he/she is licensed to operate or has operated, regardless of whether or not he/she has previously passed an examination provided for in chapter 15.58 RCW; ((or))

(s) To have in his/her possession a department pesticide applicator, operator, dealer manager or pest control consultant examination or to remove or cause to remove any said examination from the department without expressed consent from the department; or

(t) Made or failed to make an inspection, statement, or report in violation of WAC 16-228-400 through 16-228-430.

(2) A penalty fee assessed as a result of a late license or registration renewal does not prevent the department from taking additional regulatory action against the violator.

(3) No pesticide dealer or dealer manager license shall be denied, suspended, or revoked, simply because a pesticide purchased from that dealer was applied in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder, unless the department finds the dealer or dealer manager in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder.

#### NEW SECTION

WAC 16-228-400 INSPECTION AND REPORTING CRITERIA FOR COMPLETE WOOD DESTROYING ORGANISM INSPECTIONS. All



persons licensed to conduct wood destroying organism inspections shall comply with the following criteria when performing complete wood destroying organism inspections.

(1) The inspector shall make a thorough inspection of accessible areas of the subject structure which are not excluded. The inspection shall be conducted by making a careful visual examination, and/or probing with inspection instruments.

(2) Substructural crawl areas shall be inspected when accessible.

(3) Upon completion of an inspection, a wood destroying organism report shall be issued to the person paying for and/or otherwise requesting the inspection. Such report shall include the following: PROVIDED, That all diagrammatic representations may be omitted from the report provided to the person paying for or otherwise requesting the inspection, but shall be maintained on file pursuant to subsection (3)(k) of this section.

(a) Date of inspection;

(b) Name of seller/owner and purchaser (when applicable);

(c) Street address of structure inspected. When there is more than one structure that may be used as a dwelling at a given street address it shall be clearly indicated which structure was inspected;

(d) Name of structural inspector and department pesticide license number;

(e) Substructural crawl areas which are not accessible due to inadequate clearance, or foundation walls/partitions, etc., which block access, shall be clearly indicated on the complete wood destroying organism inspection report including any diagram which is a part of that report. It shall be stated on the report that such areas may be vulnerable to attack by wood destroying organisms, and should be made accessible for inspection if feasible. In the event that it is neither feasible or necessary to make access into such areas, a statement indicating the reason(s) shall be included on the report;

(f) With the exception of areas within the living quarters of an occupied structure, all areas which are excluded from the inspection shall be clearly indicated on any complete wood destroying organism inspection report;

(g) Evidence of infestation of wood destroying organisms which shall include:

(i) Common name of the wood destroying organism(s). Termites shall be described as either dampwoods or subterraneans. Wood boring beetles shall be described by the appropriate family name, i.e., anobiidae (deathwatch beetles). Buprestid and Cerambycid beetles shall not be described as "powder post beetles";

(ii) Statement describing specific evidence of infestation(s) observed;

(iii) If evidence of infestation(s) is observed only in wood which is not normally considered a part of the structure i.e., form boards, cellulose debris, roots, stumps, landscaping wood/lumber, etc., the report shall so state;

(iv) Diagrammatic representation of areas infested sufficient to identify the approximate location of areas infested;

(h) Optional method of control. When infestations of dampwood termites or rot fungus are localized in a structure, or observed only in wood which is not normally considered a part of the structure, such as form boards, cellulose debris, roots, stumps, landscaping wood/lumber, it shall be stated in the report that such infestations may be eliminated by removal of all infested wood and correction of any contributing conducive conditions;

(i) Damage caused by wood destroying organisms:

(i) A statement describing any damage which was observed in accessible areas of the structure which were not excluded from the inspection.

(ii) A diagrammatic representation indicating such areas of damage;

(j) Conducive conditions for an infestation of wood destroying organisms. Written statements and diagrammatic representation of the following shall be provided:

(i) Inadequate clearance: Where there is less than eighteen inches clear space between the bottom of floor joists and the unimproved ground area in any crawl space or portion thereof.

(ii) Earth-wood contact: Where wood of the structure is in direct contact with the soil. This does not include wood that has been treated for direct soil contact.

(iii) Cellulose debris: Where wood by-product material can be raked or is larger than can be raked, or where any stumps, roots, form boards, etc., are on the ground of a crawl space.

(iv) Excess moisture: Where there is standing water or evidence of seasonal standing water in crawl space or basement. Plumbing and other moisture leaks.

(v) Inadequate ventilation: Where there is detectable excessive moisture content in the wood of a substructure, and/or an active infestation of wood destroying organisms which can be attributed to the lack of sufficient ventilation in the substructure;

(k) A record of the complete wood destroying organism inspection report shall be maintained on file by the structural inspector or employer for a period of seven years. Such record shall be made available to the department upon request.

#### NEW SECTION

WAC 16-228-410 INSPECTION AND REPORT PREREQUISITE TO WOOD DESTROYING ORGANISM TREATMENT. All persons licensed to conduct wood destroying organism inspections shall conduct either a limited or complete wood destroying organism inspection prior to treatment.

(1) A limited or complete wood destroying organism inspection shall be conducted and a report issued to the person paying for and/or otherwise requesting the inspection prior to the contracting of any treatment for wood destroying organisms, except when the treatment is for preventative purposes only. In situations when treatment is for preventative purposes, the person requesting treatment shall provide the following preauthorization:

I have requested that ..... perform a preventative treatment for control of ..... on the structure located at ..... I acknowledge that this preventative treatment may be performed without inspection.

.....  
Signed (property owner or custodian)

(2) A limited or complete wood destroying organism inspection report or treatment preauthorization form shall accompany or be included within any proposal/estimate for treatment of wood destroying organisms.

(3) When no evidence of infestation is observed, and any proposed treatment is for preventative purposes only, a limited or complete wood destroying organism inspection report shall include:

(a) A statement describing that no evidence of infestation was observed, and the treatment proposed is for preventative purposes only. Such statement shall stand out by having larger print than the main body of the report, or by being highlighted or underlined.

(b) The initials of the person, or representative thereof, that requested the inspection shall be inscribed directly under or adjacent to the statement as described in (a) of this subsection. Such initials shall be obtained prior to the commencement of any preventative treatment.

(4) Treatment performed for wood destroying organisms under an existing warranty shall not require the preparation of a limited or complete wood destroying organism inspection report.

**NEW SECTION**

**WAC 16-228-420 LIMITED WOOD DESTROYING ORGANISM INSPECTIONS.** A limited wood destroying organism inspection shall not be construed as a complete wood destroying organism inspection. In no case shall a limited wood destroying organism inspection report be submitted in lieu of a complete wood destroying organism inspection report to a lending institution, title company, real estate office or agent, or other person, when a complete wood destroying organism inspection has been requested for the purpose of verifying that a structure is free of visible evidence of wood destroying organisms, their damage, or conducive conditions.

**NEW SECTION**

**WAC 16-228-430 REPORTING CRITERIA FOR LIMITED WOOD DESTROYING ORGANISM INSPECTIONS.** All persons licensed to conduct wood destroying organism inspections shall comply with the following criteria when performing a limited wood destroying organism inspection.

(1) A limited wood destroying organism inspection report shall include the following: PROVIDED, That all diagrammatic representations may be omitted from the report provided to the person paying for or otherwise requesting the inspection, but shall be maintained on file pursuant to subsection (2) of this section:

(a) Date of inspection;

(b) Name of person or agency requesting the inspection, proposal, or estimate;

(c) Address of structure inspected;

(d) Name of structural inspector and WSDA license number;

(e) A statement describing specific evidence of infestation(s) observed;

(f) If evidence of infestation(s) is observed only in wood which is not normally considered a part of the structure, i.e., form boards, cellulose debris, roots, stumps, landscaping wood/lumber, etc., the report shall so state;

(g) Common name of wood destroying organisms. Termites shall be described as either dampwoods or subterraneans. Wood boring beetles shall be described by the appropriate family name, i.e., anobiidae (death-watch beetles). Buprestid and Cerambycid beetles shall not be described as "powder post beetles";

(h) A diagrammatic representation of area of infestation sufficient to identify the appropriate location of areas infested: PROVIDED, That a diagram shall not be necessary when the homeowner/caretaker presents an insect and/or wood sample to the inspector, and this is the only evidence of infestation(s) observed;

(i) Optional method of control: When infestations of dampwood termites or rot fungus are localized in a structure, or observed only in wood which is not normally considered a part of the structure, such as form boards, cellulose debris, roots, stumps, landscaping wood/lumber, it shall be stated in the report that such infestations may be eliminated by removal of all infested wood and correction of any contributing conducive conditions.

(2) A record of the limited wood destroying organism inspection report shall be maintained on file by the structural inspector or employer for a period of one year. Such records shall be made available to the department upon request.

**WSR 92-07-085**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 92-11—Filed March 17, 1992, 4:23 p.m.]

Original Notice.

Title of Rule: Chapter 173-202 WAC, Washington forest practices rules and regulations to protect water quality.

Purpose: To improve protection of water quality, water quantity, wetlands and aquatic habitat.

Statutory Authority for Adoption: Chapters 90.48 and 76.09 RCW.

Statute Being Implemented: Chapter 90.48 RCW.

Summary: Proposed rules address wetlands protection, cumulative effects, stream temperature control, forest chemical use and SEPA as it applies to forest practices.

Reasons Supporting Proposal: Proposals will result in a net improvement of protection for water quality, water quantity, wetlands and aquatic habitat.

Name of Agency Personnel Responsible for Drafting: David J. Roberts, P.O. Box 47600, Olympia, WA 98504-7600, (206) 493-9496; Implementation: Fred

Greef, P.O. Box 47600, Olympia, WA 98504-7600, (206) 438-7088; and Enforcement: Regional Staff (TFW) and Fred Greef, P.O. Box 47600, Olympia, WA 98504-7600, (206) 438-7088.

Name of Proponent: Department of Ecology and Forest Practices Board, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Adequate staffing has been allotted for implementation.

Rule is necessary because of federal law, Federal Clean Water Act; and state court decision, Lake Roesiger, *Washington FPB vs Snohomish County*.

Explanation of Rule, its Purpose, and Anticipated Effects: The Departments of Natural Resources and Ecology and the Forest Practices Board jointly adopt forest practice regulations to protect water quality. This proposal adds new rules and revises existing rules to significantly improve public resource protection for water quality and aquatic habitat. The new regulations provide resource protection from the cumulative effects of forest practices and establish protection for wetlands.

Proposal Changes the Following Existing Rules: This proposal also changes existing forest practice rules. The definition of forest practices subject to review under the State Environmental Protection Act (SEPA) and Department of Ecology SEPA rules is expanded. Shade requirements to protect water temperature are increased. The requirements for handling, storage, and application of chemicals are changed.

#### Small Business Economic Impact Statement

##### Introduction

The Forest Practices Board is proposing to adopt changes to state forest practice regulations as provided for under chapter 76.09 RCW. These changes encompass forest practice rules regulating forest practices dealing with streamside temperature, chemicals, wildlife leave trees, wetlands, harvest size and timing, and cumulative effects.

The purpose of this assessment is to highlight the economic impacts of these forest practice regulations on specific industrial sectors and to determine if such impacts disproportionately fall on small businesses. Such assessments are required by the Regulatory Fairness Act, chapter 19.85 RCW.

The Regulatory Fairness Act, chapter 19.85 RCW, was adopted in 1982 to minimize proportionately higher economic impacts of state regulations on small businesses. The act requires that state agencies review all regulations (proposed and existing) to ensure that the costs of compliance are considered, analyzed, and mitigated if they are found to place a disproportionately higher burden on small firms. "Small business" is defined in RCW 43.31.025 as "any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.["]

The Regulatory Fairness Act requires that all rules which have an economic impact on more than 10 percent of the businesses in any one industry or on more than 20

percent of all industries in the state be reviewed and, if necessary, altered to minimize the impact on small businesses. To satisfy the Regulatory Fairness Act, a small business economic impact statement is drafted for each rule that meets the above criteria. In the legislation, "industry" is defined as any activity at the three-digit SIC (standard industrial classification) level.

When a small business economic impact statement is required, it must include a brief description of the compliance requirements of the rule, a description of the kinds of professional services needed by a small business compliance with the 10 percent of the businesses which comprise the largest businesses required to comply with the proposed rules. For those compliance activities for which no precise cost estimates are available, qualitative statements may be possible concerning the relative impact on small and large firms. For purposes of comparison, agencies must use cost per employee, cost per hour of labor, cost per \$100 of sales, or any combination of these.

When it is found through the impact analysis that a rule places a disproportional burden on small businesses, the requirements of the rule must be mitigated. RCW 19.85.030(1) provides that agencies "shall reduce the economic impact of the rule on small business." Changing a rule to minimize proportionately higher burdens on small businesses is not required when such changes would result in illegal or unconstitutional regulations or when changes are not "feasible in meeting the stated objective of the statutes which are the basis for the proposed rule." Unless an agency determines that changes are not legal or feasible, the agency must undertake one or more steps to reduce the impact: Establish differing compliance or reporting requirements or time tables for small businesses; clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses; establish performance rather than design standards; or exempt small businesses from any or all requirements of the rule.

##### Economic Impact

The proposed forest practice regulations will have an immediate economic impact on businesses, directly affect one or more industries, and cause increased costs to small businesses. The proposed regulations have the potential to restrict, modify, or prohibit certain forest practices which would have an economic impact on businesses. While the economic impacts probably would not affect more than 20 percent of all industries in the state of Washington, it will affect 10 percent of the businesses in at least one industry at the three-digit level in the state. Consequently, a small business economic impact statement is required.

Given the potential range of compliance costs, including developing mitigation plans for some particular forest practices, obtaining outside professional services or legal counsel, or restricting the range or extent of operations on some parcels, or restricting volume of timber removal, due to regulatory restrictions, it is likely that the relative impact on small firms will be greater on a per employee or per \$100 dollars of sales basis than for a large firm.

Affected Industries.

The industries that would most likely be directly affected by one or more of the proposed forest practice regulations are listed in the table below. These are the three-digit SIC groups in which more than 10 percent of the firms could be affected by the proposed regulations.

Affected Firms by Industrial Sector and Size

Industry Group	Gross Business Income	Number of Taxpayers	Number of Firms <50 Employees	Number of Firms >50 Employees	Number of Firms with No Employees	Total Firms
<b>Forestry</b>						
01-Timber Tracts	\$31,716,393	105	35	3	14	52
<b>Lumber &amp; Wood Products</b>						
21-Logging Camps	\$1,105,469,840	2495	757	35	342	1134
24-Sawmills & Planing Mills	\$2,619,402,441	588	291	84	68	443
24-Billwork, Plywood & Structural Members	\$1,030,719,464	738	205	52	20	277
<b>Forest Allied Products</b>						
21-Pulp Mills	\$734,563,598	4	3	8	0	12
24-Paper Mills	\$1,853,641,469	8	7	14	2	11

Source: Washington State Department of Trade and Economic Development, 1989. The Regulatory Fairness Act, Chapter 19.45 RCW, Guidelines for State Agencies.

The numbers in the table must be interpreted with great care. It is highly probable that the number of timber tracts (firms in SIC 081) is substantially underreported. In 1977, there were 8447 individuals who owned less than 20 acres of timberland in western Washington. About 20,800 individuals owned from 21 to 200 acres, another 1630 individuals owned from 201-500 acres of timberland; and only 668 other private landowners owned over 500 acres of timberland. It is not unreasonable to assume that at least the 668 landowners with at least 500 acres manage or harvest their timberlands at least once during their land tenure, if not periodically. One problem is that a taxpayer (individual or business) is commonly reported under the SIC industry from which it derives the majority of its revenues. Consequently, employment, earnings, and wage statistics for a large, vertically integrated timber company with over a million acres of managed timberland would commonly be reported under SIC 24 or 26 industries; statistics for their timberlands would not be reported separately under SIC 081 (timber tracts) industries.

Furthermore, these same statistics for a farmer with timber tracts would be reported under the appropriate agricultural SIC industries if his principal source of income was from his agricultural enterprises, rather than from timber harvests.

Thus, there are potentially many other firms, both large and small, that are classified in other 3-digit industries that could be affected by the proposed forest practice regulations. Most, if not all, of these would be affected by the proposed regulations.

The vast majority of the business units that would be impacted by the proposed forest practice regulations would be classified as small businesses. Indeed, using unadjusted data from the table, over 94 percent of the business units in SIC 081 (timber tracts) would be classified as small businesses. Furthermore, over 80 percent of the businesses in the SIC 24 industries (lumber and wood products) would be classified as small businesses.

**Comparison of Compliance Costs.**

Costs associated with the proposed forest practices regulations are extensive. In general, higher administrative and operating costs should be expected, in addition

to revenue losses from deferred timber harvests and reductions in long-term productivity. Higher planning and assessment, field design and layout, permit application and handling, field administration, and field monitoring costs will elevate general administrative costs. Operating costs associated with road layout, construction/reconstruction, maintenance, and abandonment will increase, as will logging and site clean up costs. Landowners will incur losses of revenue from short-term restrictions on the rate of harvest and harvest deferrals, as well as from areas set aside from full timber production.

Because of the lack of reliable data, no direct comparison between small and large industries using employment, hours of labor, or earnings is possible. Nevertheless, qualitative statements and professional judgment can be made on the relative impact on small and large businesses.

**Wildlife Reserve Trees:** The economic impact of the forest practice rule changes associated with wildlife reserve trees could encompass a wide array of direct and indirect impacts, ranging from lost timber revenue to higher insurance costs. Although not all inclusive, these impacts could be lost timber revenues from leave trees and acres taken out of production, higher harvesting costs, higher insurance premiums, and greater risk to life and limb. Many of these costs will be directly associated with the number of acres harvested over time. While many of these costs may be proportional to acres operated on by small and large businesses, the impacts will probably be proportionately higher on small businesses when using number of employees, hours of labor, or sales as bases of comparison.

**Chemicals:** The economic impacts of the forest practice rule changes associated with chemicals could encompass a wide array of direct and indirect impacts, ranging from lost timber revenue to higher administrative costs. Although not all inclusive, these impacts could be lost timber revenues from lost growth opportunities, lost timber and land value due to undesirable species conversions, and higher application costs. While many of these costs may be proportional to acres operated on by small and large businesses, the impacts will probably be proportionately higher on small businesses when using number of employees, hours of labor, or sales as bases of comparison. Based on anecdotal observations and USDA Forest Service statistics for western Washington, nonindustrial private landowners own more acreage of hardwoods than private industry (59 percent of the total), acreage which is strongly correlated with streams and wetlands which these regulations are designed to protect and on which chemical use will be most restricted.

**Stream Temperature:** The economic impact of the forest practice rule changes associated with stream temperature primarily would result from lost timber revenue and higher operating costs. These impacts would include the loss of harvest volume opportunities associated with cutbacks in anticipated harvest plans to prevent preharvest temperature conditions from exceeding water temperature standards, and from complete deferral or prevention of harvesting where preharvest temperature conditions already exceed water temperature standards. These impacts will also be proportionately higher on

small timber tract owners for the same reason cited above. That is, nonindustrial private landowners own more acreage of hardwoods than private industry, and this acreage is strongly correlated with streams and associated RMZs. Furthermore, the forest land holdings of the nonindustrial forest land ownership group tends to be concentrated in lower elevations and shade requirements increase as elevation decreases. For these two reasons alone this ownership group will bear a disproportionate burden in preventing preharvest temperature conditions from exceeding water temperature standards.

**Harvest Size and Timing:** While the economic impact of the proposed regulations on harvest size and timing could have substantial economic impacts on large businesses (the forest industry), they probably do not significantly or disproportionately impact small businesses (small landowners), either because of smaller ownership size or because of assumed tendencies toward smaller clearcuts.

**Wetlands:** The economic impact of the addition of forest practice rules and regulations for the management of wetlands in the state of Washington will most likely be significant. Forested wetlands and the forested components of nonforested wetlands tend to be highly productive, and on many sites produce high valued cedar and spruce, in addition to western hemlock, among other species. The costs to landowners associated with lost harvest opportunities alone will be significant, not to mention significantly higher costs associated with road construction and maintenance, field design and layout, and other administrative and operating costs. These regulations will probably require that small businesses hire outside consultants for setting up timber harvest plans, and this alone will cause a disproportionate economic impact on small businesses. Furthermore, small forest landowners will be disproportionately impacted because they own more acreage of hardwoods than private industry, acreage which is also strongly correlated with streams and wetlands which these regulations are designed to protect. Even more significant is the distribution of total private forest land ownership of hardwood forest types between small and large landowners. According to the USDA Forest Service, nonindustrial private forest land owners control only 35 percent of the private forest land in western Washington; yet, they own 59 percent of the total hardwood acreage. Approximately 48 percent of the total acreage owned by this landownership group is in hardwood forest types, while only 18 percent of the total acreage owned by forest industry is in hardwood forest types. Consequently, any forest practice regulations which will tend to impact timberlands stocked by hardwood forest types to a greater degree than all forest types in general will have a substantially disproportionate economic impact on non-industrial private forest landowners.

**Cumulative Effects:** The costs to forest land owners of the proposed forest practice rules and regulations pertaining to cumulative effects are highly uncertain. To date, no watershed screening has been conducted in the state; there is no data on the general conditions of the resources pertaining to water, fish, and capital improvements of the state; WAUs have not been identified nor

have WAUs which might have sensitive or potentially sensitive resource conditions; and conditioning forest practice prescriptions which might be used in sensitive or potentially sensitive WAUs have not been developed and compared to forest practice activities which might be applied in absence of the proposed rules and regulations.

It is expected that the costs to the forest land owner will be extensive, more so than with any of the other proposed forest practice rules and regulations. Higher administrative and operating costs should be expected, in addition to revenue losses from deferred timber harvests and reductions in long-term forest productivity. Higher planning and assessment, field design and layout, permit application and handling, field administration, and field monitoring costs will elevate general administrative costs. Operating costs associated with road layout, construction/reconstruction, maintenance, and abandonment will increase, as will logging and site clean up costs. Landowners will incur losses of revenue from short-term restrictions on the rate of harvest and harvest deferrals, as well as from areas set aside from full timber production.

The burden of cumulative effects proposals will probably be disproportionately higher on small landowners. To the extent that large landowners, with spartially distributed land holdings, have options for moving harvesting activities from areas of sensitive resource conditions to other areas or sites, the costs of cumulative effects proposals will be substantial, but can be constrained. However, small landowners with all of their ownership in an area of sensitive resource conditions might not have the flexibility of larger landowners. To the extent that proposals would preclude these landowners from operating on such areas, or would significantly reduce the activities, the economic impacts to these landowners could be substantial, if not catastrophic. This would be particularly true to those whose life savings, retirement plans, emergency medical insurance, and other estate plans are wrapped up in these investments.

#### Mitigation

When it is found through an economic impact analysis that a rule places a disproportional burden on small businesses, the requirements of the rule must be mitigated. That is, agencies must reduce the economic impact of the rule on small businesses. Unless changes are not legal or are not feasible in meeting the stated objective of the statutes which are the basis of the proposed rule, one or more of the following steps must be undertaken to reduce the impact: Establish differing compliance or reporting requirements or time tables for small businesses; clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses; establish performance rather than design standards; or exempt small businesses from any or all requirements of the rule.

Provisions have been made in the proposed rules which allow larger harvest unit sizes for small landowners involved in estate tax settlements.

#### Conclusions

The proposed forest practice regulations will directly affect more than 10 percent of businesses in at least three industries at the 3-digit SIC level. The potential

compliance costs of meeting the proposed regulations will be substantial at best, if not debilitating to some small businesses (nonindustrial private landowners).

It is highly likely that the package of regulations as a whole, as well as particular elements of the package, will impose a disproportionate impact on small businesses since it is assumed that most compliance costs will be independent of the size, employment, or gross revenue of an affected business.

Hearing Location: Spokane, April 21, 1992, Holiday Inn, West 4212 Sunset Boulevard, four meetings, two at each of the following times: 1:00 p.m. to 4:30 p.m. and 6:30 to 10:30 p.m. Note: One of the 1:00 meetings reserved for organizational presentations; at Yakima, April 22, 1992, Cavanaugh Plaza Ballroom, 607 East Yakima Avenue, four meetings, two at each of the following times: 1 p.m. to 4:30 p.m. and 6:30 p.m. to 10:30 p.m.; at Everett, April 23, 1992, Port of Everett Yacht Club, 404 14th Street, four meetings, two at each of the following times: 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 10:30 p.m.; at Kelso, April 24, 1992, Red Lion Inn, 510 Kelso Drive, four meetings, two at each of the following times: 1:00 p.m. to 4:30 p.m. and 6:30 p.m. to 10:30 p.m.; and at Ocean Shores, April 25, 1992, Convention Center, 120 West Chance Aler Mer Street, four meetings, two at each of the following times: 10:00 p.m. [a.m.] to 1:00 p.m. and 2:00 p.m. to 6:00 p.m. Note: One of the 1:00 meetings reserved for organizational presentations.

Submit Written Comments to: Ed Summerfield, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, by April 27, 1992.

Date of Intended Adoption: June 30, 1992.

March 18, 1992  
Fred Olson

AMENDATORY SECTION (Amending Order 88-19, filed 10/27/88)

WAC 173-202-020 CERTAIN WAC SECTIONS ADOPTED BY REFERENCE. The following sections of the Washington Administrative Code (~~as now promulgated~~) existing on June 30, 1992, are hereby adopted by reference as part of this chapter in all respects as though the sections were set forth herein in full:

- WAC 222-08-035—Continuing review of forest practices regulations.
- WAC 222-12-010—Authority.
- WAC 222-12-040—Alternate plans.
- WAC 222-12-045—Adaptive management.
- WAC 222-12-070—Enforcement policy.
- ~~WAC 222-12-090—Forest practices board manual.~~
- WAC 222-16-010—General definitions.
- WAC 222-16-020 (1), (6), (7), (8)—Water and wetland categories.
- WAC 222-16-030 (1), (2), (3)—Water typing system.
- WAC 222-16-035—Wetland typing system.
- ~~((WAC 222-16-046—Watershed analysis implementation:))~~
- WAC 222-16-050—Classes of forest practices.
- WAC 222-16-060—Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species.
- WAC 222-16-070—Pesticide uses with the potential for a substantial impact on the environment.
- WAC 222-22-010—Cumulative effects—Policy and approach.
- WAC 222-24-010—Policy.
- WAC 222-24-020 (2), (3), (4), (6)—Road location.
- WAC 222-24-025 (2) (5), (6), (7), (8), (9), (10)—Road design.
- WAC 222-24-030 (2), (4), (5), (6), (7), (8), (9), ((#00))—Road construction.
- WAC 222-24-035—(1), (2)(c), (2)(d), (2)(e), (2)(f)—Landing location and construction.
- WAC 222-24-040 (1), (2), (3), (4), (5)—Water crossing structures.
- WAC 222-24-050—Road maintenance.

- WAC 222-24-060 (1), (2), (3), (6)—Rock quarries, gravel pits, borrow pits, and spoil disposal areas.
- WAC 222-30-010—Policy—Timber harvesting.
- WAC 222-30-020 (2), (3), ((4)), ((5))3, ((6))4, ((7))5 (6), (7)—Harvest unit planning and design.
- WAC 222-30-021—Green up—Harvest unit size and separation.
- WAC 222-30-030—Stream bank integrity.
- WAC 222-30-040—((Temperature control)) Shade requirements to maintain stream temperature.
- WAC 222-30-050 (1), (2), (3)—Felling and bucking.
- WAC 222-30-060 (1), (2), ((2))3, ((3))4, ((4))5(c)—Cable yarding.
- WAC 222-30-070 (1), (2), (3)((3)4), ((4))5, ((6))7, ((7))8, ((8))9)—Tractor and wheeled skidding systems.
- WAC 222-30-080 (1), (2)—Landing cleanup.
- WAC 222-30-090—Postharvest site preparation.
- WAC 222-30-100 (1)(a), (1)(c), (4), (5)—Slash disposal.
- WAC 222-32-010—Policy—Watershed analysis.
- WAC 222-32-030—Watershed administrative units.
- WAC 222-32-040—Qualification of watershed resource analysts, specialists, and field managers.
- WAC 222-32-050—Watershed prioritization.
- WAC 222-32-060—Level 1 watershed resource assessment.
- WAC 222-32-070—Level 2 watershed resource assessment.
- WAC 222-32-080—Prescription recommendation.
- WAC 222-32-090—Approval of watershed analysis.
- WAC 222-32-100—Cumulative effects from forest practices. Use and review of watershed analysis.
- WAC 222-32-101—Application review prior to watershed analysis.
- WAC 222-34-040 (1), (2), (3)—Site preparation and rehabilitation.
- WAC 222-38-010—Policy—Forest chemicals.
- WAC 222-38-020—Handling, storage, and application of pesticides.
- WAC 222-38-030—Handling, storage, and application of fertilizers.
- WAC 222-38-040—Handling, storage, and application of other forest chemicals.

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

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

**WSR 92-07-086**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF ECOLOGY**  
[Memorandum—March 17, 1992]

PUBLIC NOTICE

The Department of Ecology will hold public hearings to receive comment on a proposed general boatyard permit. Boatyards are facilities which work on boats under 65 feet in length. Under the provisions of chapter 90.48 RCW and the Federal Water Pollution Control Act all persons owning and operating boatyard facilities are required by law to control the discharge of pollutants into the waters of the state.

The proposed national pollutant discharge elimination system (NPDES) general permit authorizes discharges providing effluent limitations and conditions necessary for boatyards to carry out the provisions of state and federal law. Facility operators must apply to ecology for coverage after the general permit is issued. A small business economic impact on boat building and repair facilities subject to this permit was prepared by the Department of Ecology.

WHEN: Both public meetings will begin at 4:00 p.m. The public hearing will follow at 5:00 p.m. Written comments will be accepted until May 21, 1992.

**WHERE:** The first meeting to be held will be on April 22 in Ecology's NW Regional Office, 3190 160th Avenue, S.E., Bellevue, WA 98008. The second is on April 29 in the Lacey Timberland Library, 500 College Street S.E., Lacey, WA 98504. Both meetings will begin at 4:00 p.m., with the public hearing following at 5:00 p.m.

**FURTHER INFORMATION:** Please contact Pam Gronbeck, 649-7127 or Kevin Fitzpatrick, 649-7037, at Ecology's Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008.

**WSR 92-07-087**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 92-16—Filed March 17, 1992, 4:25 p.m.]

**Original Notice.**

**Title of Rule:** WAC 173-19-2511 City of Kent shoreline master program.

**Purpose:** Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

**Statutory Authority for Adoption:** RCW 90.58.200.

**Statute Being Implemented:** Chapter 90.58 RCW, Shoreline Management Act of 1971.

**Summary:** The amendment revises the shoreline master program for city of Kent.

**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 Implementation and Enforcement:** Barry Wenger, Department of Ecology, P.O. Box 46700, Olympia, WA 98504-6700, (206) 459-6767.

**Name of Proponent:** Department of Ecology, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This proposed amendment revises, reformats and replaces essentially all of the program's policies and standards. New definitions are proposed to provide clarity and to be consistent with existing state rules. Existing shoreline environment designations are not proposed to be changed with the exception of that portion of Lot 18 of the Foster Industrial Park lying north of the city right-of-way extending westerly from South 259th Street to SR 167, which is proposed to be changed from conservancy to an urban shoreline environment designation. Administrative procedures and processes are also set forth in the proposed document.

**Proposal Changes the Following Existing Rules:** Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 6, Laws of 1982, the Regulatory Fairness Act, states that regulations which have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry shall have a small business economic impact statement prepared and filed with the code reviser.

The amendment proposed by the city of Kent does not meet the criteria which determines that a small business economic impact statement is necessary.

**Hearing Location:** Council Chambers, 220 4th Avenue South, Kent, WA, on April 23, 1992, at 7:00 p.m.

**Submit Written Comments to:** Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Olympia, Washington 98504-6700, by April 30, 1992.

**Date of Intended Adoption:** June 16, 1992.

March 16, 1992

Fred Olson

Deputy Director

**AMENDATORY SECTION** (Amending Order DE 85-05, filed 4/15/85)

WAC 173-19-2511 KENT, CITY OF. City of Kent master program approved April 9, 1974. Revision approved December 8, 1978. Revision approved April 10, 1979. Revision approved December 10, 1980. Revision approved June 16, 1992.

**WSR 92-07-088**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 92-15—Filed March 17, 1992, 4:26 p.m.]

**Original Notice.**

**Title of Rule:** WAC 173-19-2521 City of Seattle shoreline master program.

**Purpose:** Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

**Statutory Authority for Adoption:** RCW 90.58.200.

**Statute Being Implemented:** Chapter 90.58 RCW, Shoreline Management Act of 1971.

**Summary:** The amendment revises the shoreline master program for city of Seattle.

**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 Implementation and Enforcement:** Peter Skowlund, Department of Ecology, P.O. Box 46700, Olympia, WA 98504-6700, (206) 438-7430.

**Name of Proponent:** Department of Ecology, governmental.

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

**Explanation of Rule, its Purpose, and Anticipated Effects:** This proposed amendment to the city of Seattle shoreline master program will allow house barges existing as of June 1990 to remain as residential uses over

the city's waters. The amendment will grandfather approximately thirty-four house barges, which were faced with eviction from their marina moorages, as permitted nonconforming uses within the shorelines of Seattle. The amendment will also add a definition for house barges to distinguish this residential use from floating homes and navigable vessels used for over-water residential purposes.

Proposal Changes the Following Existing Rules: Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 6, Laws of 1982, the Regulatory Fairness Act, states that regulations which have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry shall have a small business economic impact statement prepared and filed with the code reviser.

The amendment proposed by the city of Seattle does not meet the criteria which determines that a small business economic impact statement is necessary.

Hearing Location: City Council Chambers, 11th Floor Municipal Building, 600 4th Avenue, use 5th Avenue Entrance, Seattle, WA, on April 22, 1992, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Olympia, Washington 98504-6700, by April 29, 1992.

Date of Intended Adoption: June 16, 1992.

March 16, 1992

Fred Olson

Deputy Director

**AMENDATORY SECTION** (Amending Order 90-35, filed 10/2/90)

WAC 173-19-2521 SEATTLE, CITY OF. City of Seattle master program approved June 30, 1976. Revision approved March 11, 1977. Revision approved September 10, 1980. Revision approved February 24, 1981. Revision approved May 14, 1981. Revision approved October 1, 1981. Revision approved January 5, 1982. Revision approved February 24, 1983. Revision approved June 7, 1983. Revision approved July 12, 1983. Revision approved October 13, 1983. Revision approved October 1, 1985. Revision approved October 20, 1986. Revision approved February 11, 1987. Revision approved November 10, 1987. Revision approved October 2, 1990. Revision approved June 16, 1992.

**WSR 92-07-089**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 92-17—Filed March 17, 1992, 4:27 p.m.]

Original Notice.

Title of Rule: WAC 173-19-430 Wahkiakum County shoreline master program.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200.

Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for Wahkiakum County.

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 Implementation and Enforcement: Nora Jewett, Department of Ecology, P.O. Box 46700, Olympia, WA 98504-6700, (206) 459-6789.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This amendment establishes new siting criteria and standards for floating homes; defines floating homes, houseboats, vessels and nonconforming uses; and establishes nonconforming uses and development standards.

Proposal Changes the Following Existing Rules: Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 6, Laws of 1982, the Regulatory Fairness Act, states that regulations which have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry shall have a small business economic impact statement prepared and filed with the code reviser.

The amendment proposed by Wahkiakum County does not meet the criteria which determines that a small business economic impact statement is necessary.

Hearing Location: Superior Courtroom, County Courthouse, 64 Main Street, Cathlamet, WA 98612, on April 21, 1992, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, Olympia, Washington 98504-6700, by April 28, 1992.

Date of Intended Adoption: June 16, 1992.

March 16, 1992

Fred Olson

Deputy Director

**AMENDATORY SECTION** (Amending Order 85-29, filed 3/18/86)

WAC 173-19-430 WAHAKIAKUM COUNTY. Wahkiakum County master program approved June 17, 1975. Revision approved January 2, 1980. Revision approved May 20, 1981. Revision approved March 12, 1986. Revision approved June 16, 1992.

**WSR 92-07-090**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 92-14—Filed March 17, 1992, 4:28 p.m.]

Original Notice.

Title of Rule: WAC 173-19-2503 City of Bellevue shoreline master program.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.



Statutory Authority for Adoption: RCW 90.58.200.  
Statute Being Implemented: Chapter 90.58 RCW,  
Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for the city of Bellevue.

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, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6767; Implementation and Enforcement: D. Rodney Mack, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (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 replaces the existing policy section of the Bellevue shoreline master program, WAC 173-19-2503, with an updated, consolidated policy section. The policies address shoreline dependent uses, fisheries and wildlife habitat, public access, and environmental impacts. Definitions for water-dependent, water-related, and water-enjoyment uses are also proposed.

Proposal Changes the Following Existing Rules: Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 6, Laws of 1982, the Regulatory Fairness Act, states that regulations which have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry shall have a small business economic impact statement prepared and filed with the code reviser.

The amendment proposed by the city of Bellevue does not meet the criteria which determines that a small business economic impact statement is necessary.

Hearing Location: City Council Chambers, 11511 Main Street, Bellevue, WA, on April 22, 1992, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, P.O. Box 47600, Olympia, WA 98504, by April 29, 1992.

Date of Intended Adoption: June 16, 1992.

March 16, 1992  
Fred Olson  
Deputy Director

AMENDATORY SECTION (Amending Order DE 89-21, filed 9/27/89)

WAC 173-19-2503 BELLEVUE, CITY OF. City of Bellevue master program approved February 26, 1975. Revision approved January 8, 1979. Revision approved May 14, 1981. Revision approved February 24, 1983. Revision approved September 5, 1989. Revision approved June 16, 1992.

WSR 92-07-091

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 92-13—Filed March 17, 1992, 4:29 p.m.]

Original Notice.

Title of Rule: WAC 173-19-130 Clallam County shoreline master program.

Purpose: Adoption of revised shoreline master program into the 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 Clallam County.

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, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-6700, (206) 459-6767; Implementation and Enforcement: D. Rodney Mack, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-6700, (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 to the Clallam County shoreline master program revises Section 5.08 - Residential Development to Specifically address "bed and breakfast" facilities and "home occupation" activities as allowable uses subject to certain criteria and standards set forth. Definitions for each of these activities are also proposed to be added to the master program glossary.

Proposal Changes the Following Existing Rules: Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

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

Chapter 6, Laws of 1982, the Regulatory Fairness Act, states that regulations which have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry shall have a small business economic impact statement prepared and filed with the code reviser.

The amendment proposed by the Clallam County does not meet the criteria which determines that a small business economic impact statement is necessary.

Hearing Location: Commissioner's Meeting Room, 223 East Fourth Street, Port Angeles, WA, on April 24, 1992, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, P.O. Box 47600, Olympia, WA 98504, by May 1, 1992.

Date of Intended Adoption: June 16, 1992.

March 16, 1992

Fred Olson

Deputy Director

AMENDATORY SECTION (Amending Order 89-17, filed 11/1/89)

WAC 173-19-130 CLALLAM COUNTY. Clallam County master program approved August 5, 1976. Revision approved November 16, 1976. Revision approved August 10, 1979. Revision approved January 4, 1983. Revision approved March 27, 1984. Revision approved January 27, 1986. Revision approved June 3, 1986. Revision approved March 1, 1988. Revision approved October 31, 1989. Revision approved June 16, 1992.

## WSR 92-07-092

### PROPOSED RULES

#### DEPARTMENT OF REVENUE

[Filed March 18, 1992, 9:12 a.m.]

#### Original Notice.

Title of Rule: New section WAC 458-20-260 Oil spill response and administration tax.

Purpose: To implement chapter 200, Laws of 1991, effective October 1, 1991, which imposes a tax on the offloading from waterborne vessel of crude oil or petroleum products at marine terminals in this state.

Statutory Authority for Adoption: RCW 82.23B.050.

Statute Being Implemented: RCW 82.32.300.

Summary: The rule provides applicable definitions, the rate and measure of tax, the tax reporting and payment procedure, and describes an exemption and credit against tax.

Reasons Supporting Proposal: The rule is necessary to implement chapter 200, Laws of 1991, which became effective October 1, 1991.

Name of Agency Personnel Responsible for Drafting: Robert Heller, 711 Capitol Way, #205, Olympia, (206) 753-1971; Implementation: Les Jaster, 711 Capitol Way, #205, Olympia, (206) 586-7150; and Enforcement: Ed Faker, 711 Capitol Way, #400, Olympia, (206) 753-5579.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule provides tax reporting information to taxpayers liable for the oil spill response and administration taxes imposed under chapter 82.23B RCW. The rule provides for applicable definition, the rate and measure of tax, describes the incidence of taxability, and provides for an exemption and credit against tax.

Proposal does not change existing rules.

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

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses.

A small business economic impact statement is not required for the following reason(s): No economic impact. This rule has no identifiable administrative impact on small businesses.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on April 21, 1992, at 10:00 a.m.

Submit Written Comments to: Robert Heller, Administrative Law Judge, Department of Revenue, P.O. Box 47458, FAX (206) 586-7603, Olympia, WA 98504-7458, by April 21, 1992.

Date of Intended Adoption: April 24, 1992.

March 17, 1992

Edward L. Faker

Assistant Director

#### NEW SECTION

WAC 458-20-260 OIL SPILL RESPONSE AND ADMINISTRATION TAX (1) INTRODUCTION. This section explains and implements the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax, effective October 1, 1991. The taxes are imposed upon the privilege of offloading crude oil or petroleum products at a marine terminal in this state from a waterborne vessel or barge operating through or upon the navigable waters of this state. This section provides applicable definitions, the rate and measure of the tax, the tax payment and reporting procedure, and describes an exemption and a credit against tax.

(2) DEFINITIONS. For purposes of this section, the following terms will apply.

(a) "Tax" means the oil spill response and oil spill administration taxes imposed by chapter 82.23B RCW.

(b) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(c) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(d) "Department" means the department of revenue.

(e) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(f) "Navigable waters" means those waters of the state and their adjoining shorelines, that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(g) "Person" has the meaning provided in RCW 82.04.030.

(h) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(i) "Taxpayer" means the person owning crude oil or petroleum products immediately before the same are off-loaded at a marine terminal in this state and who is liable for the tax.

(j) "waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

(k) "Previously taxed product" means any crude oil or petroleum product which has been offloaded in this state in a manner subject to the tax and upon which the tax has been paid.

(l) "Offloading" means the physical act of moving crude oil or petroleum product from a waterborne vessel or barge to a marine terminal. Offloading occurs at the point where the crude oil or petroleum product passes through the dock flange or point of connection between the vessel or barge and the marine terminal.

(3) TAX RATE AND MEASURE. The tax is imposed on the privilege of off-loading crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating through or across the navigable waters of this state. The tax is levied upon the owner of the crude oil or petroleum products immediately before such off-loading occurs.

(a) The oil spill response tax is imposed at the rate of two cents per barrel of crude oil or petroleum product off-loaded.

(b) The oil spill administration tax is imposed at the rate of three cents per barrel of crude oil or petroleum product off-loaded.

(c) The number of barrels offloaded shall be computed as the net barrels received by the marine terminal operator. Net barrels shall be

computed by using an industry standard adjustment to gross barrels offloaded to account for variations in temperature and content of water or other nonpetroleum substances.

(4) **TAX COLLECTION BY THE MARINE TERMINAL OPERATOR.** Unless the taxpayer has been issued a direct payment certificate as provided in subsection (5) below, the operator of any marine terminal located in this state where crude oil or petroleum products are offloaded is responsible for the collection of the tax from the taxpayer.

(a) Failure to collect the tax from the taxpayer and remit it to the department will cause the marine terminal operator to become personally liable for the tax, unless the marine terminal operator has billed the taxpayer for the tax or notified the taxpayer in writing of the imposition of the tax. The tax has been billed to a taxpayer when an invoice, statement of account, or notice of imposition of the tax is mailed or delivered to the taxpayer by the terminal operator within the operator's normal billing cycle and separately states the dates of offloading, rate of tax, number of barrels offloaded, and the amount of the tax required to be collected. A taxpayer has been notified of the imposition of the tax when, within ten days from the date of offloading, a notice is mailed or delivered to the taxpayer, or to an agent of the taxpayer authorized to accept notices of this type other than the marine terminal operator, which separately states the dates of offloading, rate of tax, number of barrels offloaded, and the amount of the tax required to be collected. Marine terminal operators shall maintain a record of the names and addresses of taxpayers billed for the tax, or in cases where taxpayers are sent written notification of the imposition of the tax, the names and addresses of the persons to whom notice is sent. Such records shall indicate those persons billed or notified from whom the tax has been collected. Upon request, the records shall be made available for inspection by the department.

(b) The tax collected shall be held in trust by the terminal operator until paid to the department.

(c) The tax collected shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the tax is collected.

(d) A terminal operator who relies in good faith upon a direct payment certificate issued to a taxpayer shall be relieved from any liability for the collection of the tax from the taxpayer. A marine terminal operator shall likewise be relieved from liability for collection of the tax from a taxpayer if the marine terminal operator relies in good faith upon a current roster of certificate holders published by the department which bears the name of a taxpayer.

(5) **DIRECT PAYMENT TO THE DEPARTMENT.** Any taxpayer may apply to the department in writing for permission to pay the tax directly to the department. Upon approval of the department, any taxpayer making application for direct payment shall be issued a direct payment certificate entitling the taxpayer to pay the tax directly to the department.

(a) In order to qualify for direct payment, the taxpayer must meet the following requirements:

(i) The taxpayer must be registered with the department.

(ii) The taxpayer must file a bond with the department in an amount equal to two months estimated liability for the tax, but in no event less than \$10,000. The bond shall be executed by the taxpayer as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. Two months estimated tax liability shall be the total number of barrels offloaded in this state by the taxpayer during the two months in the immediately preceding twelve month period with the highest number of barrels offloaded multiplied by the total tax rate. If the department determines that the result of the foregoing calculation does not represent a fair estimate of the actual tax liability which the taxpayer is expected to incur, it may set the bond requirement at such higher amount as the department determines in its judgement will secure the payment of the tax. The bond requirement may be waived upon proof satisfactory to the department that the taxpayer has sufficient assets located in this state to insure payment of the tax.

(iii) The taxpayer must be current in all of its tax obligations to the state having filed all returns as required by title 82 RCW.

(b) The department may, from time to time, review the amount of any bond filed by a taxpayer possessing a direct payment certificate and may, upon twenty days written notice to the taxpayer, require such higher bond as the department determines to be necessary to secure the payment of the tax. The filing of a substitute bond in such higher amount shall be a condition to the continuation of the right to make direct payment under this section.

(c) A direct payment certificate issued under this section may be revoked by the department if the taxpayer fails to maintain a current registration, fails to file a substitute bond within twenty days from a written request, or becomes delinquent in the payment of the tax.

(d) The department shall maintain a current roster of all taxpayers who have a direct payment certificate. Copies of the roster shall be made available on a monthly basis to any interested person requesting to be placed on the roster subscription list. Requests to be placed on the subscription list should be mailed to the Miscellaneous Tax Division, Department of Revenue, P.O. Box \_\_\_\_\_, Olympia, WA 98504.

(e) Applications for a direct payment certificate shall be in writing and shall include the name and address of the applicant, the applicant's registration number if currently registered, and the name and phone number of a contact person. The application shall also contain a statement that if the application is approved, the taxpayer consents to the public disclosure that the taxpayer has been granted a direct payment certificate, or if the certificate is later revoked, the taxpayer consents to the public disclosure of the fact of revocation. Applications should be mailed to the Miscellaneous Tax Division, Department of Revenue, MS: AX-02, Olympia, WA 98504.

(6) **EXEMPTION - PREVIOUSLY TAXED OIL OR PETROLEUM PRODUCTS.** The tax applies only to the first off-loading of crude oil or petroleum products at a marine terminal in this state. An exemption is available for the subsequent offloading at a marine terminal in this state of previously taxed product. This exemption applies even though the previously taxed product is refined or processed prior to further transportation and subsequent offloading.

(a) Crude oil or petroleum products offloaded for the first time at a marine terminal in this state which have been commingled with previously taxed product present a special problem in determining the amount of tax properly due. In such cases the amount of tax due is equal to the difference between the total number of barrels offloaded and the number of barrels of previously taxed product multiplied by the total tax rates. Due to the difficulty of determining the amount of tax due under such circumstances the following rebuttable presumptions shall apply:

(i) All crude oil or petroleum products loaded on a vessel and shipped from a point within this state will be presumed, subject to rebuttal, to be previously taxed product. The subsequent offloading at a point within this state of such product will be treated as exempt from the tax.

(ii) All crude oil or petroleum products loaded on a vessel and shipped from a point outside this state will be presumed to be crude oil or petroleum products offloaded for the first time in this state. The subsequent offloading at a point within this state of such crude oil or petroleum products will be treated as subject to the tax.

(b) The presumptions in this subsection may be rebutted upon proof of the number of barrels of previously taxed product offloaded in this state.

(c) Example. The presumptions in this subsection (6) can be illustrated by the following example:

(i) A previously taxed petroleum product is loaded on an ocean-going barge at a marine terminal located on Puget Sound in Washington. The barge is towed to Portland, Oregon where the petroleum product is offloaded and commingled with a similar product which has not been subjected to the tax. Later, commingled product is loaded onto a barge which is towed up the Columbia River to a marine terminal located in Pasco, Washington and offloaded. The petroleum products loaded onto the barge in Portland would be presumed, subject to rebuttal, to be subject to the tax when offloaded in Pasco.

(7) **EXPORT CREDIT.** A credit is allowed against the tax imposed for any crude oil or petroleum products previously offloaded in a manner subjected to the tax and subsequently exported or sold for export from the state.

(a) An export credit may be taken by any person exporting or selling for export any previously taxed product who has paid the tax on such product to a marine terminal operator or the department. An export credit may also be taken by any person who has purchased previously taxed product and who subsequently exports the product or sells the product for export, provided that such person has been invoiced for and has paid the tax to its seller. Any such invoice must state the amount of the tax passed on to the purchaser and identify the product to which the tax amount relates by type and quantity.

(b) A person exports previously taxed product when they actually transport the product beyond the borders of this state for purposes of sale, or deliver the product to a common carrier for delivery and subsequent sale or use at a point outside this state.

(c) A person sells previously taxed product for export when as necessary incident to a contract of sale the seller agrees to, and does deliver previously taxed product

- (i) to the buyer at a destination outside this state;
- (ii) to a carrier consigned to and for transportation to a destination outside this state;
- (iii) to the buyer alongside or aboard a vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the product has begun; or
- (iv) into a pipeline for transportation to a destination outside this state.

In all circumstances there must be a certainty of export evidenced by some overt step taken in the export process. A sale for export will not necessarily be deemed to have occurred if the product is merely in storage awaiting shipment, even though there is reasonable certainty that the product will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export if the product has not commenced its journey outside this state. The product must actually enter the export stream. Sales of petroleum products by delivery into the fuel tank of a vessel or other vehicle in quantities greater than one hundred gallons will be considered placed into the export stream, provided the vessel or vehicle is immediately destined for a point outside this state and the seller obtains and keeps the documentary evidence provided in subsection (7)(d).

(d) A person claiming credit for sales for export under this subsection (7) must document the fact the product was placed into the export process. This fact may be shown by obtaining and keeping any of the following documentary evidence:

- (i) A bona fide bill of lading in which the seller is the shipper/consignor and by which the carrier agrees to transport the product to the buyer at a destination outside this state; or
- (ii) a written certification in substantially the following form:

**Certificate of Export**

I hereby certify that the crude oil or petroleum products specified herein, purchased by or transferred to the undersigned from (seller or transferor), have been received into the export stream and are for export for sale or use outside Washington state. I will become liable for any tax credit granted (seller or transferor) pertaining to any crude oil or petroleum products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud.

Registration No. \_\_\_\_\_ Type of Business \_\_\_\_\_  
 (If applicable)

Firm Name \_\_\_\_\_ Registered Name \_\_\_\_\_  
 (If different)

Authorized Signature \_\_\_\_\_  
 Title \_\_\_\_\_

Identity of Product \_\_\_\_\_  
 (Kind and amount by volume)

Date \_\_\_\_\_

; or

- (iii) Documents consisting of:
  - (aa) Purchase orders or contracts of sale which show that the seller is required to place the product into the export stream, e.g., "f.a.s. vessel;" and
  - (bb) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the product was delivered into the export stream; and
  - (cc) When available, records showing that the products were packaged, numbered or otherwise handled in a way which is exclusively attributable to products sold for export.

(e) Only the export or sale for export of crude oil or petroleum products will qualify for the export credit. Crude oil or petroleum products will not be eligible for the export credit if, prior to export, they are subject to further processing or used as ingredients in other compounds unless the resulting products are themselves crude oil or petroleum products.

(f) Crude oil or petroleum products delivered to purchasers in other states pursuant to location exchange agreements will not qualify for the export credit unless the crude oil or petroleum products were previously subject to the tax and credit has not yet been taken. A location exchange agreement is any arrangement where crude oil or petroleum

products located in this state are exchanged through an accounts crediting system, or any other method, for like substances located in other states. Any person acquiring previously taxed product in this state for which no credit has been taken may claim a credit on any such product subsequently exported or sold for export, provided all of the requirements set forth in this subsection (7) have been met.

(i) Example. An oil company enters into a location exchange agreement with a competitor which provides for the delivery of one thousand barrels of petroleum products to a local storage facility owned by the competitor. In exchange for the petroleum products delivered in Washington the competitor delivers one thousand barrels of like petroleum products to the oil company's storage facilities in California. The delivery of petroleum products in California would not constitute an export or sale for export of the products delivered in Washington even though the products are of like quality and quantity. If the competitor delivers products which have been previously subject to the tax and no credit has been taken, the delivery of products in California may qualify for the credit. The subsequent export of the petroleum products received by the competitor in Washington would qualify for the credit if the competitor has been invoiced for and has paid the tax to the exchanging oil company.

(f) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. For this purpose any person claiming a credit who maintains those records required by WAC 458-20-19301 (multiple activities tax credit), part (9), will be considered to have satisfied the requirements of this subsection.

(8) AMOUNT OF CREDIT. The amount of the credit will be equal to the tax previously paid by the person claiming the credit on the crude oil or petroleum product exported or sold for export.

(a) In the case of a person claiming credit who is not the taxpayer, the credit will be equal to that portion of the tax billed on an invoice which relates to the particular product exported or sold for export. In order to determine the amount of tax reflected on an invoice which relates to a particular product exported or sold for export, it may be necessary to convert the tax paid from a rate per barrel to a rate per gallon or some other unit of measurement. This conversion is computed by taking the total amount of tax paid on an invoice for a particular product and dividing that figure by the total quantity of the product expressed in terms of the unit of measurement used for export. The credit is then computed by multiplying the converted rate times the quantity of product exported or sold for export. In no event will a credit be allowed in excess of the tax paid on the product exported or sold for export.

(b) Due to the fungible nature of crude oil and petroleum products it will sometimes be impossible for a person claiming a credit to determine exactly the rate of tax invoiced for a specific quantity of oil being exported or sold for export. The physical handling of oil or petroleum products requires that products of like kind be stored in bulk. This commingling results in product bearing tax passed on at different rates making it difficult to determine the amount of credit applicable to an export sale. Under such circumstances a person claiming the export credit may compute the tax using one of the following methods:

(i) First-in, first-out method. Under this method the export credit is computed by treating existing inventory as sold before later acquired inventory.

(ii) Average of tax paid method. Under this method the export credit is determined by calculating the average rate of tax paid on all inventory. This method requires computing the tax by making adjustments in the rate of tax paid on all product on hand as it is removed from or added to storage.

(iii) Any other method approved by the department.

(c) The use of one of the methods set forth in this subsection (8) to account for tax paid on commingled crude oil or petroleum products shall constitute an election to continue using the method selected. Once selected, no change in accounting method will be permitted without the prior consent of the department.

(d) Examples. The following are examples of the way in which the credit is to be computed:

(i) A petroleum products distributor purchases 100 barrels each of premium unleaded gasoline and regular unleaded gasoline. The invoice from the refiner separately states that the invoice includes five dollars of tax for each of the two types of products. The distributor pays the invoiced amount and later sells 2,000 gallons of the premium unleaded and 4,000 gallons of the regular unleaded to a retailer located outside Washington. In order to compute the amount of credit on the export sales the distributor must convert the tax paid from barrels to gallons.

Since there are forty-two US gallons in a barrel and 200 barrels purchased, the number of gallons equals 8400 ( $42 \times 200$ ). The per gallon tax paid on both products is equal to .119 cents per gallon ( $\$10.00 \div 8400$ ). The distributor would be eligible for credit equal to \$2.38 for the premium unleaded ( $2,000 \times \$0.0119$ ) and \$4.76 for the regular unleaded ( $4,000 \times \$0.0119$ ).

(ii) A petroleum products distributor purchases 100 barrels of unleaded gasoline which it will use to blend with 30 barrels of ethanol to produce gasohol. The invoice for the unleaded separately states that the total price includes four dollars of tax. The distributor pays the invoiced amount and sells 2,940 gallons of gasohol to a retailer for sale outside Washington. The tax paid on the unleaded is equal to .095 cents per gallon ( $\$4.00 \div 4200$ ). Since the exported product has been blended with a component that has not been taxed, only 76.9% of the exported product is eligible for credit ( $100 \div 130$ ). The credit would be \$2.15 ( $2,940 \times .769 \times \$0.0095$ ).

(iii) A petroleum distributor purchases 100 barrels of unleaded gasoline from refinery A and later purchases 100 barrels from refinery B. The distributor stores all of its unleaded gasoline in a single storage tank. The invoice from refinery A separately states the amount of tax on the gasoline as \$5.00 and the refinery B invoice states the tax as \$4.00. The distributor pays the two invoiced amounts and sells 2,100 gallons of the commingled unleaded to a retailer located outside Washington. The distributor then purchases 100 more barrels of unleaded gasoline from distributor C. Distributor C's invoice separately states the tax as \$3.00. Following payment of the invoice, the distributor exports an additional 2,100 gallons of unleaded. The distributor could choose to calculate the tax using one of the methods of accounting described in subsection (8)(b).

(aa) Under the first-in, first-out method the distributor would treat all 4,200 gallons sold as if it was the unleaded gasoline purchased from refinery A. Under this method, the credit would be equal to .119 cents per gallon ( $\$5.00 \div 4,200$ ) or \$5.00 total ( $\$.00119 \times 4,200$ ).

(bb) Under the average of tax paid method the distributor would recompute the tax paid on average for the entire commingled amount making adjustments as gasoline is sold or gasoline is added. Prior to the addition of the purchases from refinery B or distributor C, the rate would be .119 cents per gallon ( $\$5.00 \div 4,200$ ). Following the addition of the 100 barrels from refinery B the tank contains 8,400 gallons. The rate of tax would now be .107 cents per gallon ( $(\$5.00 + \$4.00) \div 8,400$ ). Out of this amount 2,100 gallons is exported in the first sale. The credit for this sale would be equal to \$2.25 ( $\$.00107 \times 2,100$ ). After the addition of the 100 barrels from distributor C, the tank contains 10,500 gallons ( $8,400 + 2,100 + 4,200$ ). In order to recompute the tax, the total tax paid on the remaining gasoline after the first sale must be computed. After withdrawal of the 2,100 gallons of unleaded for the first sale, the total tax paid on the remainder would be \$6.74 ( $(8,400 - 2,100) \times \$0.0107$ ). The addition of the 100 barrels from distributor C causes the total tax for the stored amount to rise to \$9.74 ( $\$6.74 + \$3.00$ ). The average rate of tax is now .093 cents per gallon ( $\$9.74 \div 10,500$ ). The credit for the second export sale would be \$1.95 ( $\$.00093 \times 2,100$ ).

(9) HOW AND WHEN TO PAY TAX. The tax must be reported on special return forms prescribed by the department. The tax is due for payment together with the timely filing of the return upon which it is reported, on the twenty-fifth day of the month following the month in which the taxable offloading occurs. In case any offloading commences on the last day of any month and extends past midnight, the offloading will be deemed to have occurred during the following month.

(10) HOW AND WHEN TO CLAIM CREDITS. Persons who pay tax under a direct payment certificate and persons who are both taxpayers and marine terminal operators should claim credits as an offset against tax liability reported on the same return when possible. The tax return form provides a line for reporting the tax and a line and supporting schedule for taking credits as an offset against the tax reported. Persons claiming credit who are not required to file returns reporting liability for the tax may claim credits on forms provided by the department for this purpose. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(11) SALES TO U.S. GOVERNMENT. The tax does not apply to the offloading of crude oil or petroleum products owned by the U.S. government. The U.S. government is also not required to collect the tax as a marine terminal operator when the U.S. government owns the facilities where crude oil or petroleum products are received. However,

owners of crude oil or petroleum products offloaded at marine terminals owned by the U.S. government remain liable for the tax. In such instances the taxpayer is required to report the tax on forms supplied by the department. The tax is due for payment along with a completed return on the twenty-fifth day of the month following the month in which the offloading occurred.

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 92-07-093

### PROPOSED RULES

#### FOREST PRACTICES BOARD

[Filed March 18, 1992, 9:31 a.m.]

#### Original Notice.

Title of Rule: Amendment to forest practices rules, Title 222 WAC.

Purpose: To modify provisions of forest practices rules, in order to protect public resources while maintaining a viable timber industry.

Statutory Authority for Adoption: RCW 76.09.040, 76.09.050, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 76.09 RCW.

#### Summary

Cumulative Effects of Forest Practices: Policy statements on cumulative effects (WAC 222-12-046) and watershed analysis (WAC 222-22-010); provides for a watershed analysis system to deal with cumulative effects in watershed administrative units of 10,000 to 50,000 acres (WAC 222-22-020 through 222-22-100); provides for more intensive review of even-aged harvest units larger than 120 acres (WAC 222-30-025); limits harvest unit size on islands in inland salt water, including Puget Sound and the San Juan Islands (WAC 222-30-110); and adds even-aged timber harvest of contiguous areas larger than 240 acres to the definition of Class IV-Special forest practices (WAC 222-16-050 (1)(j)).

Wetlands: Modifies the water typing system (WAC 222-16-030(1)); adds a wetland typing system (WAC 222-16-035); modifies the definitions of classes of forest practices (WAC 222-16-050); modifies existing road construction and maintenance rules to provide for wetlands protection (chapter 222-24 WAC); revises timber harvesting policy to provide wetlands protection (WAC 222-30-010); integrates wetlands and wetland management zones with riparian zone protection where they overlap (WAC 222-30-020 (3) and (4)); provides for protection of wetlands and wetland management zones (WAC 222-30-020 (6) through (8)); and adds wetlands to existing rules for timber harvesting and reforestation practices (WAC 222-30-050, 222-30-060, 222-30-070, 222-30-090, 222-30-100, and 222-34-040).

Revise Definition of Class IV-Special Forest Practices: Class IV-Special forest practices are those practices which are subject to review under the State Environmental Policy Act (SEPA) and SEPA rules: Revises provisions for aerial application of pesticides (WAC 222-16-050 (1)(a) and 222-16-070); revises the definition of critical wildlife habitat (WAC 222-16-050

(1)(b) and 222-16-080); modifies the provisions for forest practices other than timber harvest on slide prone areas ( WAC 222-16-050(d)); adds timber harvest on slide prone areas (WAC 222-16-050 (1)(e)); adds forest practices on snow avalanche slopes (WAC 222-16-050 (1)(f)); adds forest practices on archaeological sites, historical sites, and sites containing evidence of specified elements of Native American interest (WAC 222-16-050 (1)(g)); adds forest practices which deviate from prescriptions in watershed analysis (WAC 222-16-050 (1)(h)); adds filling and draining of more than 0.5 acre of a wetland (WAC 222-16-050 (1)(i)); and adds even-aged timber harvest of contiguous areas larger than 240 acres (WAC 222-16-050 (1)(j)).

**Shade Requirements to Maintain Stream Temperature:** Requires use of a specified method to determine adequate shade cover for streams. No trees are to be removed from the riparian management zone if their removal would result in inadequate shade cover (WAC 222-30-040).

**Handling, Storage, and Application of Chemicals:** Segregates forest chemicals into pesticides, fertilizers, and other forest chemicals (WAC 222-16-010); provides specific rules for pesticides (WAC 222-38-020), fertilizers (WAC 222-38-030), and other forest chemicals (WAC 222-38-040); and provides for protection of wetlands from chemicals (chapter 222-38 WAC).

**Reasons Supporting Proposal:** Advances in knowledge show the need for modifying forest practices rules in order to accomplish the purposes and policies of the Forest Practices Act, chapter 76.09 RCW; and a court decision necessitated expansion of the list of practices subject to SEPA review, Class IV Special practices.

**Name of Agency Personnel Responsible for Drafting:** Ed Summerfield, 1007 South Washington, Olympia, WA, (206) 753-5315; **Implementation and Enforcement:** Jack Hulsey, 1007 South Washington, Olympia, WA, (206) 753-5315.

**Name of Proponent:** State of Washington Forest Practices Board, governmental.

Rule is necessary because of state court decision, Snohomish County Superior Court No. 89-2-069 23-5 (applies only to the definition of Class IV-Special forest practices).

**Explanation of Rule, its Purpose, and Anticipated Effects:** The proposal would provide for protecting wetlands in forests, regulating the cumulative effects of forest practices, regulating the size and timing of timber harvest, preserving trees required as habitat for cavity-nesting wildlife, and modifying existing rules to accommodate new knowledge. The overall purpose is to protect public resources while maintaining a viable forest industry. The proposal, if adopted, would provide greater protection for public resources.

**Proposal Changes the Following Existing Rules:** Extends the list of forest practices subject to SEPA review (WAC 222-16-050(1)); modifies rules for handling and use of chemicals in forests (chapter 222-38 WAC); modifies provisions for maintaining shade to avoid excessive stream temperatures (WAC 222-30-040); in rules regulating road construction and maintenance, and

timber harvesting, provides for protection of wetlands (chapters 222-24 and 222-30 WAC); and adds several definitions (WAC 222-16-010).

### Small Business Economic Impact Statement

#### Introduction

The Forest Practices Board is proposing to adopt changes to state forest practice regulations as provided for under chapter 76.09 RCW. These changes encompass forest practice rules regulating forest practices dealing with streamside temperature, chemicals, wildlife leave trees, wetlands, harvest size and timing, and cumulative effects.

The purpose of this assessment is to highlight the economic impacts of these forest practice regulations on specific industrial sectors and to determine if such impacts disproportionately fall on small businesses. Such assessments are required by the Regulatory Fairness Act, chapter 19.85 RCW.

#### The Regulatory Fairness Act

The Regulatory Fairness Act, chapter 19.85 RCW, was adopted in 1982 to minimize proportionately higher economic impacts of state regulations on small businesses. The act requires that state agencies review all regulations (proposed and existing) to ensure that the costs of compliance are considered, analyzed, and mitigated if they are found to place a disproportionately higher burden on small firms. "Small business" is defined in RCW 43.31.025 as "any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.["]

The Regulatory Fairness Act requires that all rules which have an economic impact on more than 10 percent of the businesses in any one industry or on more than 20 percent of all industries in the state be reviewed and, if necessary, altered to minimize the impact on small businesses. To satisfy the Regulatory Fairness Act, a small business economic impact statement is drafted for each rule that meets the above criteria. In the legislation, "industry" is defined as any activity at the three-digit SIC (standard industrial classification) level.

When a small business economic impact statement is required, it must include a brief description of the compliance requirements of the rule, a description of the kinds of professional services needed by a small business in order to comply, and, based on existing data, an analysis of the costs of compliance. Finally, a comparison should be made, to the greatest extent compliance with the 10 percent of the businesses which comprise the largest businesses required to comply with the proposed rules. For those compliance activities for which no precise cost estimates are available, qualitative statements may be possible concerning the relative impact on small and large firms. For purposes of comparison, agencies must use cost per employee, cost per hour of labor, cost per \$100 of sales, or any combination of these.

When it is found through the impact analysis that a rule places a disproportional burden on small businesses, the requirements of the rule must be mitigated. RCW 19.85.030(1) provides that agencies "shall reduce the

economic impact of the rule on small business." Changing a rule to minimize proportionately higher burdens on small businesses is not required when such changes would result in illegal or unconstitutional regulations or when changes are not "feasible in meeting the stated objective of the statutes which are the basis for the proposed rule." Unless an agency determines that changes are not legal or feasible, the agency must undertake one or more steps to reduce the impact: Establish differing compliance or reporting requirements or time tables for small businesses; clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses; establish performance rather than design standards; or exempt small businesses from any or all requirements of the rule.

**Economic Impact**

The proposed forest practice regulations will have an immediate economic impact on businesses, directly affect one or more industries, and cause increased costs to small businesses. The proposed regulations have the potential to restrict, modify, or prohibit certain forest practices which would have an economic impact on businesses. While the economic impacts probably would not affect more than 20 percent of all industries in the state of Washington, it will affect 10 percent of the businesses in at least one industry at the three-digit level in the state. Consequently, a small business economic impact statement is required.

Given the potential range of compliance costs, including developing mitigation plans for some particular forest practices, obtaining outside professional services or legal counsel, or restricting the range or extent of operations on some parcels, or restricting volume of timber removal, due to regulatory restrictions, it is likely that the relative impact on small firms will be greater on a per employee or per \$100 dollars of sales basis than for a large firm.

**Affected Industries**

The industries that would most likely be directly affected by one or more of the proposed forest practice regulations are listed in the table below. These are the three-digit SIC groups in which more than 10 percent of the firms could be affected by the proposed regulations.

Affected Firms by Industrial Sector and Size

Industry Group	Gross Business Income	Number of Taxpayers	Number of Firms <50 Employees	Number of Firms >50 Employees	Number of Firms with No Employees	Total Firms
<b>Forestry</b>						
081-Timber Tracts	\$31,716,393	105	35	3	14	52
<b>Lumber &amp; Wood Products</b>						
241-Logging Camps	\$1,105,469,840	2495	757	35	342	1134
242-Sawmills & Planing Mills	\$2,619,402,441	588	291	84	68	443
243-Millwork, Plywood & Structural Members	\$1,030,719,464	738	205	52	20	277
<b>Paper &amp; Allied Products</b>						
261-Pulp Mills	\$734,563,598	4	3	8	0	12
262-Paper Mills	\$1,853,641,469	8	7	14	2	11

Source: Washington State Department of Trade and Economic Development, 1989, The Regulatory Fairness Act, Chapter 19.85 RCW, Guidelines for State Agencies.

The numbers in the table must be interpreted with great care. It is highly probable that the number of timber tracts (firms in SIC 081) is substantially underreported. In 1977, there were 8447 individuals who owned less than 20 acres of timberland in western Washington.

About 20,800 individuals owned from 21 to 200 acres, another 1630 individuals owned from 201-500 acres of timberland; and only 668 other private landowners owned over 500 acres of timberland. It is not unreasonable to assume that at least the 668 landowners with at least 500 acres manage or harvest their timberlands at least once during their land tenure, if not periodically. One problem is that a taxpayer (individual or business) is commonly reported under the SIC industry from which it derives the majority of its revenues. Consequently, employment, earnings, and wage statistics for a large, vertically integrated timber company with over a million acres of managed timberland would commonly be reported under SIC 24 or 26 industries; statistics for their timberlands would not be reported separately under SIC 081 (timber tracts) industries.

Furthermore, these same statistics for a farmer with timber tracts would be reported under the appropriate agricultural SIC industries if his principal source of income was from his agricultural enterprises, rather than from timber harvests.

Thus, there are potentially many other firms, both large and small, that are classified in other 3-digit industries that could be affected by the proposed forest practice regulations. Most, if not all, of these would be affected by the proposed regulations.

The vast majority of the business units that would be impacted by the proposed forest practice regulations would be classified as small businesses. Indeed, using unadjusted data from the table, over 94 percent of the business units in SIC 081 (timber tracts) would be classified as small businesses. Furthermore, over 80 percent of the businesses in the SIC 24 industries (lumber and wood products) would be classified as small businesses.

**Comparison of Compliance Costs**

Costs associated with the proposed forest practices regulations are extensive. In general, higher administrative and operating costs should be expected, in addition to revenue losses from deferred timber harvests and reductions in long-term productivity. Higher planning and assessment, field design and layout, permit application and handling, field administration, and field monitoring costs will elevate general administrative costs. Operating costs associated with road layout, construction/reconstruction, maintenance, and abandonment will increase, as will logging and site clean up costs. Landowners will incur losses of revenue from short-term restrictions on the rate of harvest and harvest deferrals, as well as from areas set aside from full timber production.

Because of the lack of reliable data, no direct comparison between small and large industries using employment, hours of labor, or earnings is possible. Nevertheless, qualitative statements and professional judgment can be made on the relative impact on small and large businesses.

**Wildlife Reserve Trees:** The economic impact of the forest practice rule changes associated with wildlife reserve trees could encompass a wide array of direct and indirect impacts, ranging from lost timber revenue to higher insurance costs. Although not all inclusive, these impacts could be lost timber revenues from leave trees and acres taken out of production, higher harvesting

costs, higher insurance premiums, and greater risk to life and limb. Many of these costs will be directly associated with the number of acres harvested over time. While many of these costs may be proportional to acres operated on by small and large businesses, the impacts will probably be proportionately higher on small businesses when using number of employees, hours of labor, or sales as bases of comparison.

**Chemicals:** The economic impacts of the forest practice rule changes associated with chemicals could encompass a wide array of direct and indirect impacts, ranging from lost timber revenue to higher administrative costs. Although not all inclusive, these impacts could be lost timber revenues from lost growth opportunities, lost timber and land value due to undesirable species conversions, and higher application costs. While many of these costs may be proportional to acres operated on by small and large businesses, the impacts will probably be proportionately higher on small businesses when using number of employees, hours of labor, or sales as bases of comparison. Based on anecdotal observations and USDA Forest Service statistics for western Washington, nonindustrial private landowners own more acreage of hardwoods than private industry (59 percent of the total), acreage which is strongly correlated with streams and wetlands which these regulations are designed to protect and on which chemical use will be most restricted.

**Stream Temperature:** The economic impact of the forest practice rule changes associated with stream temperature primarily would result from lost timber revenue and higher operating costs. These impacts would include the loss of harvest volume opportunities associated with cutbacks in anticipated harvest plans to prevent preharvest temperature conditions from exceeding water temperature standards, and from complete deferral or prevention of harvesting where preharvest temperature conditions already exceed water temperature standards. These impacts will also be proportionately higher on small timber tract owners for the same reason cited above. That is, nonindustrial private landowners own more acreage of hardwoods than private industry, and this acreage is strongly correlated with streams and associated RMZs. Furthermore, the forest land holdings of the nonindustrial forest land ownership group tends to be concentrated in lower elevations and shade requirements increase as elevation decreases. For these two reasons alone this ownership group will bear a disproportionate burden in preventing preharvest temperature conditions from exceeding water temperature standards.

**Harvest Size and Timing:** While the economic impact of the proposed regulations on harvest size and timing could have substantial economic impacts on large businesses (the forest industry), they probably do not significantly or disproportionately impact small businesses (small landowners), either because of smaller ownership size or because of assumed tendencies toward smaller clearcuts.

**Wetlands:** The economic impact of the addition of forest practice rules and regulations for the management of wetlands in the state of Washington will most likely

be significant. Forested wetlands and the forested components of nonforested wetlands tend to be highly productive, and on many sites produce high valued cedar and spruce, in addition to western hemlock, among other species. The costs to landowners associated with lost harvest opportunities alone will be significant, not to mention significantly higher costs associated with road construction and maintenance, field design and layout, and other administrative and operating costs. These regulations will probably require that small businesses hire outside consultants for setting up timber harvest plans, and this alone will cause a disproportionate economic impact on small businesses. Furthermore, small forest landowners will be disproportionately impacted because they own more acreage of hardwoods than private industry, acreage which is also strongly correlated with streams and wetlands which these regulations are designed to protect. Even more significant is the distribution of total private forest land ownership of hardwood forest types between small and large landowners. According to the USDA Forest Service, nonindustrial private forest land owners control only 35 percent of the private forestland in western Washington; yet, they own 59 percent of the total hardwood acreage. Approximately 48 percent of the total acreage owned by this landownership group is in hardwood forest types, while only 18 percent of the total acreage owned by forest industry is in hardwood forest types. Consequently, any forest practice regulations which will tend to impact timberlands stocked by hardwood forest types to a greater degree than all forest types in general will have a substantially disproportionate economic impact on nonindustrial private forest landowners.

**Cumulative Effects:** The costs to forest land owners of the proposed forest practice rules and regulations pertaining to cumulative effects are highly uncertain. To date, no watershed screening has been conducted in the state; there is no data on the general conditions of the resources pertaining to water, fish, and capital improvements of the state; WAUs have not been identified nor have WAUs which might have sensitive or potentially sensitive resource conditions; and conditioning forest practice prescriptions which might be used in sensitive or potentially sensitive WAUs have not been developed and compared to forest practice activities which might be applied in absence of the proposed rules and regulations.

It is expected that the costs to the forest land owner will be extensive, more so than with any of the other proposed forest practice rules and regulations. Higher administrative and operating costs should be expected, in addition to revenue losses from deferred timber harvests and reductions in long-term forest productivity. Higher planning and assessment, field design and layout, permit application and handling, field administration, and field monitoring costs will elevate general administrative costs. Operating costs associated with road layout, construction/reconstruction, maintenance, and abandonment will increase, as will logging and site clean up costs. Landowners will incur losses of revenue from short-term restrictions on the rate of harvest and harvest deferrals, as well as from areas set aside from full timber production.



The burden of cumulative effects proposals will probably be disproportionately higher on small landowners. To the extent that large landowners, with spartially distributed land holdings, have options for moving harvesting activities from areas of sensitive resource conditions to other areas or sites, the costs of cumulative effects proposals will be substantial, but can be constrained. However, small landowners with all of their ownership in an area of sensitive resource conditions might not have the flexibility of larger landowners. To the extent that proposals would preclude these landowners from operating on such areas, or would significantly reduce the activities, the economic impacts to these landowners could be substantial, if not catastrophic. This would be particularly true to those whose life savings, retirement plans, emergency medical insurance, and other estate plans are wrapped up in these investments.

#### Conclusions

The proposed forest practice regulations will directly affect more than 10 percent of businesses in at least three industries at the 3-digit SIC level. The potential compliance costs of meeting the proposed regulations will be substantial at best, if not debilitating to some small businesses (nonindustrial private landowners).

It is highly likely that the package of regulations as a whole, as well as particular elements of the package, will impose a disproportionate impact on small businesses since it is assumed that most compliance costs will be independent of the size, employment, or gross revenue of an affected business.

Hearing Location: April 21, Spokane, 1:30-4:30 p.m. and 6:30-no later than 10:30 p.m., Holiday Inn, 4212 Sunset Boulevard; on April 22, Yakima, 1:30-4:30 p.m. and 6:30-no later than 10:30 p.m., Cavanaugh's, 607 East Yakima Avenue; on April 23, Everett, 1:30-4:30 p.m. and 6:30-no later than 10:30 p.m., Port of Everett Yacht Club, 14th Street Marina; on April 24, Kelso, 1:30-4:30 p.m. and 6:30-no later than 10:30 p.m., Red Lion, 510 Kelso Drive; and on April 25, Ocean Shores, 10:00 a.m.-1:00 p.m. and 2:00-no later than 6:00 p.m., Ocean Shores Convention Center, 120 West Chance A La Mer.

Testimony will be limited to three minutes per person except that the following hearings will be devoted to ten minutes of testimony from organizations: April 21 (Spokane), 1:30-4:30 p.m.; and on April 25 (Ocean Shores), 10:00 a.m. to 1:00 p.m.

Persons testifying at the hearings devoted to organizations will be allowed to testify for ten minutes. They must preregister no later than April 13. If more persons register than can be accommodated in the time available, members of the Forest Practices Board will select those who will be heard. Those not selected will be notified as soon as possible. To preregister, provide your name, organization, address, and telephone number to: Lisa Beusan, Forest Practices Division, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012.

Written testimony is encouraged. Submit written testimony to: Ed Summerfield, Forest Practices Division, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012.

Submit Written Comments to: Ed Summerfield, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, by April 28, 1992.

Date of Intended Adoption: June 26, 1992.

March 18, 1992

Brian Boyle

Commissioner of Public Lands

#### NEW SECTION

WAC 222-12-046 CUMULATIVE EFFECTS. The purpose of this section is to identify how the forest practices rules address changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices. This interaction is referred to as "cumulative effects." The following approaches have been taken:

(1) Title 222 WAC establishes minimum standards for all forest practices, regardless of the class of forest practice application.

(2) Forest practices which have a potential for a substantial impact on the environment have been classified as Class IV-Special or Class IV-General by WAC 222-16-050 and receive an evaluation as to whether or not a detailed statement must be prepared pursuant to chapter 43.21C RCW.

(3) Certain rules are designed to focus on specific aspects of cumulative effects of forest practices. For example:

(a) WAC 222-08-035 requires continuing review of the forest practices regulations and voluntary processes and adopts the concept of adaptive management. WAC 222-12-045 also adopts adaptive management.

(b) WAC 222-12-040 allows alternate plans that equal or exceed the protection of public resources as provided in the act and rule.

(c) WAC 222-24-050(1) allows the department to require road maintenance and abandonment plans for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources.

(d) WAC 222-30-025 addresses harvest unit size and separation requirements.

(e) Chapter 222-22 WAC addresses cumulative effects on the public resources of fish, water, and capital improvements of the state or its political subdivisions.

(f) Chapter 222-46 WAC establishes the enforcement policy for forest practices.

(4) The board is considering measures to further protect cultural resources and wildlife resources. The board shall continue consultation with the departments of ecology, fisheries, wildlife, natural resources, and federally recognized tribes on these resource issues.

AMENDATORY SECTION (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-12-090 FOREST PRACTICES BOARD MANUAL. When approved by the board the manual serves as an advisory technical supplement to these forest practices regulations. The department, in cooperation with the departments of fisheries, wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) ~~((Temperature sensitive determinations))~~ Method for determination of adequate shade requirements on streams needed for use with WAC 222-30-040.

(2) ~~((Procedures for leaving the required 50 percent or 75 percent shade as required in WAC 222-30-040.~~

(3) ~~A list of "critical wildlife habitats" as established under WAC 222-16-010(1).~~

(4) ~~The standard methods for measuring channel width, stream gradient and flow which are used in the water typing criteria WAC 222-16-030.~~

(5) ~~A chart for establishing recommended permanent culvert sizes and associated data.~~

(6) ~~Guidelines for clearing slash and debris from Type 4 and 5 Waters.~~

(7) ~~Guidelines for landing location and construction.~~

(8) ~~Guidelines for determining acceptable stocking levels.~~

~~((9))~~ (7) Guidelines for calculating average widths of riparian management zones.

(8) Guidelines for wetland delineation.

(9) Guidelines for wetland mitigation.

(10) The standard methodology, which shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC.

(11) A map of the watershed administrative units produced under WAC 222-22-020.

(12) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3). Guidelines required to be developed by these rules and other interpretive material may be published in tandem with the manual after review by the board or its committees, but do not require board approval unless otherwise specified in the rule.

**AMENDATORY SECTION** (Amending WSR 92-03-028, filed 1/8/92, effective 2/8/92)

WAC 222-16-010 GENERAL DEFINITIONS.\* Unless otherwise required by context, as used in these regulations:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas of potential harm to resource characteristics identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce and may be associated with open water.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Chemicals" means substances applied to forest lands or timber (to accomplish specific purposes and includes pesticides, insecticides, rodenticides, plant growth regulators, fungicides, fertilizers, desiccants, fire retardants when used in controlled burning, repellents, oil, dust-control agents (other than water), salt and other materials that may present hazards to the environment) including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation leaving fewer seedlings, saplings, or merchantable trees per acre than are prescribed under WAC 222-34-010 (1)(b) or 222-34-020 (1)(b). Forest practices involving the clearing of land of hardwoods, understocked stands, or brush where such practices fail to maintain minimum stocking levels prescribed in chapter 222-34 WAC are clearcuts. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five years or, if the qualifying trees are less than five years old, they have reached an average height of four feet.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: PROVIDED, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Critical ((wildlife)) habitat (federal)" means the habitat of any threatened or endangered species (~~(, as such habitat is established by the board in the forest practices board manual, or other situations as identified by the board, after consultation with the department of wildlife, where specific management practices are needed to prevent critical wildlife habitat destruction)~~) designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Department" means the department of natural resources.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: PROVIDED, That Christmas trees are forest trees and: PROVIDED FURTHER, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize disturbance of soils and vegetation during the yarding process. This includes suspending at least one end of the log during yarding, yarding during periods of low soil moisture, or when the ground is frozen and using equipment whose standard ground pressure is less than 7 pounds per square inch or equipment that typically uses a skid trail no more than twice, such as a hydraulic loader commonly referred to as a shovel.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products.

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Mitigation" means a process to address impacts to public resources. This process includes a clear sequence of mitigation options, including:

Avoidance of adverse impacts;

Minimization of the impact by limiting the magnitude of the action;  
Rectification of the impact by repairing, rehabilitating, or restoring  
the affected environment;

Reduction or elimination of impacts over time by preservation and  
maintenance operations during the action;

Compensation for the impacts by replacing, enhancing, or providing  
substitute resources or environments.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: PROVIDED, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control  
burning (other than water), nontoxic repellents, oil, dust-control  
agents (other than water), salt, and other chemicals used in forest  
management, except pesticides and fertilizers, that may present haz-  
ards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable  
characteristics of fish, water, and capital improvements of the state or  
its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical structural integrity.

If the methodology is developed and added to the manual to analyze  
the cumulative effects of forest practices on other characteristics of  
fish, water, and capital improvements of the state or its subdivisions,  
the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site preparation" means those activities associated with the removal  
of slash in preparing a site for planting and shall include scarifica-  
tion and/or slash burning.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Threatened or endangered species" ((applies to)) means all species  
of wildlife listed as "threatened" or "endangered" by the United States  
((Fish and Wildlife Service, except any species which the Washington  
department of wildlife determines does not require special protection  
under the Forest Practices Act because conservation of the species is  
reasonably assured through a recovery and enhancement program or  
existence of an adequate population on lands where commercial forestry  
and land development are prohibited, or through other means. For  
this purpose, "wildlife" means all members of the animal kingdom except  
insects and benthic organisms)) Secretary of the Interior, and all  
species of wildlife designated as "threatened" or "endangered" by the  
Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on  
the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment  
completed under WAC 222-22-050 or 222-22-060 together with the  
prescriptions selected under WAC 222-22-070.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the lands of the state lying west of  
the administrative line described in the definition of Eastern  
Washington.

"Wetland" means those areas that are inundated or saturated by  
surface or ground water at a frequency and duration sufficient to sup-  
port, and under normal circumstances do support, a prevalence of veg-  
etation typically adapted for life in saturated soil conditions, such as  
swamps, bogs, and similar areas. This includes wetlands created, re-  
stored, or enhanced as part of a mitigation procedure. This does not  
include constructed wetlands or the following surface waters of the  
state intentionally constructed from wetland sites: Irrigation and  
drainage ditches, grass lined swales, canals, agricultural detention fa-  
ilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and  
quantity, providing fish and wildlife habitat, and the production of  
timber.

"Wetland management zone" means a specified area adjacent to  
Type A and B Wetlands where specific measures are taken to protect  
the wetland functions.

"Wildlife" means all species of the animal kingdom whose members  
exist in Washington in a wild state. The term "wildlife" includes, but  
is not limited to, any mammal, bird, reptile, amphibian, fish, or inver-  
tebrate, at any stage of development. The term "wildlife" does not in-  
clude feral domestic mammals or the family Muridae of the order  
Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or  
dying trees which provide or have the potential to provide habitat for

those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

#### AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

##### WAC 222-16-020 WATER AND WETLAND CATEGORIES.

\*The following types of water and wetlands are used in these regulations (the system for typing the waters is as). The typing systems are set forth in WAC 222-16-030 water typing system, and WAC 222-16-035 wetland typing system.

(1) "Type 1 water" means all waters, within their ordinary high-water mark, (as) inventoried as "shorelines of the state" under chapter 90.58 RCW, and chapters 173-18 and 173-20 WAC. These waters include "shorelines of state-wide significance" which are subject to additional protective requirements under chapter 90.58 RCW.

(2) "Type 2 water" shall mean segments of natural waters which are not classified as Type 1 water and have a high use and are important from a water quality standpoint for:

- (a) Domestic water supplies,
- (b) Public recreation,
- (c) Fish spawning, rearing, or migration or wildlife uses; or
- (d) Are highly significant to protect water quality.

(3) "Type 3 water" shall mean segments of natural waters which are not classified as Type 1 or 2 water and have a moderate to slight use and are moderately important from a water quality standpoint for:

- (a) Domestic use,
- (b) Public recreation,
- (c) Fish spawning, rearing, or migration or wildlife uses; or
- (d) Have moderate value to protect water quality.

(4) "Type 4 water" shall mean segments of natural waters which are not classified as Type 1, 2 or 3. Their significance lies in their influence on water quality downstream in Type 1, 2 and 3 waters. These may be perennial or intermittent.

(5) "Type 5 water" means all other waters, in natural water courses, including streams with or without a well-defined channel, areas of perennial or intermittent seepage, ponds, and natural sinks. Drainage ways having short periods of spring runoff are considered to be Type 5 waters.

(6) "Type A wetland" means nonforested wetlands greater than 0.5 acre in size with ponded or standing open water, or bogs or fens greater than 0.25 acre.

(7) "Type B wetland" means nonforested wetlands greater than 0.5 acre in size without open water.

(8) "Type C wetland" means forested wetlands greater than 1 acre and nonforested wetlands less than 0.5 acre and greater than 0.25 acre.

#### AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-16-030 WATER TYPING SYSTEM. \*The department in cooperation with the departments of fisheries, wildlife and ecology, and in consultation with affected Indian tribes shall classify

streams, lakes and ponds and prepare stream classification maps showing the location of Type 1, 2, 3 and 4 Waters within the various forested areas of the state. Such maps shall be available for public inspection at area offices of the department. The waters will be classified using the following criteria, except that these agencies may approve classifications of water segments which do not follow the criteria when substantiated evidence demonstrates that use of the criteria would result in incorrect classification of such water according to the definitions contained in WAC 222-16-020. When so requested by any affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fisheries, wildlife and ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

(1) "Type 1 Water" means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" or "shorelines of state-wide significance" under chapter 90.58 RCW, but not including those waters' associated wetlands.

(2) "Type 2 Water" classification shall be applied to segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 100 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are within a federal, state, local, or private campground having more than 30 camping units: PROVIDED, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

(c) Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater in width between the ordinary high-water marks and having a gradient of less than 4 percent.

(ii) Lakes, ponds, impoundments having a surface area of 1 acre or greater at seasonal low water.

(3) "Type 3 Water" classifications shall be applied to segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:

(i) Stream segments having a defined channel of 5 feet or greater in width between the ordinary high-water marks; and having a gradient of less than 12 percent and not upstream of a falls of more than 10 vertical feet.

(ii) Ponds, impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to an anadromous fish stream.

(c) Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

(i) Stream segments having a defined channel of 10 feet or greater in width between the ordinary high-water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than 12 percent.

(ii) Ponds or impoundments having a surface area greater than 0.5 acre at seasonal low water.

(d) Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 Water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 Water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.

(4) "Type 4 Water" classification shall be applied to segments of natural waters which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 Water upstream until the channel width becomes less than 2 feet in width between the ordinary high-water marks.

(5) "Type 5 Water" classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4; areas of perennial or intermittent seepage, ponds and drainageways having short periods of spring or storm runoff.

(6) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of parttime occupancy.

(c) "Resident game fish" means game fish as described in the Washington game code that spend their life cycle in fresh water. Steelhead, searun cutthroat and Dolly Varden trout are anadromous game fish and should not be confused with resident game fish.

(d) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(e) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(f) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(g) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

(h) "Intermittent streams" means those segments of streams that normally go dry.

#### NEW SECTION

WAC 222-16-035 WETLAND TYPING SYSTEM. \*The department in cooperation with the departments of fisheries, wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified using the following criteria. When so requested by any affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fisheries, wildlife, and ecology, and affected Indian tribes and those contesting the adopted wetland types. These conferences shall be established under procedures established in WAC 222-46-020.

(1) "Type A Wetland" classification shall be applied to all wetlands which:

(a) Are greater than 0.5 acre in size, including any acreage of open water where the water is completely surrounded by the wetland; and

(i) Are associated with at least 0.5 acre of open water. The open water must be present on the site for at least 7 consecutive days between April 1 and October 1 to be considered for the purposes of these rules; and

(ii) Are nonforested wetlands where the forest overstory trees have a crown closure of less than 30%; or

(b) Are bogs and fens greater than 0.25 acre.

(2) "Type B Wetland" classification shall be applied to all wetlands which:

(a) Are greater than 0.5 acre in size; and

(b) Are nonforested wetlands where the forest overstory trees have a crown closure of less than 30%.

(3) "Type C Wetland" classification shall be applied to all wetlands which:

(a) Are forested wetlands where the overstory trees have a crown closure of 30% or more; and

(b) Are greater than 1 acre in size; and

(c) Shall include nonforested wetlands less than 0.5 acre but greater than 0.25 acre in size.

AMENDATORY SECTION (Amending WSR 91-23-052, filed 11/15/91, effective 12/16/91)

WAC 222-16-050 CLASSES OF FOREST PRACTICES. There are 4 classes of forest practices created by the act. (~~These classes are listed below in the order most convenient for the applicant's use in determining into which class his operations fall.~~) All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices regulations.

(1) "Class IV - special." Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

\*~~(a) ((Aerial application of pesticides to an "area of water supply interest" as determined according to WAC 222-38-020 (5)(i):~~

~~(b) Harvesting, road construction, site preparation or aerial application of pesticides:~~

~~(i) On lands known to contain a breeding pair or the nest or breeding grounds of any threatened or endangered species; or~~

~~(ii) Within the critical habitat designated for such species by the United States Fish and Wildlife Service:~~

~~(c) Widespread use of DDT or a similar persistent insecticide.~~

~~(d) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland or its wetland management zone.~~

~~(b) Specific forest practices listed in WAC 222-16-080 on lands designated as:~~

~~(i) Critical wildlife habitat (state) of threatened or endangered species; or~~

~~(ii) Critical habitat (federal) of threatened or endangered species except those excluded by the board under WAC 222-16-080(3).~~

~~(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.~~

\*~~((e)) (d) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, when such slide prone areas occur on an uninterrupted slope above ((a) Type 1, 2, 3 or 4)) any water type, wetland type, or capital improvement of the state or its political subdivisions where there is potential for a substantial debris flow or mass failure to cause significant impact to public resources.~~

\*~~(e) Timber harvest in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, on slide prone areas, field verified by the department, where soils, geologic structure, and local hydrology indicate that canopy removal has the potential for increasing slope instability, when such areas occur on an uninterrupted slope above any water or wetland type, or a capital improvement of the state or its political subdivisions where there is a potential for a substantial debris flow or mass failure to cause significant impact to public resources.~~

~~(f) Timber harvest, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation, as high avalanche hazard.~~

~~(g) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.~~

\*~~(h) Forest practices subject to a watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in watershed analysis.~~

\*~~(i) Filling or draining of more than 0.5 acre of a wetland.~~

~~(j) Proposed timber harvest which would result in contiguous areas larger than two hundred forty acres harvested by one landowner using~~

even-aged harvest methods, excepting salvage operations for timber damaged by wind, disease, insect, and fire. The size of the harvested area shall be determined in accordance with WAC 222-30-025(2).

(2) "Class IV - general." Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special." Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with State Environmental Policy Act.

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, or on lands being converted to another use.

(b) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. (See WAC 222-16-060 and 222-34-050.)

(3) "Class I." Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

\* (b) Road maintenance except: (i) Replacement of bridges and culverts across Type 1, 2, 3 or flowing Type 4 Waters; or (ii) movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.

\* (c) Construction of landings less than 1 acre in size, if not within a shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or 3 Water, ((or)) the ordinary high-water mark of a Type 4 Water, the wetland management zone of a Type A or B Wetland or within a Type C Wetland.

\* (d) Construction of less than 600 feet of road on a sideslope of 40 percent or less if the limits of construction are not within the shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or Type 3 Water, ((or)) the ordinary high-water mark of a Type 4 Water, the wetland management zone of a Type A or B Wetland or within a Type C Wetland.

\* (e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type 1 Water and does not involve disturbance of the beds or banks of any waters.

\* (f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

\* (n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type 1 Water, the riparian management zone of any Type 2 or 3 Water, or the ordinary high-water mark of a Type 4 Water, the wetland management zone of a Type A or B Wetland or within a Type C Wetland.

\* (o) Ground application of chemicals. (See WAC 222-38-020 and 222-38-030.)

\* (p) Aerial application of chemicals (except insecticides) when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type 1 Water or the riparian management zone of a Type 2 or 3 Water, or within the ordinary high-water mark of a Type 4 Water or flowing Type 5 Water, and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on active and inactive roads. An hydraulics project approval from the Washington department of wildlife or the Washington department of fisheries or the appropriate Indian tribe may be required.

(4) "Class II." Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: PROVIDED, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 75.20.100) or is within a "shorelines of the state," or involves a bond in lieu of landowners signature (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, or on lands being converted to another use. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification.

(b) Renewal of a previously approved Class III or IV forest practice application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

\* (c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, ((or)) within the ordinary high-water mark of a Type 4 Water, within the wetland management zone of a Type A or B Wetland or within a Type C Wetland:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

\* (d) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, ((or)) within the ordinary high-water mark of a Type 4 Water, within the wetland management zone of a Type A or B Wetland or within a Type C Wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

Salvage of logging residue.

\* (e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, ((or)) within the ordinary high-water mark of a Type 4 Water, within the wetland management zone of a Type A or B Wetland or within a Type C Wetland and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of 600 or more feet of road, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "Class III" forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 75.20.100).

\* (b) Those within the shorelines of the state other than those in a Class I forest practice.

- \*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.
- \*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.
- \*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.
- \*(f) All road construction and reconstruction except as listed in Classes I, II and IV forest practices.
- (g) Opening of new pits or extensions of existing pits over 1 acre.
- \*(h) Road maintenance involving:
  - (i) Replacement of bridges or culverts across Type 1, 2, 3, or flowing Type 4 Waters; or
  - (ii) Movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.
- (i) Operations involving an applicant's bond in lieu of a landowner's signature.
- (j) Site preparation or slash abatement not listed in Classes I or IV forest practices.
- (k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:
  - (i) On or are eligible for listing on the National Register of Historic Places; or
  - (ii) Have been identified to the department as being of interest to an affected Indian tribe.
- (l) Harvesting exceeding 19 acres in a designated difficult regeneration area.
- (m) Utilization of an alternate plan. See WAC 222-12-040.
- \*(n) Any filling of Type A, B, or C Wetlands, except where classified as Class IV forest practices.

**NEW SECTION**

WAC 222-16-070 PESTICIDE USES WITH THE POTENTIAL FOR A SUBSTANTIAL IMPACT ON THE ENVIRONMENT. \*To identify forest practices involving pesticide uses that have the potential for a substantial impact on the environment, the department shall apply the process prescribed in this section.

(1) Pesticide list - The department shall maintain a list of all pesticides registered under chapter 15.58 RCW for use in forest practices. The department shall conduct, in consultation with the departments of ecology, health, agriculture, and wildlife, an annual review of the list for the purpose of including new pesticides and/or removing those pesticides which have been prohibited from use. The list shall be available to the public at each of the department's offices. A list of the department's offices and their addresses appears at WAC 332-10-030. In preparing the pesticide list, the department shall include information on the following characteristics:

- (a) Active ingredients, name brand or trade mark, labeled uses, pesticide type, EPA-registration number;
- (b) Toxicity of the pesticide based on the Environmental Protection Agency (EPA) label warning under 40 C.F.R. 156.10 (h)(1), listed as "caution," "warning," "danger," or "danger - poison"; and
- (c) Whether the pesticide is a state restricted use pesticide for the protection of ground water under WAC 16-228-164(1).

(2) Key for evaluating applications. To determine whether aerial application of a pesticide has the potential for a substantial impact on the environment, the department shall apply the following analysis:

KEY FOR EVALUATION OF SITE SPECIFIC USE OF AERIALY APPLIED CHEMICALS

Question	Question	Resp	Action
1	Is the pesticide on the pesticide list (WAC 222-16-070(1))?	Yes No	go to 2 Class IV Sp
2	Is the toxicity rating for the pesticide to be used "Danger - Poison" as designated in the pesticide list (WAC 222-16-070(1)(b))?	Yes No	Class IV Sp go to 3(a)
3 (a)	Is Bacillus thuringiensis (BT) the only pesticide being used on this application?	Yes No	go to 3(b) go to 4(a)
3 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical wildlife habitat (State) of a species within the application area that is susceptible to the BT strain being used.	Yes No	Class IV Sp Class III
4 (a)	Is this operation occurring over ground water with a high susceptibility to contamination as specified in EPA 910/9-87-189 or in documentation provided by the department of ecology?	Yes No	go to 4(b) go to 5(a)
4 (b)	Is this pesticide a state restricted use pesticide for the protection of ground water under WAC 16-228-164 (1)	Yes No	Class IV Sp go to 5(a)
5 (a)	Is the operation adjacent (within 100 ft.) of surface water?	Yes No	go to 5(b) go to 5(e)
5 (b)	Determine the toxicity rating: * Is the toxicity rating "Caution" or "Warning"? * Is the toxicity rating "Danger"?	Yes Yes	go to 5(c) go to 5(d)
5 (c)	Is there a Group A or B water surface water system (WAC 246-250-020) intake OR a fish hatchery intake within 2 miles downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (d)	Is there a Group A or B water surface system intake OR a fish hatchery intake within 3 miles downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (e)	Is the operation within 200 feet of the intake of a Group A or B spring water system?	Yes No	Class IV Sp go to 5(f)
5 (f)	Is the operation applying a pesticide in a Type A or B wetland or its WAZ?	Yes No	Class IV Sp go to 6(a)
6 (a)	Does any portion of the planned operation cover 240 or more contiguous acres? Pesticide treatment units will be considered contiguous if they are separated by less than 300 feet or treatment dates of adjacent units are less than 90 days apart.	Yes No	Class IV Sp go to 6(b)
6 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical wildlife habitat (State) of a species within the application area.	Yes No	Class IV Sp go to 6(c)
6 (c)	If there is a special concern identified for this pesticide in the Board manual, does it apply to this application?	Yes No	Class IV Sp Class III

(3) A recommended special concerns list (see question 6(c) in the above key) shall be developed by the board's forest chemicals taskforce and presented to the board for approval and inclusion in the board's manual. Special concerns shall include situations where use of pesticides has the potential for a substantial impact on the environment, beyond those covered specifically in the key in subsection (2) of this section.

**NEW SECTION**

WAC 222-16-080 CRITICAL WILDLIFE HABITATS (STATE) AND CRITICAL HABITAT (FEDERAL) OF THREATENED AND ENDANGERED SPECIES. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald Eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of an active nest site between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of regular use areas. Regular use areas are defined as locations where 10 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years. Regular use areas shall include communal roosting sites meeting the requirements of a regular use area but shall not include refuse or garbage dumping sites.

(b) Gray Wolf - harvesting, road construction, or site preparation within 1 mile of an active den site or regular use areas between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year. Regular use areas are defined as locations where 1 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years.

(c) Grizzly Bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of an active den site between the dates of October 1 and May 30 or 0.25 mile at other times of the year; and within 0.25 mile of regular use areas. Regular use areas are defined as locations where 1 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years. Regular use areas shall not include refuse or garbage dumping sites.



(d) Mountain Caribou – harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of an active breeding area or regular use areas. Regular use areas are defined as locations where 5 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years.

(e) Oregon silverspot butterfly – harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence.

(f) Peregrine falcon – harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of an active nest site between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year or within 0.25 mile of a regular use area. Regular use areas are defined as locations where 1 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years.

(g) Sandhill crane – harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of an active nesting area or regular use area between the dates of March 1 to August 30. Regular use areas are defined as locations where 10 or more individuals are observed at one time within an area less than 160 acres in size on at least 3 independent occasions within a calendar year or are observed once in the area in at least 3 of 5 consecutive years.

(h) Northern spotted owl – The department shall determine what constitutes critical wildlife habitat (state) for spotted owls in consultation with the department of wildlife. The department's determination shall be limited to harvesting, road construction, aerial application of pesticides, or site preparation on lands known to contain Status 1, 2, 3, or 4 spotted owls.

Within critical wildlife habitat state for Status 4 owl sites, the department shall require that adequate surveys be conducted to determine whether these sites should be upgraded to Status 1, 2, or 3, or removed from the TRAX data base.

This rule is intended to be interim and shall be changed as necessary upon completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

The department shall rely upon the department of wildlife for the determination of status based on the following definitions:

- Status 1 Pair or reproductive – the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.
- Status 2 Two birds, pair status unknown – the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.
- Status 3 Resident territorial single – the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area).
- Status 4 Single, status unknown – the response of a male or female that does not meet any of the above category definitions.

(i) Western pond turtle – harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of an individual occurrence.

(2) A site specific special wildlife management plan developed by the landowner shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species by the wildlife commission. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered.

Essential habitats may include but are not limited to feeding areas, cover, travel and migration corridors, and reproduction areas. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV – special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV – Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)(ii).

#### Chapter 222-22 WAC WATERSHED ANALYSIS

##### NEW SECTION

WAC 222-22-010 POLICY. (1) Public resources may be adversely affected by the interaction of two or more forest practices. The purpose of this rule is to address these cumulative effects of forest practices on the public resources of fish, water, and capital improvements of the state or its political subdivisions. The long-term objective of this rule is to protect and restore these public resources and the productive capacity of fish habitat adversely affected by forest practices while maintaining a viable forest products industry. The board intends that this be accomplished through prescriptions designed to protect and allow the recovery of fish, water, and capital improvements of the state or its political subdivisions, through enforcement against non-compliance of the forest practice rules in this Title 222 WAC, and through voluntary mitigation measures. This system also allows for monitoring, subsequent watershed analysis, and adaptive management.

(2) Adaptive management in a watershed analysis process requires advances in technology and cooperation among resource managers. The board finds that it is appropriate to promulgate rules to address certain cumulative effects by means of the watershed analysis system, while recognizing the pioneering nature of this system and the need to monitor its success in predicting and preventing adverse change to fish, water, and capital improvements of the state and its political subdivisions.

(3) Many factors other than forest practices can have a significant effect on the condition of fish, water, and capital improvements of the state or its political subdivisions. Nonforest practice contributions to cumulative effects should be addressed by the appropriate jurisdictional authorities. When a watershed analysis identifies a potential adverse effect on fish, water, and capital improvements of the state or its political subdivisions from activities that are not regulated under chapter 76.09 RCW, the department should notify any governmental agency or Indian tribe having jurisdiction over those activities.

(4) The rules in this chapter set forth a system for identifying the probability of change and the likelihood of this change adversely affecting specific characteristics of fish, water, and capital improvements of the state or its political subdivisions, and for using forest management prescriptions to avoid or minimize significant adverse effects from forest practices.

(5) These rules are intended to be applied and should be construed in such a manner as to minimize the delay associated with the review of individual forest practice applications and notifications by increasing the predictability of the process and the appropriate management response.

##### NEW SECTION

WAC 222-22-020 WATERSHED ADMINISTRATIVE UNITS. (1) For purposes of this chapter, the state is divided into areas known as watershed administrative units (WAUs). The department shall, in cooperation with the departments of ecology, fisheries, and wildlife, federally recognized Indian tribes, local government entities, forest land owners, and the public, define WAUs throughout the state. The department shall identify WAUs on a map, which will be included in the manual.

(2) WAUs should generally be between 10,000 to 50,000 acres in size. The board recognizes, however, that identified watershed processes and potential effects on resource characteristics differ, and require different spatial scales of analysis, and the department's determination of the WAUs should recognize these differences. The board further recognizes that mixed land uses will affect the ability of a watershed analysis to predict probabilities and identify causation as required under this chapter, and the department's conduct and approval of a watershed analysis under this chapter shall take this effect into account.

(3) The department is directed to conduct periodic reviews of the WAUs adopted under this chapter to determine whether revisions are needed to more efficiently assess potential cumulative effects. The department shall consult the departments of ecology, fisheries, and wildlife, affected Indian tribes, forest land owners, local government entities, and the public. From time to time and as appropriate, the department shall make recommendations to the board regarding revision of watershed administrative units.

#### NEW SECTION

**WAC 222-22-030 QUALIFICATION OF WATERSHED RESOURCE ANALYSTS, SPECIALISTS, AND FIELD MANAGERS.** (1) The department shall set the minimum qualifications for analysts participating in level 1 assessments conducted under WAC 222-22-050, for specialists participating in level 2 assessments conducted under WAC 222-22-060, and for field managers participating in recommendation of prescriptions under WAC 222-22-070. The minimum qualifications shall be specific for the disciplines needed to participate in level 1 and level 2 assessments and in the recommendations of prescriptions, and shall include, at a minimum, formal education in the relevant discipline and field experience. Minimum qualifications for analysts participating in level 2 assessments should typically include a graduate degree in the relevant discipline.

(2) The department shall coordinate with relevant state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public to seek and utilize available qualified expertise to participate in watershed analysis.

(3) Qualified analysts, specialists, and field managers shall, while and only for the purpose of conducting a watershed analysis or monitoring in a WAU, be duly authorized representatives of the department for the purposes of RCW 76.09.150.

(4) An individual may qualify in more than one science or management skill. Qualification under subsection (1) of this section shall be effective for 5 years. When a qualification expires, a person requesting requalification shall meet the criteria in effect at the time of requalification.

(5) The department shall provide and coordinate training for, maintain a register of, and monitor the performance of qualified analysts, specialists, and field managers by region. The department shall disqualify analysts, specialists, and field managers who fail to meet the levels of performance required by the qualification standards.

#### NEW SECTION

**WAC 222-22-040 WATERSHED PRIORITIZATION.** (1) The department shall determine, by region, the order in which it will analyze WAUs. The department shall cooperate with the departments of ecology, wildlife, and fisheries, affected Indian tribes, forest land owners, and the public in setting priorities. In setting priorities or reprioritizing WAUs, the department shall consider the availability of participation and assistance that may be provided by affected Indian tribes and local government entities.

(2) Except as set forth in subsection (3) of this section, the department shall undertake a watershed analysis on each WAU, in the order established under subsection (1) of this section.

(3) The owner or owners of ten percent or more of the nonfederal forest land acreage in a WAU may notify the department in writing that it intends to conduct a level 1 assessment, level 2 assessment, or both, and the prescription recommendation process on the WAU under this chapter at its own expense. The notice shall identify the teams proposed to conduct the watershed analysis, which shall be comprised of individuals qualified by the department pursuant to WAC 222-22-030. The department shall promptly notify any owner or owners sending notice under this subsection if any member of the designated teams is not so qualified. Within 30 days of delivering a notice to the department under this subsection, the forest land owner or owners shall begin the level 1 assessment under WAC 222-22-050 or, at its option, the level 2 assessment under WAC 222-22-060. An approved forest land

owner team shall, while and only for the purposes of conducting a watershed analysis in a WAU, be a duly authorized representative of the department for the purposes of RCW 76.09.150. The board encourages forest land owners conducting assessments under this chapter to include available, qualified expertise from state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public.

(4) Before beginning an analysis in a WAU, the department or the forest land owner conducting the analysis shall provide reasonable notice, including notice by regular United States mail where names and addresses have been provided to the department, to all forest land owners in the WAU, and to affected Indian tribes. The department or the forest land owner shall provide reasonable notice to the public and to state, federal, and local government entities, by, among other things, posting the notice conspicuously in the office of the departmental region containing the WAU. The notice shall be in a form designated by the department and give notice that an analysis is being conducted, by whose team, the time period of the analysis, and the dates and locations in which the draft analysis will be available for review and comment.

#### NEW SECTION

**WAC 222-22-050 LEVEL 1 WATERSHED RESOURCE ASSESSMENT.** (1) To begin a watershed resource analysis on a WAU, the department shall assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1). A forest land owner or owners acting under WAC 222-22-040(3) may assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1) or, at its option, may begin the analysis under WAC 222-22-060. Each level 1 team shall include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science;
- (e) Geomorphology; and
- (f) Such other disciplines as may be necessary and indicated in the methodology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

(2) The level 1 team shall perform an inventory of the WAU utilizing the methodology, indices of resource condition, and checklists set forth in the manual in accordance with the following:

(a) The team shall survey the WAU for fish, water, and capital improvements of the state or its political subdivisions and shall display their location on a map of the WAU. The team shall determine the current condition of the resource characteristics of these resources, shall classify their condition as "good," "fair," or "poor," and shall display this information on the map of the WAU. The criteria used to determine current resource conditions shall include indices of resource condition, in addition to such other criteria as may be included in the manual. The indices will include two levels, which will distinguish between good, fair, and poor conditions.

(b) The team shall assess the likelihood that identified watershed processes in a given physical location will be adversely changed by one forest practice or by cumulative effects and that, as a result, a material amount of water, wood, sediment, or energy (e.g., affecting temperature) will be delivered to fish, water, or capital improvements of the state or its political subdivisions. (This process is referred to in this chapter as "adverse change and deliverability.") (For example, the team will address the likelihood that road construction will result in mass wasting and a slide that will in turn reach a stream.) The team shall rate this likelihood of adverse change and deliverability as "high," "medium," "low," or "indeterminate." Those likelihoods rated high, medium, or indeterminate shall be displayed on the map of the WAU.

(c) For each instance of high, medium, or indeterminate likelihood of adverse change and deliverability identified under (b) of this subsection, the team shall assess the vulnerability of potentially affected resource characteristics. Criteria for resource vulnerability shall include indices of resource condition as described in (a) of this subsection and quantitative means to assess the likelihood of material adverse effects to resource characteristics caused by forest practices. The criteria may also include the recoverability of the resource, the persistence of effects, and other relevant criteria. (For example, the team will assess the potential damage that increased sediment caused by a slide

reaching a stream will cause to salmon spawning habitat that is already in fair or poor condition.) The team shall rate this vulnerability "high," "medium," "low," or "indeterminate" and shall display those vulnerabilities on the map of the WAU. If there are no other criteria in the manual to assess vulnerability at the time of the assessment, current resource condition shall be used, with good condition equivalent to low vulnerability, fair condition equivalent to medium vulnerability, and poor condition equivalent to high vulnerability.

(d) The team shall identify as areas of resource sensitivity, as provided in table 1 of this section, the locations in which a management response other than the standard forest practice rules is required under WAC 222-22-070(3) because, as a result of one forest practice or of cumulative effects, there is a combination of a high, medium, or indeterminate likelihood of adverse change and deliverability under (b) of this subsection and a low, medium, high, or indeterminate vulnerability of resource characteristics under (c) of this subsection:

**Table 1**  
**AREAS OF RESOURCE SENSITIVITY AND MANAGEMENT RESPONSE**  
Likelihood of Adverse Change and Deliverability

		Low	Medium	High
Vulnerability	Low	Standard rules	Standard rules	Response: Prevent or avoid
	Medium	Standard rules	Response: Minimize	Response: Prevent or avoid
	High	Standard rules	Response: Prevent or avoid	Response: Prevent or avoid

The team shall display the areas of resource sensitivity on the map of the WAU.

(e) The decision criteria used to determine low, medium, and high likelihood of adverse change and deliverability shall be as set forth in the manual. A low designation generally means there is minimal likelihood that there will be adverse change and deliverability. A medium designation generally means there is a significant likelihood that there will be adverse change and deliverability. A high designation generally means that adverse change and deliverability is more likely than not with a reasonable degree of confidence. Any areas identified as indeterminate in the level 1 assessment shall be classified for the purposes of the level 1 assessment as medium until a level 2 assessment is done on the WAU under WAC 222-22-060, during which the uncertainties shall be resolved.

(f) The team shall prepare a causal mechanism report regarding the relationships of each process identified in (b) and (c) of this subsection. The report shall demonstrate that the team's determinations were made in accordance with the manual. If, in the course of conducting a level 1 assessment, the team identifies areas in which voluntary corrective action will significantly reduce the probability of damage to the condition of a resource characteristic, the team shall include this information in the report, and the department shall convey this information to the applicable land owner.

(3) Within 21 days of mailing notice under WAC 222-22-040(4), the level 1 team shall submit to the department its draft level 1 assessment, which shall consist of the map of the WAU marked as set forth in this section and the causal mechanism report proposed under subsection (2)(f) of this section.

(4) If the level 1 assessment contains any areas in which the likelihood of adverse change and deliverability or resource vulnerability are identified as indeterminate under this section or if the level 1 methodology recommends it, the department shall assemble a level 2 assessment team under WAC 222-22-060 to resolve the uncertainties in the assessment, unless a forest land owner acting under WAC 222-22-040(3) has conducted a level 2 assessment on the WAU.

(5) Pending the completion of the level 2 assessment, if any, on the WAU, the department shall select interim prescriptions using the process and standards described in WAC 222-22-070 (1), (2), and (3) and 222-22-080(3) and shall apply them to applications and notifications as provided in WAC 222-22-090 (1) and (2). Before submitting recommended interim prescriptions to the department, the field managers' team under WAC 222-22-070(1) shall review the recommended prescriptions with available representatives of the jurisdictional management authorities of the fish, water, and capital improvements of the state or its political subdivisions in the WAU, including, but not limited to, the departments of fisheries, ecology, and affected Indian tribes.

**NEW SECTION**

**WAC 222-22-060 LEVEL 2 WATERSHED RESOURCE ASSESSMENT.** (1) The department, or forest land owner acting under WAC 222-22-040(3), may assemble a level 2 assessment team either, in the case of a forest land owner, to begin a watershed analysis or to review the level 1 assessment on a WAU. The level 2 team shall consist of specialists qualified under WAC 222-22-030(1). Each level 2 team shall include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science;
- (e) Geomorphology; and
- (f) Such other disciplines as may be necessary and indicated in the methodology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to designate one qualified member of the team at its own expense.

(2) The level 2 team shall perform an assessment of the WAU utilizing the methodology, indices of resource condition, and checklist set forth in the manual in accordance with the following:

(a) If a level 1 assessment has not been conducted under WAC 222-22-050, the assessment team shall complete the tasks required under WAC 222-22-050(2), except that the level 2 team shall not rate any likelihood of adverse change and deliverability or resource vulnerability as indeterminate.

(b) If the level 2 team has been assembled to review a level 1 assessment, the level 2 team shall, notwithstanding its optional review of all or part of the level 1 assessment, review each likelihood of adverse change and deliverability and resource vulnerability rated as indeterminate and shall revise each indeterminate rating to low, medium, or high and shall revise the map of the WAU accordingly.

(3) The level 2 team shall submit to the department its draft level 2 assessment, which shall consist of the map of the WAU and the causal mechanism report.

(4) The level 2 team shall endeavor to produce a consensus report. If the level 2 team is unable to agree as to one or more areas of resource sensitivity, alternative designations and an explanation therefor shall be included in the draft assessment. Where the draft level 2 assessment delivered to the department contains alternative designations, the department shall within 30 days of the receipt of the draft level 2 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

**NEW SECTION**

**WAC 222-22-070 PRESCRIPTION RECOMMENDATION.**

(1) For each WAU for which a watershed analysis is undertaken, the department, or forest land owner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified under WAC 222-22-030(1). The team shall include one or more persons who shall be qualified in:

- (a) Forest resource management;
- (b) Forest harvest and road systems engineering;
- (c) Forest hydrology;
- (d) Fisheries science or management; and
- (e) Such other disciplines as may be necessary and indicated in the methodology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

(2) Each forest land owner in a WAU shall have the right to submit to the department or the forest land owner conducting the watershed analysis prescriptions for areas of resource sensitivity on its land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

(3) For each identified area of resource sensitivity, the field managers' team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend to the department prescriptions. These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(d), the likelihood of adverse change and deliverability that has the potential to

cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest land owners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Each set of prescriptions shall provide for an option for an alternative plan, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity; and

(c) The regulation of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.

(4) The field managers' team shall submit the recommended prescriptions to the department within 30 days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within 21 days of the submission to the department of the level 1 assessment under WAC 222-22-050.

#### NEW SECTION

WAC 222-22-080 APPROVAL OF WATERSHED ANALYSIS. (1) Upon receipt of the recommended prescriptions resulting from a level 2 assessment under WAC 222-22-060 or a level 1 assessment under WAC 222-22-050 where a level 2 assessment will not be conducted, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology, fisheries, and wildlife, affected Indian tribes, local government entities, forest land owners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the prescriptions, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

(2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, and capital improvements of the state or its political subdivisions.

(3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) For the prescriptions, that they are not designed to accomplish the purposes and policies of this chapter and of the Forest Practices Act, chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090(3).

(4) If the department does not approve the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

#### NEW SECTION

WAC 222-22-090 USE AND REVIEW OF WATERSHED ANALYSIS. (1) Where a watershed analysis has been completed for a WAU under this chapter:

(a) Forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest land owner shall use in conducting the forest practice in the area of resource sensitivity;

(b) The department shall assist operators, timber owners, and forest land owners in obtaining governmental permits required for the prescription (see WAC 222-50-020 and 222-50-030);

(c) The department shall confirm that the prescription selected under (a) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

(d) The department shall not further condition forest practice applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practice applications and notifications outside an area of resource sensitivity in a WAU, except for reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU, and except to correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

(2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices on a WAU after the date notice is mailed under WAC 222-22-040(4) commencing a watershed analysis on the WAU shall be conditioned to require compliance with interim, draft, and final prescriptions, as available. Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

(3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, and field managers as determined under WAC 222-22-030. Subsequent watershed analysis and management strategies in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

(4) Where the condition of resource characteristics in a WAU are degraded, the department shall evaluate the effectiveness of the prescriptions applied under this chapter to the WAU in providing for the protection and recovery of the resource characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a period of 3 years, the department shall repeat the watershed analysis in the WAU. Aside from the foregoing, once a watershed analysis is completed on a WAU, it shall be revised in whole or in part upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, if necessary;

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU;

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a 12-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a 12-month period; or

(d) The request of an owner of forest land in the WAU which wishes to conduct a watershed analysis at its own expense.

Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter for the original watershed analysis, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions.

#### NEW SECTION

WAC 222-22-100 APPLICATION REVIEW PRIOR TO WATERSHED ANALYSIS. The watershed analysis system established in this chapter is a principal but nonexclusive methodology for assessing the effects on fish, water, and capital improvements of the state or its political subdivisions of two or more forest practices. Recognizing that it will not be possible to achieve state-wide implementation of the analysis process for all WAUs for some time, the board hereby establishes certain regulatory measures designed to ensure use of the best available analysis techniques and existing authorities to protect fish, water, and capital improvements of the state or its political subdivisions.

(1) The board directs that the department continue to use its implementation and enforcement authority to prevent damage to fish, water, and capital improvements of the state or its political subdivisions. See chapter 222-46 WAC.

(a) The department shall continue to concentrate and exercise its authority in implementing the use of existing road construction, maintenance, and abandonment rules where there is evidence of road-related damage to fish, water, and capital improvements of the state or its political subdivisions. The applicable road construction and maintenance rules can be found in chapter 222-24 WAC.

(b) The department shall report to the appropriate board committee each quarter the results of its road construction, maintenance, and abandonment enforcement program. No later than October 31 of each year, the board committee shall report to the full board on results and recommendations for regulatory change as needed to protect fish, water, and capital improvements of the state or its political subdivisions.

(2) The department shall condition the size of clearcut harvest applications in the significant rain-on-snow zone where the department determines, using local evidence, that peak flows have resulted in material damages to public resources. The department may prepare conditioning guidelines to assess and condition applications located in a significant rain-on-snow zone.

(a) Each year not later than August 31, the department shall provide a summary report of actions taken under rain-on-snow conditioning or conditioning guidelines to the appropriate board committee.

(b) Rain-on-snow conditions or conditioning guidelines shall be implemented by the department with respect to all relevant applications submitted on or after September 3, 1991, provided, where a level 1 or level 2 assessment has been commenced pursuant to this chapter, rain-on-snow data and recommendations, if any, arising from a watershed analysis shall be used to condition applications rather than the general conditioning guidelines developed hereunder. Nothing in this section mandates a watershed analysis to develop harvest size recommendations. Nothing in this section prevents watershed analysis-based prescriptions from following general rain-on-snow guidelines, or from modifying harvest sizes for rain-on-snow concerns in any way from the general guidelines.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-010 POLICY. \*A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems. Mitigation applies to all road and landing construction which impacts wetlands. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term. Extra protection is required during road construction and maintenance to protect ~~((this habitat))~~ these resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate to develop road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction. This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and regulations and/or permit requirements may apply. See chapter 222-50 WAC.)

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-020 ROAD LOCATION. (1) Fit the road to the topography so that a minimum of alterations to the natural features will occur.

\*~~(2) Minimize roads along or within narrow canyons ((and along)), riparian management zones, ((wet meadows and marshes)) wetlands and wetland management zones.~~

(a) Except where crossings are necessary, roads shall not be located within natural drainage channels and riparian management zones when there would be substantial loss or damage to wildlife habitat unless adequate mitigation of damage to public resources is provided and the department has determined that alternatives will cause greater damage to public resources.

(b) Roads shall not be located in ~~((marshes or wet meadows)) wetlands~~ when there would be substantial loss or damage to ~~((wildlife habitat)) wetland functions~~ unless adequate mitigation of damage to public resources is provided and the department has determined that alternatives will cause greater damage to public resources.

\*~~(3) Minimize the number of stream crossings.~~

\*~~(4) Whenever practical, cross streams at right angles to the main channel.~~

(5) Avoid duplicative roads by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.

\*~~(6) Where feasible, do not locate roads on excessively steep or unstable slopes or known slide prone areas as determined by the department. The department shall determine whether slopes are unstable using available soils information, or from evidence of geologically recent slumps or slides, or where the natural slope exceeds the angle of repose for the particular soil types present, or where springs or seeps may indicate unstable conditions are present in or above the construction site.~~

Essential road construction will be accomplished by end hauling, over hauling, or other special road construction techniques unless the department determines there is potential for damage to public resources under WAC 222-16-050 (1)(e).

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-025 ROAD DESIGN. (1) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.

\*~~(2) Subgrade width should average not more than 32 feet for double lane roads and 20 feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable, minimize subgrade width.~~

(3) Balance excavation and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.

(4) Design or construct cut and fill slopes to the normal angle of repose for the materials involved, or at a lesser angle whenever practical.

\*~~(5) All roads should be outloped or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.~~

\*~~(6) Cross drains, relief culverts, and diversion ditches shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.~~

\*~~(7) Install cross drains, culverts, water bars, drivable dips, or diversion ditches on all forest roads to minimize erosion of the road bed, cut bank, and fill slope, or to reduce sedimentation of Type 1, 2, 3 or 4 Water. Cross drains are required in wetlands to provide for continued hydrologic connectivity.~~ These drainage structures shall be installed at all natural drainages, all low points in the road gradient and spaced no wider than as follows:

Grade	Distance Westside	Distance Eastside
0 to 7%	1,000 ft.	1,500 ft.
8% to 15%	800 ft.	1,000 ft.
over 15%	600 ft.	800 ft.

More frequent culvert spacing or other drainage improvements are required where site specific evidence of peak flows or soil instability makes additional culverts necessary to minimize erosion of the road bed, ditches, cut bank, and fill slope to reduce sedimentation of Type 1, 2, 3 or 4 Waters, or within wetlands or to avoid unreasonable risk to public resources. See Part 5, Table 2 in the forest practices board manual for "Additional culvert spacing recommendations." On request of the applicant, the department may approve less frequent drainage spacing where parent material (e.g. rock, gravel) or topography justify.

\*~~(8) Relief culverts installed on forest roads shall meet the following minimum specifications:~~

(a) Be at least ~~((+2))~~ 18 inches in diameter or equivalent.

(b) Be installed sloping toward the outside edge of the road at a minimum gradient of 3 percent.

\*(9) Ditch diversion. Where roadside ditches slope toward a Type 1, 2, ~~((or))~~ 3 Water, or Type A or B Wetland for more than 300 feet and otherwise would discharge into the stream or wetland, divert the ditchwater onto the forest floor by relief culvert or other means at the first practical point.

\*(10) Filling or draining more than 0.5 acre of a wetland requires mitigation through compensation. See WAC 222-16-010. The objective of successful replacement or substitution of lost wetland area shall be on an acre for acre basis and of the same type and in the same general location.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-030 ROAD CONSTRUCTION. (1) Right of way timber. Merchantable right of way timber shall be removed or decked in suitable locations where the decks will not be covered by fill material or act as support for the fill or embankment.

\*(2) Debris burial.

(a) In permanent road construction, do not bury:

(i) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across ~~((swampy ground))~~ wetlands or for culvert protection.

(ii) Any significant amount of organic debris within the top 2 feet of the load-bearing portion of the road, except as puncheon across ~~((swampy ground))~~ wetlands or for culvert protection.

(iii) Excessive accumulation of debris or slash in any part of the load-bearing portion of the road fill, except as puncheon across swampy ground or for culvert protection.

(b) In the cases where temporary roads are being constructed across known areas of unstable soils and where possible construction failure would directly impact waters, the requirements in (a), (i), (ii) and (iii) of this subsection shall apply. A temporary road is a roadway which has been opened for the purpose of the forest practice operation in question, and thereafter will be an inactive or abandoned road.

(3) Compact fills. During road construction, fills or embankments shall be built up by layering. Each layer shall be compacted by operating the tractor or other construction equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with WAC 222-38-020.

\*(4) Stabilize soils. When soil, exposed by road construction, appears to be unstable or erodible and is so located that slides, slips, slumps, or sediment may reasonably be expected to enter Type 1, 2, 3 or 4 Water and thereby cause damage to a public resource, then such exposed soil areas shall be seeded with grass, clover, or other ground cover, or be treated by erosion control measures acceptable to the department. Avoid introduction of nonnative plant species to wetlands and wetland management zones.

\*(5) Channel clearance. Clear stream channel of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first.

\*(6) Drainage.

(a) All required ditches, culverts, cross drains, drainage dips, water bars, and diversion ditches shall be installed concurrently with the construction of the roadway.

(b) Uncompleted road construction to be left over the winter season or other extended periods of time shall be drained by outslipping or cross draining. Water bars and/or dispersion ditches may also be used to minimize eroding of the construction area and stream siltation. Water movement within wetlands must be maintained.

\*(7) Moisture conditions. Construction shall be accomplished when moisture and soil conditions are not likely to result in excessive erosion and/or soil movement, so as to avoid damage to public resources.

\*(8) End haul/sidecasts. End haul or overhaul construction is required where significant amounts of sidecast material would rest below the 50-year flood level of a Type 1, 2, 3, or 4 Water, within the boundary of a Type A or Type B Wetland or wetland management zones or where the department determines there is a potential for mass soil failure from overloading on unstable slopes or from erosion of side cast material causing damage to the public resources.

\*(9) Waste disposal. When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the 50-year flood level of Type 1, 2, 3, or 4 Waters or in other locations so as to prevent damage to public resources. The material shall be stabilized by erosion control measures as necessary to prevent the material from entering the waters.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of Type C Wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-035 LANDING LOCATION AND CONSTRUCTION. \*(1) Landing location:

Locate landings to prevent damage to public resources. Avoid excessive excavation and filling. Minimize placement and size of landings within Type C Wetlands. Landings shall not be located in Type A or B Wetlands or their wetland management zones.

(2) Landing construction.

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

(b) Where the average general slopes exceed 65 percent, fill material used in construction of landings shall be free from loose stumps and excessive accumulations of slash and shall be mechanically compacted where necessary and practical in layers by tractor to prevent soil erosion and mass soil movement. Chemical compacting agents may be used in accordance with WAC 222-38-020.

\*(c) Truck roads, skid trails, and fire trails shall be outslipped or cross drained uphill of landings and the water diverted onto the forest floor away from the toe of any landing fill.

\*(d) Landings shall be sloped to minimize accumulation of water on the landing.

\*(e) Excavation material shall not be sidecast where there is high potential for material to enter below the ordinary high-water mark of any stream or the 50-year flood level of Type 1, 2, 3, or 4 Water.

\*(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of Type C Wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-040 WATER CROSSING STRUCTURES. \*(1) Bridge construction.

(a) Bridges are required for new crossings of any Type 1 or 2 Waters regularly used for recreational boating.

(b) Permanent bridges shall not constrict clearly defined channels and shall be designed to pass the 50-year flood level or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure.

(c) One end of each new permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within 10 vertical feet of the 50-year flood level.

(d) Excavation for bridges, placement of sills or abutments, and the placement of stringers or girders shall be accomplished from outside the ordinary high-water mark of all waters, except when such operations are authorized by a hydraulic project approval.

(e) Earth embankments constructed for use as bridge approaches shall be protected from erosion by high water. Some examples of protection are: Planted or seeded ground cover, bulkheads, rock riprap, or retaining walls.

(f) When earthen materials are used for bridge surfacing, curbs of sufficient size shall be installed to be above the surface material and prevent such surface material from falling into the stream bed.

\*(2) Culvert installation: All permanent culverts installed in forest roads shall be of a size that is adequate to carry the 50-year flood or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure. Refer to Part 5 "Recommended culvert sizes" in the forest practices board manual for the size of permanent culverts recommended for use in forest roads. If the department determines that because of unstable slopes the culvert size shown on that table is inadequate to protect public resources, it may require culvert sizes in

accordance with the nomograph (chart) contained in Part 5 of the forest practices board manual or with other generally accepted engineering principles.

(a) No permanent culverts shall be installed that are smaller than:

(i) 24 inches in diameter or the equivalent for anadromous fish streams or wetlands where anadromous fish are present.

(ii) 18 inches or the equivalent for ~~((the resident game fish streams. (iii) 12 inches or the equivalent for))~~ all other water or wetland crossings.

(b) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

(c) When fish life is present, construct the bottom of the culvert at or below the natural stream bed at the inlet and outlet.

(d) Terminate culverts on materials that will not readily erode, such as riprap, the original stream bed (if stable), or other suitable materials.

(e) If water is diverted from its natural channel, return this water to its natural stream bed via culvert, flume, spillway, or the equivalent.

(f) When flumes, downspouts, downfall culverts, etc., are used to protect fill slopes or to return water to its natural courses, the discharge point shall be protected from erosion by: (i) Reducing the velocity of the water, (ii) use of rock spillways, (iii) riprap, (iv) splash plates, or (v) other methods or structures demonstrated to be equally effective.

(g) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

(h) The entrance of all culverts should have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.

\* (3) Culverts in anadromous fish streams. In addition to the requirements of subsection (2) of this section, in streams used by anadromous fish:

(a) Culverts shall be either open bottomed or have the bottom covered with gravel and installed at least 6 inches below the natural stream bed at the inlet and outlet.

(b) Closed bottom culverts shall not slope more than 1/2 percent; except as provided in (e) of this subsection; open bottom culverts shall not slope more than the natural slope of the stream bed.

(c) Where multiple culverts are used, one culvert shall be at least 6 inches lower than the other(s).

(d) Culverts shall be set to retain normal stream water depth throughout the culvert length. A downstream control may be required to create pooled water back into the culvert and to insure downstream stream bed stability.

(e) Closed bottom culverts, set at existing stream gradients between 1/2 percent and 3 percent slope shall be designed with baffles for water velocity control, or have an approved designed fishway.

(f) The department, after consultation with the departments of fisheries and wildlife, shall impose any necessary limitations on the time of year in which such culverts may be installed to prevent interference with migration or spawning of anadromous fish.

(g) Any of the requirements in (a) through (f) of this subsection may be superseded by a hydraulic project approval.

\* (4) Temporary water crossings.

(a) Temporary bridges and culverts, adequate to carry the highest anticipated flow in lieu of carrying the 50-year flood, may be used:

(i) In the westside region if installed after June 1 and removed by September 30 of the same year.

(ii) In the eastside region if installed after the spring runoff and removed prior to the snow buildup which could feed a heavy runoff.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal.

(b) Temporary bridges and culverts shall be promptly removed upon completion of use, and the approaches to the crossing shall be water barred and stabilized at the time of the crossing removal.

(c) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.

(5) Properly prepared and maintained fords may be used during periods of low water providing a hydraulic permit is acquired.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-050 ROAD MAINTENANCE. \*(1) Road maintenance and abandonment plan.

(a) The landowner when notified by the department shall submit a plan for road maintenance and abandonment for those drainages or

road systems the department determines based on physical evidence to have a potential to damage public resources. The plan is subject to annual review and shall include:

(i) Ownership maps showing the road or road system;

(ii) Road status, whether active, inactive, abandoned or planned for abandonment;

(iii) Maintenance schedule and priorities for the year; and

(iv) Plan for further maintenance and reconstruction beyond the current year for repair of extensive damage.

(b) The plan shall be submitted to the department region office on or before June 30, 1988, and each June 30th thereafter unless the department agrees that no further plans are necessary.

(c) The department will review the plan annually with the landowner to determine whether it will be effective and is being implemented.

(d) Such plans shall also be reviewed with departments of ecology, fisheries and wildlife and affected Indian tribes, any of whom may request an informal conference with the landowner.

\* (2) Active roads. An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads:

(a) Culverts and ditches shall be kept functional.

(b) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade.

(c) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.

\* (3) Inactive roads. An inactive road is a forest road on which commercial hauling is discontinued for 1 or more logging seasons, and the forest landowner desires continuation of access for fire control, forest management activities, Christmas tree growing operations, occasional or incidental use for minor forest products harvesting or similar activities on such inactive roads:

(a) Before the first winter rainy season following termination of active use, nonfunctional ditches and culverts shall be cleared and the road surface shall be crowned, outsloped, water barred or otherwise left in a condition not conducive to accelerated erosion or interrupt water movement within wetlands; and

(b) Thereafter, except as provided in (c) of this subsection, the landowner shall clear or repair ditches or culverts which he knows or should know to be nonfunctional and causing or likely to cause material damage to a public resource.

(c) The landowner shall not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless he fails to make repairs as directed by a notice to comply.

\* (4) Additional culverts/maintenance. If the department determines based on physical evidence that the above maintenance has been or will be inadequate to protect public resources and that additional measures will provide adequate protection it shall require the landowner or operator to either elect to:

(a) Install additional or larger culverts or other drainage improvements as deemed necessary by the department; or

(b) Agree to an additional road maintenance program. Such improvements in drainage or maintenance may be required only after a field inspection and opportunity for an informal conference.

\* (5) Abandoned roads. An abandoned road is a forest road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection. Roads are exempt from maintenance only after (e) of this subsection is completed:

(a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands; and

(b) Ditches are left in a suitable condition to reduce erosion; and

(c) The road is blocked so that four wheel highway vehicles can not pass the point of closure at the time of abandonment; and

(d) Bridges, culverts, and fills on all waters are removed, except where the department determines other measures would provide adequate protection to public resources.

(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it shall within thirty days notify the landowner in writing that the road is officially abandoned.

\* (6) Brush control. Chemical control of roadside brush shall not be done where chemicals will directly enter any Type 1, 2, or 3 or flowing

Type 4 or 5 Water or Type A or B Wetlands. Refer to WAC 222-38-020 for additional information.

**\* (7) Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours.

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) When cleaning out chemical storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water.

(f) The use of dry road chemicals shall be in compliance with WAC 222-38-020.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-24-060 ROCK QUARRIES, GRAVEL PITS, BORROW PITS, AND SPOIL DISPOSAL AREAS. Not covered by the Surface Mine Reclamation Act of 1971 (chapter 78.44 RCW).

**\* (1) Location of pits.** Except as approved by the department, rock quarries and gravel pits opened after January 1, 1975 shall be located above the 50-year flood level.

**\* (2) Location of spoil disposal areas.** Except as approved by the department, spoil disposal areas shall be located:

(a) Above the 50-year flood level.

(b) Where the final slope after disposal will be no steeper than 1 1/2:1.

(c) Where practical, on areas having low potential timber productivity.

(d) Where the risk of soil erosion and mass soil movement is minimal.

(e) All spoils shall be placed to allow drainage without additional water ponding.

**(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of Type C Wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.**

**\* (3) Pit drainage.** During construction and use of rock quarries, gravel pits, or borrow pits, runoff water shall be either diverted onto the forest floor or be passed through one or more settling basins as approved by the department.

(4) Rehabilitation required. All rock quarries, gravel pits, spoil disposal areas and borrow pits used after January 1, 1975 shall be reclaimed within 2 years from the time the rock or gravel source is either exhausted or abandoned.

(5) Rehabilitation standards. Where rehabilitation is required:

(a) Remove all deleterious material that has potential for damaging the public resource, the soil productivity, or that would prevent reforestation of an otherwise plantable area.

(b) Grade slopes to less than the angle of repose unless otherwise approved.

(c) Reforest in accordance with chapter 222-34 WAC to the extent practical.

(d) Seed unreforested exposed erodible soils with grass, clover or other ground cover.

**\* (6) Major spoil disposal operations.** Where a spoil disposal operation involves more than 1,000 cubic yards of spoils:

(a) The spoils shall be placed to provide drainage onto the forest floor without water ponding within the disposal area;

(b) The site shall be reforested in accordance with chapter 222-34 WAC to the extent practical; and

(c) If significant erosion of the spoils develops, the eroding areas shall be water barred and any unreforested areas shall be matted, mulched, or seeded with grass or ground cover.

**AMENDATORY SECTION** (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-30-010 POLICY—TIMBER HARVESTING. This section covers all removal of timber from forest lands in commercial

operations, commercial thinning, salvage of timber, relogging merchantable material left after prior harvests, postharvest cleanup, and clearing of merchantable timber from lands being converted to other uses. It does not cover removal of incidental vegetation or removal of firewood for personal use. To the extent practical the department shall coordinate the activities on a multiple disciplinary planning approach. The riparian management zone requirements specified in this section are designed to provide protection for water quality and fisheries and wildlife habitat through ensuring present and future supplies of large organic debris for streams, snags, canopy cover, and a multistoried diverse forest adjacent to Type 1, 2 and 3 Waters. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems. The wetland management zone and wetland requirements specified in this section are designed to protect these wetland functions when measured over the length of a harvest rotation, although some of the functions may be reduced until the midpoint of the timber rotation cycle. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term.

(NOTE: OTHER LAWS OR REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

**AMENDATORY SECTION** (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-30-020 HARVEST UNIT PLANNING AND DESIGN. (1) Logging system. The logging system should be appropriate for the terrain, soils, and timber type so yarding or skidding can be economically accomplished in compliance with these regulations.

**\* (2) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

**\* (3) (Landing construction:**

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used:

(b) Where the average general slopes exceed 65 percent, fill material used in construction of landings shall be free of loose stumps and excessive accumulations of slash and shall be mechanically compacted where necessary and practical in layers by tractor to prevent soil erosion and mass soil movement. Chemical compacting agents may be used in accordance with WAC 222-38-020.

**\* (c) Truck roads, skid or fire trails shall be outsloped or cross drained uphill of landings and the water diverted onto the forest floor away from the toe of any landing fill:**

(d) Landings shall be sloped to minimize accumulation of water on the landing:

**\* (e) Excavation material shall not be sidecast where there is high potential for material to enter below the ordinary high-water mark of any stream or the 50-year flood level of Type 1, 2, 3 or 4 Water.**

**\* (4) Riparian management zones.** For the purpose of riparian management zone design the state shall be divided along an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.;

Fence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.;

Fence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan;

Fence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.;

Fence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.;

Fence south on range line between R. 16E. and R. 17E. to the Al-pine Lakes Wilderness at Section 31, T. 26N, R. 17E.;

Fence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.;

Fence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.;

Fence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.;



Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.;

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.;

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.;

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.;

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.;

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.;

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.;

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.;

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.;

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary;

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.;

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.;

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

(5)) Western Washington riparian management zones. These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, but shall not be less than 25 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include ((swamps, bogs, marshes)) wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a wetland or a wetland management zone, the more restrictive requirements shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and temperature control. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

WATER TYPE/AVERAGE WIDTH	RMZ MAXIMUM WIDTH	RATIO OF CONIFER TO DECIDUOUS/MINIMUM SIZE LEAVE TREES	# TREES/1000 FT. EACH SIDE	
			GRAVEL/COBBLE <10" DIAMETER	BOULDER/BEDROCK
1 & 2 Water 75' & over	100'	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees	50 trees
3 Water 5' & over	50'	2 to 1/12" or next largest available	75 trees	25 trees
3 Water less than 5'	25'	1 to 1/6" or next largest available	25 trees	25 trees

"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within the riparian management zone of Type 1, 2 or 3 Waters and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.

\*((6)) (4) Eastern Washington riparian management zones. These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include ((swamps, bogs, marshes)) wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a wetland or a wetland management zone, the more restrictive requirements shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and temperature control. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010(33) Partial cutting. When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all ((snags)) wildlife reserve trees within the riparian management zone ((that)) where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC ((department of labor and industries, safety division)) and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 ((snags)) wildlife reserve trees/acre 20 inches dbh or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.

Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)

(d) When 10 percent or more of the harvest unit lies within the riparian management zone of Type 1, 2 or 3 Waters and either the harvest unit is a clearcutting of 30 acres or less or the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010(33) Partial cutting.)

((7) Type 4 Water) \*5 Riparian leave tree areas. The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the stream. The leave trees may be arranged to accommodate the operation.

\*(6) Forest wetlands (Type C).

(a) Within the boundaries of Type C Wetlands 5 acres in size or larger, the following shall apply:

(i) Leave 9 wildlife reserve trees per acre, 9 green recruitment trees per acre, and 6 down logs per acre. In order to retain undisturbed habitat within forested wetlands, these trees shall be left in clumps, unless otherwise approved in writing by the department. Leave tree areas shall be clumped adjacent to RMZ or WMZ areas where possible. Green recruitment trees shall be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(ii) If a RMZ or WMZ lies within a Type C Wetland, the leave tree requirement associated with those areas may be counted toward the requirements in (a)(i) of this subsection. If a Type 1, 2, or 3 stream, with the potential to support anadromous fish, runs through or adjacent to a Type C Wetland, the leave requirements in (a)(i) of this subsection shall be concentrated within 100 feet of the stream where possible to provide protection to salmonid over-wintering habitat.

(iii) Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(b) Within the boundaries of Type C Wetlands less than 5 acres and greater than 1 acre in size, the following shall apply:

(i) Leave nonmerchantable trees standing where feasible.

(ii) Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. In all cases, at least one end of the log shall be suspended during yarding.

\*(7) Wetland management zones (WMZ). These zones shall apply to Type A and B Wetlands, 0.5 acre in size or larger, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a Type C Wetland or a riparian management zone the more restrictive requirements shall apply.

(a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

Wetland Type	Acres of Nonforested Wetland	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A	Greater than 5	200 feet	100 feet	50 feet
A	0.5 to 5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet

(b) Within the WMZ, leave a total of 75 trees per acre greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

(e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

\*8 Nonforested wetlands (Type A or B). Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Within the boundary of a Type A or B Wetland, individual trees or forested Type C Wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested Type C Wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested Type C Wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

((8)) (9) Future productivity. Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

((9)) (10) Wildlife habitat. This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of wildlife to identify critical wildlife habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) (Where a critical wildlife habitat has been identified the applicant shall consider reasonable means of protection thereof as part of the proposed harvesting operation:

(c)) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

((10)) (11) Wildlife reserve tree management. In areas where this will not create a significant fire ((or)), safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), ((a reasonable number of snags)) wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) In Western Washington, for each acre harvested 3 wildlife reserve trees, 3 green recruitment trees, and 2 down logs shall be left. In Eastern Washington for each acre harvested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes.

(b) In Eastern Washington, for 5 years from the effective date of this section where over-story harvest of seed trees left for purpose of reforestation are proposed and less than 10 trees per acre will be harvested within the 5-year period, 50% of the green recruitment trees may be left.

(c) In Western Washington, only those wildlife reserve trees 6 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 6 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 50 or more feet in height and with at least 1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. This includes trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner. Live defective trees with broken tops, cavities, etc., are preferred as green recruitment trees. Only down logs with a

small end diameter of 12 inches and a length of 20 feet shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Green recruitment trees left after harvest shall be representative of diameter classes of the stand before harvest. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution wildlife reserve tree and green recruitment tree retention areas shall be within 1200 feet of each other and no point within the harvest unit shall be more than 600 feet from a retention area. Subject to this distribution requirement, the location of these retention areas or reserve trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

#### NEW SECTION

WAC 222-30-025 EVEN-AGED HARVEST—SIZE AND TIMING. Except as provided in WAC 222-30-110, unit size and timing of timber harvesting by even-aged harvest methods is subject to the following requirements:

(1) Timber harvest which would result in an area larger than one hundred twenty acres and smaller than or equal to two hundred forty acres harvested by even-aged harvest methods by one landowner shall be reviewed by an interdisciplinary team, if the department determines that review is necessary. The area harvested by even-aged harvest methods shall be determined in accordance with subsection (2) of this section.

(2) When timber is harvested by even-aged harvest methods, the area harvested by even-aged harvest methods shall include the acreage of that harvest unit and, unless at least one of the following perimeter criteria is met, all contiguous acreage harvested by even-aged harvest methods which is owned by the same landowner:

(a) At least thirty percent of the unit's perimeter is in stands of trees that are thirty years of age or older;

(b) At least sixty percent of the unit's perimeter is in stands of trees that are fifteen years of age or older; or

(c) At least ninety percent of the unit's perimeter is in stands of trees that have survived on site a minimum of five years or, if less than five years, have reached an average height of four feet.

Evaluation of unit perimeters is subject to the conditions specified in subsection (5) of this section.

(3) When timber is harvested by even-aged harvest methods, even though one or more of the perimeter criteria in subsection (2) of this section is met, if the department determines that review is necessary it shall be reviewed by an interdisciplinary team, under the following conditions:

(a) It occurs adjacent to a clearcut area larger than two hundred forty acres; and

(b) The clearcut area is stocked with stands which have survived less than five years on site or which have an average height of less than four feet.

(4) The requirements of subsections (1), (2), and (3) of this section shall apply only to timber harvest by even-aged harvest methods and shall not apply to timber harvest to salvage timber damaged by wind, disease, insects, or fire.

(5) In evaluating the perimeters of harvest units pursuant to subsection (2) of this section, the following conditions shall apply:

(a) The following shall be treated as thirty-year-old stands:

(i) In western Washington, a riparian management zone that is twice the width with twice the tree count required by WAC 222-30-020(5) along Type 1, 2, or 3 waters;

(ii) In eastern Washington, a riparian management zone that is the width required by WAC 222-30-020(6);

(iii) Designated upland management areas;

(iv) Lands in a shoreline of state-wide significance where harvest is limited under RCW 90.58.150;

(b) A stand of trees other than those described in (a) of this subsection shall be treated as a certain age class only if the stand is at least three hundred feet wide;

(c) Timber harvest units subject to an approved application or a notification for timber harvesting shall be treated as if the timber harvesting operation proposed in the application or notification were completed and regeneration not yet established; and

(d) The portion of a perimeter consisting of land in uses other than forest land, such as land in agricultural or residential use and natural openings, and land not owned by the landowner who has proposed the harvest unit subject to the application under consideration shall not be considered in making perimeter calculations.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-040 (~~TEMPERATURE CONTROL~~) SHADE REQUIREMENTS TO MAINTAIN STREAM TEMPERATURE.

~~\*(1) ((Determination of temperature sensitivity for Type 1, 2 and 3 Waters shall be based upon field data or records, from a verified water temperature model or method acceptable to the department, that demonstrate significant adverse water temperature impacts following the proposed timber harvest and shade removal. Any designation as to whether or not waters are temperature sensitive shall be made by the department prior to the deadline for approval or disapproval of the application for harvest.~~

~~\*(2) Shade requirements. Within the riparian management zone along those Type 1, 2 and 3 Waters designated as temperature sensitive, unless a waiver is granted by the department under subsection (3) of this section, the operator shall:~~

~~(a) Leave all nonmerchantable vegetation which provides mid-summer and mid-day shade of the water surface; and~~

~~(b) Leave sufficient merchantable timber, if any, necessary to retain 50 percent of the summer mid-day shade of the water surface, provided that the department shall require leaving 75 percent of the shade where it determines that the mean of the maximum summer daily ambient water temperatures, for a 7-day period, exceeds 60 degrees before logging. (See the forest practices board manual part 2 for methods of shade determination.)~~

~~\*(3)) Determination of adequate shade. Adequate shade cover shall be left along flowing Type 1, 2, and 3 Waters to prevent excessive water temperatures which may have detrimental impact on aquatic resources. The temperature prediction method in subsection (2) of this section shall be used to determine appropriate shade levels for these waters.~~

~~\*(2) Temperature prediction method. Adequate shade cover on flowing Type 1, 2, and 3 Waters shall be determined using a method acceptable to the department. This method shall include but not be limited to the following considerations:~~

~~(a) Shade retention; and~~

~~(b) Minimum leave tree requirements; and~~

~~(c) Regional water temperature characteristics; and~~

~~(d) Elevation; and~~

~~(e) Temperature criteria defined for stream classes in WAC 173-203-030.~~

~~\*(3) Leave tree requirements for shade. The method described in subsection (2) of this section shall be used to establish the minimum shade cover based on site specific characteristics. When site specific data indicate that pre-harvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed. As a minimum, leave tree requirements specified in WAC 222-30-020 shall be met. (See forest practices board manual for method of shade determination.)~~

~~(4) Waivers. The department may waive or modify the shade requirements where ((the applicant):~~

~~(a) ((Shows a high probability of windthrow and agrees to replant the riparian management zone within the first planting season after harvest; or~~

~~(b)) The applicant agrees to a staggered setting program producing equal or greater temperature control; or~~

~~((c)) (b) The applicant provides alternative means of stream temperature control satisfactory to the department; or~~

~~(c) The temperature method used by the department indicates that additional shade will not affect stream temperature.~~

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-050 FELLING AND BUCKING. \*(1) Falling along water.

(a) No trees will be felled into Type 1, 2 and 3 Waters, or Type A or B Wetlands except trees which cannot practically and safely be felled outside the stream, lake or pond using techniques in general use and these trees must then be removed promptly.

Such felling and removing in Type 1, 2 or 3 Waters shall comply with the hydraulic project approval of the departments of fisheries or wildlife.

(b) Within ~~((the))~~ riparian management zones, wetland management zones and wetlands fall trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional falling, lining, jacking and staged falling techniques are encouraged.

(c) Trees may be felled into Type 4 Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type 4 and 5 Water.

\* (2) Bucking in water.

(a) No bucking or limbing shall be done on trees or portions thereof lying between the banks of Type 1, 2 or 3 Waters or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water.

(b) Where bucking or limbing is done between the banks of a Type 4 Water, care shall be taken to minimize accumulation of slash in the water.

\* (3) Falling near riparian management zones, wetland management zones and setting boundaries. Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

(4) Falling in selective and partial cuts. Reasonable care shall be taken to fall trees in directions that minimize damage to residual trees.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-060 CABLE YARDING. \* (1) Type 1, 2 and 3 Waters. No timber shall be cable yarded in or across a Type 1, 2 or 3 Waters except where the logs will not materially damage the bed of waters, banks or riparian management zones and removals from Type 1, 2 or 3 Water have hydraulic project approval of the departments of fisheries or wildlife.

\* (2) Type A or B Wetlands. No timber shall be cable yarded in or across Type A or B Wetlands without written approval from the department.

\* (3) Deadfalls. Any logs which are firmly embedded in the bed of a Type 1, 2, 3 and 4 Waters shall not be removed or unnecessarily disturbed without approval of the departments of fisheries or wildlife.

\* ~~((3))~~ (4) Yarding in riparian management zones, wetland management zones, and wetlands. Where timber is yarded from or across a riparian management zone, wetland or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from wetlands or Type 1, 2 and 3 Waters until clear of the wetland management zone or riparian management zone.

~~((4))~~ (5) Direction of yarding.

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

\* (c) When yarding parallel to a Type 1, 2 or 3 Water channel below the 50-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-070 TRACTOR AND WHEELED SKIDDING SYSTEMS. \* (1) ~~((Type 1, 2, 3 and 4 Waters))~~ Typed waters and wetlands.

(a) Tractor and wheeled skidders shall not be used in Type 1, 2 or 3 Water, except with approval by the department and with a hydraulic project approval of the departments of fisheries or wildlife.

(b) In order to maintain wetland water movement and water quality, and to prevent soil compaction, tractor or wheeled skidders shall not be

used in Type A or B Wetlands without prior written approval of the department.

~~((c))~~ Within all wetlands, tractors and wheeled skidder systems shall be limited to low impact harvest systems. Ground based logging systems operating in wetlands shall only be allowed within wetlands during periods of low soil moisture or frozen soil conditions.

~~((d))~~ Skidding across any flowing Type 4 Water shall be minimized and when done, temporary stream crossings shall be used, if necessary, to maintain stream bed integrity.

~~((e))~~ Whenever skidding in or across any type water, the direction of log movement between stream banks shall be as close to right angles to the stream channel as is practical.

\* (2) Riparian management zone.

(a) Logging will be permitted within the zone. However, any use of tractors, wheeled skidders, or other yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) Where skidding in or through the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

~~((3))~~ \* (3) Wetlands management zones.

~~((a))~~ Logging will be permitted within wetland management zones and forested Type C Wetlands.

~~((b))~~ Where feasible logs shall be skidded at least with one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

~~((c))~~ Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

\* (4) Deadfalls. Logs firmly embedded in the bed or bank of Type 1, 2, 3 or 4 Waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife.

\* ~~((4))~~ (5) Moisture conditions. Tractor and wheeled skidders shall not be used on exposed erodible soils or hydric (wetland) soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would result.

~~((5))~~ (6) Protection of residual timber. Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

\* ~~((6))~~ (7) Skid trail construction.

(a) Skid trails shall be kept to the minimum feasible width.

(b) Reasonable care shall be taken to minimize the amount of side-cast required and shall only be permitted above the 50-year flood level.

(c) Skid trails shall be outslopped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

\* ~~((7))~~ (8) Skid trail maintenance. Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

\* ~~((8))~~ (9) Slope restrictions. Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-090 POSTHARVEST SITE PREPARATION.

Unless the application or notification indicates that the landowner or forest landowner specifically agrees to assume responsibility for compliance with this section, the operator shall leave the site in a condition suitable for reforestation following any clear cutting, or any partial cutting west of the summit of the Cascades where 80 percent or more of the cubic volume is removed within any 5 consecutive years unless the department determines that the live trees remaining will reasonably utilize the timber growing capacity of the soils. Lands being converted to another use or classified as urban development lands under WAC 222-34-050 are exempt.

The following site preparation is required when necessary to establish a condition suitable for reforestation:

(1) Cutting, slashing, or other treatment of all noncommercial tree species, other competing vegetation, and nonmerchantable size trees commonly known as "whips" which will not reasonably utilize the

growing capacity of the soil except in ~~((the))~~ wetlands, wetland management zones, riparian management zones; or

(2) Pile or windrow slash; or

(3) Mechanically scatter slash; or

(4) Leave the cutover area in a condition for controlled broadcast burning, and subsequently burn.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-30-100 SLASH DISPOSAL. (1) Slash disposal techniques:

\* (a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and riparian management zones and on sites where the department determines that a particular method would cause unreasonable risk to public resources or unreasonably damage site productivity (~~(any conventional method of slash disposal may be used, such as:)~~). Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: PROVIDED, That on land shown to have low productivity potential the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management zones, slash disposal shall be by hand, unless approved by the department. Scarification shall not be allowed within wetlands. Machine piling is discouraged in wetlands.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to prevent damage to Type A and B Wetlands, wetland management zones, riparian management zones, soil, residual timber, public resources, and other property.

\* (c) Location of slash piles. Except where burning will be completed before the next ordinary high-water season, slash shall not be piled or windrowed below the 50-year flood level of any Type 1, 2, 3 or 4 Water or in locations from which it could be expected to enter any stream, lake or pond.

(2) Slash isolation, reduction, or abatement is required when the department determines there is an extreme fire hazard according to law (see WAC 332-24-360).

(3) Slash disposal is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

\* (4) Removing slash and debris from streams.

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type 1, 2, 3 or 4 Waters, to above the 50-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 50-year flood level of Type 1, 2, 3 or 4 Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type 4 and 5 Waters."

\* (5) Fire trails.

(a) Construct dips, water bars, cross drainage and ditches as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 50-year flood level.

(c) Fire trails shall not be located within wetlands, wetland management zones, or riparian zones without prior written approval of the department.

#### NEW SECTION

WAC 222-30-110 TIMBER HARVESTING ON ISLANDS. On an island:

(1) A landowner shall not harvest by clearcut so that more than forty contiguous acres of that landowner's forest land are in a clearcut condition;

(2) Forest land harvested by clearcut remains in the clearcut condition until it has reached canopy closure or it has been reforested for at least ten years;

(3) Clearcut harvest units are contiguous unless separated by a buffer at least two hundred feet wide that has reached canopy closure, has been reforested for at least ten years, or is in a land use other than timber production.

(4) Within two hundred feet of the ordinary high-water mark of saltwater timber harvest shall be by selective harvest only, so that no more than thirty percent of the merchantable trees are harvested in any ten-year period: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silvicultural practices necessary for regeneration render selective harvest ecologically detrimental: PROVIDED FURTHER, That harvest by clearcut on lands being converted to another use may be approved.

**AMENDATORY SECTION** (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-34-040 SITE PREPARATION AND REHABILITATION. \*(1) Heavy equipment. Heavy equipment shall not be used in connection with site preparation or rehabilitation work:

(a) When, because of soil moisture conditions or the type of soils, undue compaction or unnecessary damage to soil productivity would occur or erosion would result in damage to water quality; or

(b) Within riparian management zones, Type A and B Wetlands, wetland management zones, or within 10 feet of the ordinary high-water mark of Type 4 and 5 Waters on slopes of 30 percent or less. On slopes greater than 30 percent heavy equipment shall not operate within 50 feet of Type 1 through 5 Waters unless a site specific plan has been approved by the department.

\* (2) Surface water drainage. Where site preparation or rehabilitation involves contouring or terracing of slopes, drainage ditches, or similar work:

(a) The gradient of ditches or other artificial water courses in erodible soils shall not cause significant stream, lake ((or)), pond, or wetland siltation.

(b) Ditches and other artificial water courses shall not discharge onto any road, landing or fill.

(c) Ditches and other artificial water courses shall not be constructed to discharge onto the property of other parties without their consent.

\* (3) Stream channel alignment. Where work involves deepening, widening, straightening or relocating the channel; or bulkheading, rip-rapping or otherwise stabilizing the banks of a Type 1, 2 or 3 Water, the work shall be done only:

(a) After consultation with any party having an appropriation permit or registered right to appropriate waters from the affected stream segment in cases of streams used for domestic water supplies.

(b) Where no significant adverse affects on either the peak or minimum water levels or flows downstream can be expected.

(c) In a manner not expected to result in long-term damage to public resources or to adjacent or downstream property.

(NOTE: OTHER LAWS AND REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

**AMENDATORY SECTION** (Amending Resolution No. 82-1, filed 8/3/82, effective 10/1/82)

WAC 222-38-010 POLICY—FOREST CHEMICALS. Chemicals perform important functions in forest management. The purpose of these regulations is to regulate the handling, storage and application of chemicals in such a way that the public health, ~~((soils))~~ lands, fish, wildlife ~~((and))~~, aquatic habitat, and water quality will not be endangered by contamination. This section in no way modifies the state department of agriculture regulations governing chemicals.

(NOTE: OTHER LAWS AND REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

**AMENDATORY SECTION** (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-38-020 HANDLING, STORAGE, AND APPLICATION OF PESTICIDES. \*(1) No pesticide leakage, contamination, pollution.

(a) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container or apparatus in such a manner as to ~~((pollute))~~ cause or allow entry of pesticides into water supplies ~~((or waterways))~~, streams, lakes, or other waters of the state or cause damage or injury to land, ~~((including))~~ humans, desirable plants, ~~((and))~~ or desirable animals.

(b) The department or the department of agriculture may suspend further use of any equipment responsible for chemical leakage, until

the deficiency has been corrected to the satisfaction of the department suspending its usage.

~~\*(2) Streams, lakes and ((public waters)) wetlands. ((No person shall pollute streams, lakes, and other public water supplies in their pesticide loading and mixing operation. Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.)) Do not allow direct entry of pesticides into any Type 1, 2, 3, 4, or flowing Type 5 Waters. Any pesticide not approved for use in wetlands shall not be used in wetlands.~~

~~\*(3) Mixing and landing areas.~~

~~(a) Mix ((chemicals)) pesticides and clean tanks and equipment only where any accidental spills would not ((enter any water types)) contaminate water or wetlands.~~

~~(b) Storage and landing areas should be located where accidental spillage of ((chemicals)) pesticides will not ((cause them to become a contaminant)) contaminate water or wetlands. If any ((chemical)) pesticide is spilled, immediate appropriate procedures should be taken to contain or neutralize it.~~

~~(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.~~

~~\*(4) Riparian management zone. ((Chemical)) Pesticide treatments within the riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.~~

~~\*(5) Aerial application of pesticides.~~

~~(a) To keep ((chemicals)) pesticides out of the water, leave a 50 foot buffer strip on Type 1, 2, 3, 4, and flowing Type ((4 and)) 5 Waters, and other areas of open water, such as ponds or sloughs. Do not spray ((chemicals)) pesticides in buffer strips or riparian management zones. ((Provided that fertilizers may be applied to within 25 feet of the water.))~~

~~(b) Apply the initial swath parallel to the buffer strip in (a) of this subsection ((on Type 1, 2, 3 or flowing Type 4 and 5 Waters. Parallel flight adjacent to all buffer strips shall be required)) unless a deviation is approved in advance by the department. Drift control agents shall be required adjacent to buffer strips.~~

~~(c) Use a bucket or spray device capable of immediate shutoff.~~

~~(d) Shut off ((chemical application)) spray equipment during turns and over open water.~~

~~(e) ((Do not allow direct entry of chemicals into any Type 1, 2, 3 or flowing Type 4 and 5 Waters.~~

~~(f)) Leave at least 200 foot buffer strip around residences and 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.~~

~~((g)) ((f)) The landowner shall identify for the operator the units to be sprayed and the untreated areas within the units so they are visible from the air. Before application of the ((chemical)) pesticide an over-flight of the area shall be made by the pilot and a responsible agent of the landowner.~~

~~((h)) ((g)) Aerial chemical application areas shall be posted by the landowner by signing at significant points of regular access at least 5 days prior to treatment. Posting shall remain at least 15 days after the spraying is complete. The department may require an extended posting period in areas where human use or consumption of plant materials is probable. Posting at formal, signed trailheads that are adjacent to aerially treated units is required. The signs will contain the name of the product used, date of treatment, ((and)) a contact telephone number, and any applicable restrictions.~~

~~((i)) Any water purveyor of a certified Class 1, 2 or 3 system, as defined in WAC 248-54-015, may request the department to designate lands within the watershed upstream of the surface water intake of the affected water supply as an "area of water supply interest." Prior to requesting such designation, the purveyor shall personally or by certified mail deliver to each landowner of record within such area, a copy of the request, a map showing proposed area boundaries and the name and address of the purveyor. The department may designate an "area of water supply interest" in such area(s) where it determines that the aerial application of pesticides may adversely impact the affected water supply. Where the department has designated an "area of water supply interest," it shall notify the purveyor of any Class IV Forest Practices for the aerial application of pesticides.))~~

~~\*(6) ((Stream protection ==)) Ground application of pesticides with power equipment.~~

~~(a) ((Leave a 10 foot buffer strip on each side of every Type 1 and 2 Water and each flowing Type 3 Water.)) Leave a 25-foot buffer strip on each side of Type 1, 2, 3, 4, and flowing Type 5 Water.~~

~~(b) Do not allow entry of ((chemicals)) pesticides into any water.~~

~~(c) Do not exceed allowable dosages.~~

~~\*(7) ((Stream protection ==)) Hand application of pesticides.~~

~~Apply only to specific targets, such as a tree, stump, burrow, bait or trap.~~

~~\*(8) Limitations on application. ((Chemicals)) Pesticides shall be applied only in accordance with all limitations:~~

~~(a) Printed on the United States Environmental Protection Agency container registration label, and/or~~

~~(b) Established by regulation of the state department of agriculture.~~

~~(c) Established by state and local health departments (in municipal watersheds).~~

~~(d) Established by the Federal Occupational Safety and Health Administration, or the state department of labor and industries, as they relate to safety and health of operating personnel and the public.~~

~~\*(9) Container disposal. ((Chemical)) Pesticide containers shall be either:~~

~~(a) Removed from the forest and disposed of in the manner consistent with label directions; or~~

~~(b) Removed and cleaned for reuse in a manner ((not inconsistent)) consistent with any applicable regulations of the state department of agriculture or the state or local health departments.~~

~~\*(10) Daily records - aerial application of pesticides. On all aerial applications of pesticides, the operator shall maintain for 3 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.~~

~~\*(11) Reporting of spills. All potentially damaging chemical spills shall be immediately reported to the department of ecology.~~

#### NEW SECTION

WAC 222-38-030 HANDLING, STORAGE, AND APPLICATION OF FERTILIZERS. \*(1) Fertilizer contamination of water. No person shall transport, handle, store, load, apply, or dispose of any fertilizer in such a manner as to pollute streams, lakes, wetlands, or other public waters or Type A or B Wetlands, or their associated wetland management zones.

\*(2) Storage and landing areas. Storage and landing areas should be located where accidental spillage of fertilizers will not contaminate water or wetlands.

\*(3) Riparian management zone. Fertilizer treatments within a riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

\*(4) Aerial application of pelletized urea fertilizer.

(a) Proposed fertilization units shall be planned to avoid and to minimize the direct or indirect introduction of fertilizer into waters and wetlands.

(b) Buffer all Type 1, 2, 3, 4, and flowing Type 5 Waters, except as noted in (d) of this subsection.

(c) Buffer widths for Type A and B Wetlands shall be the average WMZ width specified in WAC 222-30-020 (7)(a).

(d) The department shall review situations where buffering or preventing fertilizer entry into Type 4 and 5 Waters would create an operator safety concern or increase the probability of introduction of fertilizers into Type 1, 2, or 3 Waters. These shall be noted on the forest practices conditions. When approved by the department, the buffers in (b) of this subsection shall not be required. See (h) of this subsection.

(e) When the helicopter flight path during fertilizer application is parallel to a water course or the WMZ edge, the centerline of the initial swath should be adjusted to prevent direct application within the buffers or WMZs.

(f) Leave at least 200 foot buffer strip around residences and 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(g) The landowner shall identify for the operator the units to be fertilized and the untreated areas within the units so they are visible from the air. Before application of the fertilizer, an over-flight of the area shall be made by the pilot and a responsible agent of the landowner.

(h) Where the department has been provided information by the department of ecology indicating that water quality in downstream waters is likely to be impaired by entry of urea into waters, such waters are excluded from the provisions in (d) of this subsection.

\*(5) Aerial application of nonurea fertilizers.

(a) No nonurea fertilizer shall be applied within 25 feet of Type 1, 2, 3, 4, or flowing Type 5 Waters, within the average WMZ width of Type A or B Wetlands as specified in WAC 222-30-020 (6)(a).

(b) Leave at least 200 foot buffer strip around residences and 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(c) The landowner shall identify for the operator the units to be fertilized and the untreated areas within the units so they are visible from the air. Before application of the fertilizer, an over-flight of the area shall be made by the pilot and a responsible agent of the landowner.

\* (6) Ground and hand application of fertilizers. Prevent fertilizer from entering all Type 1, 2, 3, 4, and flowing Type 5 Waters, and Type A and B Wetlands.

\* (7) Reporting of fertilizer spills. All fertilizer spills involving streams, lakes, wetlands, or other waters of the state shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department of natural resources regional offices.

#### NEW SECTION

WAC 222-38-040 HANDLING, STORAGE, AND APPLICATION OF OTHER FOREST CHEMICALS. \*(1) No leakage, contamination, pollution. No person shall transport, handle, store, load, apply, or dispose of any other forest chemical in such a manner as to cause or allow the entry of other forest chemicals into streams, lakes, wetlands, or other public waters, or cause damage or injury to soils, humans, desirable plants, or animals.

\* (2) Waters and wetlands. Do not allow direct entry of other forest chemicals into any Type 1, 2, 3, 4, or flowing 5 Waters, Type A, B, or C Wetlands.

\* (3) Storage, mixing, and landing areas.

(a) Mix other forest chemicals and clean tanks and equipment only where any accidental spills would not contaminate water or wetlands.

(b) Storage and landing areas should be located where accidental spillage of other forest chemicals will not contaminate water or wetlands. If any chemical is spilled, immediate appropriate procedures should be taken to contain or neutralize it.

(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.

(d) Water protection requirements in subsections (1) and (2) of this section may be waived when emergency use of fire retardants is necessary to control escaped wildfire.

#### **WSR 92-07-094**

#### **NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION**

[Memorandum—March 17, 1992]

The Washington State Human Rights Commission will hold its April regular commission meeting in Richland on April 29 and 30, 1992. The meeting on April 29, will be held at the Richland Public Library, Conference Room, 955 Northgate, Richland, and will be a planning and training session beginning at 7:00 p.m. The regular business meeting on April 30, will be held at the Richland City Hall, City Council Chambers, 505 Swift Boulevard, Richland, beginning at 9:30 a.m.

#### **WSR 92-07-095**

#### **PROPOSED RULES DEPARTMENT OF LICENSING**

[Filed March 18, 1992, 10:03 a.m.]

Original Notice.

Title of Rule: Consolidated licensing system (trade name provisions).

Purpose: To make technical corrections reflecting current procedures and to add a fee for trade name searches.

Other Identifying Information: WAC 308-300-220, 308-300-230, 308-300-240, 308-300-250, 308-300-270, and 308-300-280.

Statutory Authority for Adoption: RCW 19.80.045.

Statute Being Implemented: Chapter 19.80 RCW, RCW [19.80.]005, [19.80.]010, [19.80.]025, [19.80.]040, [19.80.]045, and [19.80.]075.

Summary: WAC 308-300-220, 308-300-230, 308-300-240 and 308-300-250, to make technical corrections; WAC 308-300-270, to describe the kinds of information obtained in a search; and WAC 308-300-280, to add a fee for trade name searches.

Reasons Supporting Proposal: 1992 legislative amendments (SSB 6461) mandate the deposit of trade name fees to the master license fund and that master license services be fully self-supporting.

Name of Agency Personnel Responsible for Drafting: Margaret Schott, 405 Black Lake Boulevard, Olympia, WA, 586-1900; Implementation: T. W. Washington Jr., 405 Black Lake Boulevard, Olympia, WA, 753-1749; and Enforcement: Nell Benzschawel, 405 Black Lake Boulevard, Olympia, WA, 586-5372.

Name of Proponent: Department of Licensing, Business License Services, governmental.

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

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

Proposal Changes the Following Existing Rules: Removes redundant definitions and defines master application; clarifies signature requirements; changes "certificate" to "application for registration"; removes acknowledgement requirement; eliminates some instances requiring a notice of cancellation; describes the kinds of information obtainable through a records search; adds a fee for trade name searches; and removes the statement that all fees will be deposited to the general fund.

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

Hearing Location: 405 Black Lake Boulevard, Conference Room #1, Olympia, WA, on April 21, 1992, at 9:00 a.m.

Submit Written Comments to: Margaret Schott, P.O. Box 9034, Olympia, WA 98507-9034, by April 20, 1992.

Date of Intended Adoption: April 24, 1992.

March 18, 1992

Derek Edwards

Assistant Attorney General

#### AMENDATORY SECTION (Amending Order 601-DOL, filed 1/6/81)

WAC 308-300-220 DEFINITIONS. The following definitions apply to use of these terms in RCW 19.80.010:

(1) ~~((True and real name means:~~

~~(a) The surname of an individual coupled with one or more of his or her other names, one or more of his or her initials, or any combination thereof;~~

(b) The designation or appellation by which a person is best known and called in the business community where he or she transacts business, if this is used as the legal signature.

(2) Person means: Any individual or general partnership conducting, intending to conduct, or having an interest in a business in the state of Washington.

(3) Style means: As used in these rules, title or appellation of a person.

(4) Trade name, as used in these rules, means assumed name, that is:

(a) The name taken up or adopted by a person or persons which does not include the true and real name of that person or persons, for the conduct of or intent to conduct business; or

(b) Any name that does not include the true and real names of all persons conducting that business or with an interest therein; or

(c) Any name that includes words which suggest additional parties of interest such as "company," "and sons," "and associates."

(5) Acknowledgement, as used in these rules, is an acknowledgement (3) Application means the master application as prescribed by chapter (64-08) 19.02 RCW.

(6) Director means the director of the department of licensing.

(7) Department means the department of licensing.

**AMENDATORY SECTION** (Amending Order 551-DOL, filed 9/5/79)

WAC 308-300-230 **REQUIRED REGISTRATION** (~~(=CERTIFICATE)~~) OF TRADE NAME. Any person or persons who conduct or intend to conduct a business under a trade name must register that name with the department. The person or all the persons conducting that business or having an interest therein shall (~~sign and cause to have filed an acknowledged certificate of~~) register a trade name with the department. The (~~certificate~~) application for registration of trade name shall set forth:

(1) The designation, name or style under which the business is to be conducted.

(2) The real and true name of each person conducting or intending to conduct the business, or having an interest therein, together with the mailing address and an authorized signature (~~for each such person~~) of a person having an interest therein.

(3) Every county in the state of Washington in which the trade name or other designation, name or style is used or intended to be used to carry on, conduct or transact business.

(4) Any other information as the director may require.

(5) Acknowledgement of signature(s) by an officer authorized to take acknowledgement of deeds.)

Upon receipt of a properly completed (~~certificate of~~) application for trade name registration and proper fee payment, the department shall register the trade name. Such registration shall remain in effect until cancelled.

**AMENDATORY SECTION** (Amending Order 551-DOL, filed 9/5/79)

WAC 308-300-240 (~~(AMENDMENT OR)~~) CANCELLATION. (1) (~~An acknowledged certificate of amendment shall be filed with the department on a form provided by the department when one of the following occurs:~~

(a) There is a change in the true and real name of an individual conducting or having an interest in the business for which the trade name is registered; or

(b) There is a change in the counties designated for use or intended use of the trade name; or

(c) There is a change of any mailing address set forth on the certificate of trade name.

(2) A notice of cancellation shall be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new (~~certificate~~) application for registration of trade name shall be filed when:

(a) There is an addition, deletion or any change of person or persons set forth on the (~~certificate~~) application for registration of trade name as those conducting or intending to conduct business under the registered trade name (~~PROVIDED, That this subsection (3) does not apply to the legal name change of an individual for which a certificate of amendment is required under (1)(a) above~~);

(b) There is a change in the wording or spelling of the registered trade name.

**AMENDATORY SECTION** (Amending Order 551-DOL, filed 9/5/79)

WAC 308-300-250 FORMS. The department shall provide forms for (~~certificates~~) registration of trade name, (~~supplemental pages, and certificates of amendment/notice of cancellation~~) which (~~may~~) must be used to make the required filings and which will be available from the following:

(1) Business license (~~center~~) services of the department of licensing; and

(2) (~~Offices of county clerks;~~

(3) Persons or institutions, public or private, that request forms for public distribution; and

(4) Other distribution points as the director deems appropriate.

**AMENDATORY SECTION** (Amending Order 551-DOL, filed 9/5/79)

WAC 308-300-270 (~~(INSPECTION OF TRADE NAME FILES ENCOURAGED)~~) SEARCHES. (~~Each person contemplating use of a trade name is encouraged to make or cause to make an inspection of the trade name files located in the Olympia office of the department of licensing to determine whether the proposed trade name is similar to any already registered.~~) Upon request and the payment of fees as specified in WAC 308-300-280, the department shall make a comprehensive search of the master license service's records to determine any of the following facts:

(1) Persons conducting business under a trade name;

(2) Registered trade names;

(3) Firm names;

(4) Corporate names; and

(5) Verification of business existence.

**AMENDATORY SECTION** (Amending Order 551-DOL, filed 9/5/79)

WAC 308-300-280 FEES AND REFUNDS. (1) The department shall charge and collect:

(a) Five dollars for (~~initial filing of certificate~~) registration of trade name;

(b) (~~Two~~) Four dollars for each (~~certificate of amendment~~) trade name search plus the costs of any electronic medium used;

(c) (~~Twenty-five cents per page for copies of the document(s);~~

(d) Two dollars for each letter of certification to accompany copies of the document(s).

(2) (~~All fees remitted to the department shall be deposited with the state treasurer to the general fund.~~

(3) No refund of less than five dollars shall be made except upon written request by the registrant.

**WSR 92-07-096**

**EMERGENCY RULES**

**DEPARTMENT OF HEALTH**

**(Medical Disciplinary Board)**

[Order 255B—Filed March 18, 1992, 10:40 a.m.]

Date of Adoption: March 17, 1992.

Purpose: Amends WAC 246-920-030 requiring licensees and their attorneys to cooperate with an investigation. WSR 92-07-058, filed March 13, 1992, is rescinded.

Citation of Existing Rules Affected by this Order: Amending WAC 246-920-030.

Statutory Authority for Adoption: RCW 18.72.150.

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: In order to protect the public it is imperative that licensees cooperate with the board's investigations.

Effective Date of Rule: Immediately.

March 17, 1992  
Traci Troutman  
Program Manager

AMENDATORY SECTION (Amending Order 105B, filed 12/21/90, effective 1/21/91)

WAC 246-920-030 COOPERATION WITH INVESTIGATION. (1) A licensee (~~(physician)~~) must comply with a request, under RCW 70.02.050, for health care records(;) or documents (~~(or explanation)~~) from an investigator who is acting on behalf of the disciplining authority pursuant to RCW 18.130.050(2) (~~board~~) by submitting the requested items within fourteen calendar days of receipt of the request by the licensee (~~(physician)~~) or the licensee's (~~(physician's)~~) attorney, whichever is first. If the licensee (~~(physician)~~) fails to comply with the request within fourteen calendar days, the investigator shall contact the licensee (~~(physician)~~) or the licensee's (~~(physician's)~~) attorney by (~~telephone or~~) letter as a reminder.

~~((2))~~ (a) Investigators may extend the time for response if the licensee (~~(physician)~~) requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted (~~(only)~~) by the board chairman or the board's designee (~~(presiding officer)~~).

~~((3))~~ (b) If the licensee (~~(physician)~~) fails to comply with the request within three business days after the receipt of the written reminder, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, those charges may be included in the statement of charges (~~(then a subpoena shall be served upon the physician to obtain the requested items)~~).

(2) A licensee must comply with a request for non-health care records or documents from an investigator who is acting on behalf of the board pursuant to RCW 18.130.050(2) by submitting the requested items within fourteen calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen calendar days, the investigators shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted by the board chairman or the board's designee.

(b) If the licensee fails to comply with the request within three business days after the receipt of the reminder, then a subpoena shall be served upon the licensee to obtain the requested items.

(c) If the licensee fails to comply with the subpoena, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

(3) A licensee must comply with a request for information from an investigator who is acting on behalf of the board pursuant to RCW 18.130.050(2). This information may include, but is not limited to an explanation of the matter under investigation, curriculum vitae, continuing medical education credits, malpractice action summaries, or hospital affiliations. The licensee will submit the requested information within fourteen calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.

(a) Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted by the board chairman or the board's designee.

(b) If the licensee fails to comply with the written reminder within three business days after the receipt of the reminder, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

~~((4) If the physician fails to comply with the subpoena, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.)~~

~~((5)) (4) ((If the physician complies with the request after the issuance of the statement of charges, the board's assistant attorney general-prosecutor shall decide whether the charges based on RCW 18.130.180(8) will be prosecuted or settled. If the charges based on RCW 18.130.180(8) are to be settled, the)) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the reviewing board member may take into consideration whether the licensee has complied with the request after the statement of charges has been issued. Any settlement proposal shall be presented to the board or a duly constituted panel of the board for a decision on ratification and until ratified, the settlement is not final.~~

**WSR 92-07-097**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed March 18, 1992, 10:41 a.m.]

Original Notice.

Title of Rule: WAC 246-316-990 Boarding homes; 246-318-990 Hospitals; 246-322-990 Private psychiatric hospitals; and 246-322-991 Private alcohol hospitals.

Purpose: Amend fee schedules for hospitals and boarding homes.

Statutory Authority for Adoption: RCW 43.70.250.

Summary: This will amend fee rules for hospitals and boarding homes.

Reasons Supporting Proposal: The department has determined that additional fees are necessary to support the programs that regulate health care facilities.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kathy Stout, Director, 753-5916.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Current rules are amended to reflect additional fees that are necessary to support the programs that are responsible for regulating health care facilities.

Proposal Changes the Following Existing Rules: Department has determined increasing of fees are necessary to support programs that regulate health care facilities.

Small Business Economic Impact Statement: WAC 246-316-990 Boarding homes, the department has considered whether this rule is subject to the Regulatory Fairness Act and has determined that it is not for the reason that boarding homes comprise less than 10% of the industries under the industry code for residential care 8361; and WAC 246-318-990 Hospitals, 246-322-990 Private psychiatric hospitals, and 246-322-991 Private alcohol hospitals, fees are adjusted according to the size of the business.

Hearing Location: General Administration Auditorium, 11th and Columbia, Olympia, Washington 98504, on April 22, 1992, at 1:30 p.m.

Submit Written Comments to: Leslie Baldwin, P.O. Box 47902, Olympia, WA 98504-7902, by April 20, 1992.

Date of Intended Adoption: April 29, 1992.

March 17, 1992  
Kristine M. Gebbie  
Secretary

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-316-990 FEES. Boarding homes licensed under chapter 18.20 RCW shall:

Submit an annual fee of ((~~fourteen~~)) thirty-five dollars ((~~multiplied by~~)) per bed of the licensed resident bed capacity of the boarding home.

The "licensed resident bed capacity" is the resident occupancy level determined by the boarding home and approved by the department, consistent with physical plant and movable equipment requirements for resident sleeping rooms.

The occupancy level shall be maintained at or below the licensed resident bed capacity of the boarding home.

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-318-990 FEES. Hospitals licensed under chapter 70.41 RCW shall:

(1) Submit an annual license fee of ((~~nineteen~~)) forty-five dollars for each bed space within the licensed bed capacity of the hospital to the department;

(2) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(3) Include neonatal intensive care bassinet spaces;

(4) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(a) Physical plant requirements of this chapter are met without movable equipment; and

(b) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(5) Exclude all normal infant bassinets;

(6) Limit licensed bed spaces as required under chapter 70.38 RCW;

(7) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity; and

(8) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-322-990 PRIVATE PSYCHIATRIC HOSPITAL FEES. Private psychiatric hospitals licensed under chapter 71.12 RCW shall:

(1) Submit an annual fee of ((~~twenty-seven~~)) forty-five dollars for each bed space within the licensed bed capacity of the hospital to the department;

(2) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(3) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(a) Physical plant requirements of this chapter are met without movable equipment; and

(b) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department;

(4) Limit licensed bed spaces as required under chapter 70.38 RCW;

(5) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity; and

(6) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-322-991 ALCOHOLISM HOSPITAL FEES. Alcoholism hospitals licensed under chapter 71.12 RCW shall:

(1) Submit an annual fee of ((~~twenty~~)) forty-five dollars for each bed space within the licensed bed capacity of the alcoholism hospital to the department;

(2) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(3) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(a) Physical plant requirements of this chapter are met without movable equipment; and

(b) The alcoholism hospital currently possesses the required movable equipment and certifies this fact to the department;

(4) Limit licensed bed spaces as required under chapter 70.38 RCW;

(5) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to the department establishment of the alcoholism hospital's licensed bed capacity; and

(6) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

**AMENDATORY SECTION** (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-326-990 FEES. Alcoholism treatment facilities licensed under chapter 71.12 RCW shall:

(1) Submit an annual fee of ((~~fifteen~~)) forty-five dollars for each bed space within the licensed bed capacity of the alcoholism treatment facility to the department;

(2) Include all bed spaces in rooms complying with physical plant and movable equipment requirements for twenty-four-hour assigned patient rooms; and

(3) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

WSR 92-07-098
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)
[Filed March 18, 1992, 10:44 a.m.]

Original Notice.

Title of Rule: Board of Pharmacy rules.

Purpose: To update WAC and RCW references and delete obsolete material, and to change record retention requirements from five to two years in compliance with federal record-keeping requirements.

Statutory Authority for Adoption: Chapters 246-858, 246-863, 246-865, 246-869, 246-871, 246-873, 246-875, 246-879, 246-895, and 246-903 WAC is RCW 18.64.005; chapter 246-857 WAC is RCW 18.64.005 and 34.05.220, except for WAC 246-857-340 which is chapter 43.21C RCW; chapter 246-867 WAC is RCW 18.64.005 and 18.130.050; chapter 246-883 WAC is RCW 18.64.005 and 69.41.075; chapter 246-886 WAC is RCW 69.41.080; chapter 246-887 WAC is chapter 69.50 RCW and RCW 18.64.005; chapter 246-889 WAC is RCW 69.43.050; chapter 246-893 WAC is RCW 42.17.250; chapter 246-897 WAC is RCW 18.64.005 and 69.41.075; chapter 246-899 WAC is RCW 69.41.180; and chapter 246-901 WAC is RCW 18.64A.020 and 18.64A.030.

Summary: Housekeeping changes to update information.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Donald Williams, 1300 Quince Street S.E., Olympia, (206) 753-6834.

Name of Proponent: Board of Pharmacy, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Housekeeping changes to update pharmacy rules. Also changes the retention period for certain records from five years to two years.

Proposal Changes the Following Existing Rules: Housekeeping changes.

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

Hearing Location: WestCoast SeaTac Hotel, 18220 Pacific Highway South, Seattle, WA 98188, on April 24, 1992, at 10:00 a.m.

Submit Written Comments to: D. H. Williams, 1300 Quince Street S.E., P.O. Box 47863, Olympia, WA 98504-7863, by April 22, 1992.

Date of Intended Adoption: April 24, 1992.

March 3, 1992
Donald Williams
Executive Director

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-857-020 PRACTICE AND PROCEDURE ((CROSS))--ADOPTION BY REFERENCE. ((In order to conform the board's practice and procedure rules to the uniform procedural rules for the conduct of contested cases, the board has repealed certain practice and procedure rules. The following cross reference will assist in locating the superseding uniform procedural rule:)) The board

adopts the following sections of chapter 10-08 WAC, Model Rules of Procedure, by reference:

((Repealed Board Rule Uniform Procedural Rule))

Table with 2 columns: Repealed Board Rule and Uniform Procedural Rule. Rows include WAC 10-08-080 through WAC 10-08-090.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-857-180 DEPOSITIONS UPON INTERROGATORIES--INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC ((360-08-250)) 246-857-090 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-857-320 DECLARATORY RULINGS. As prescribed by RCW ((34-04-080)) 34.05.240, any interested person may petition the board for a declaratory ruling. The board shall consider the petition and within a reasonable time the board shall:

- (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 hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the board shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
(2) Issue a nonbinding declaratory ruling; or
(3) Notify the person that no declaratory ruling is to be issued.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-857-330 FORMS. Any interested person petitioning the board for a declaratory ruling pursuant to RCW ((34-04-080)) 34.05.240, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of pharmacy." 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 ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the board. Petitions shall be on white paper either 8 1/2" x 11" or 8 1/2" x 13" in size.

Any interested person petitioning the board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of pharmacy." 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 (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the board. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-857-340 SEPA EXEMPTION. The board of pharmacy has reviewed its authorized activities and has found them to be exempt pursuant to WAC ((197-10-040(2), 197-10-150 through 197-10-190)) 197-11-800 and the State Environmental Policy Act, chapter 43.21C RCW.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-858-020 GENERAL REQUIREMENTS. (1) RCW 18.64.080((5)) (3) states: "Any person enrolled as a student of pharmacy in an accredited college may file with the ((state board of pharmacy)) department an application for registration as a pharmacy intern—." A student of pharmacy shall be defined as any person enrolled in a college or school of pharmacy accredited by the board of pharmacy or any graduate of any accredited college or school of pharmacy.

(2) As provided for in RCW 18.64.080((4)) (3) the board of pharmacy hereby establishes fifteen hundred hours for the internship requirement.

(a) For graduates prior to July 1, 1991, credit may be allowed:

(i) Up to seven hundred hours for experiential classes as part of the curriculum of an accredited college or school of pharmacy commonly referred to as externship/clerkship;

(ii) Up to five hundred hours of credit for the internship shall be granted to graduates of board approved schools or colleges of pharmacy;

(iii) Seven hundred hours or more for experience obtained after completing the first quarter/semester of pharmacy education, and including any breaks or vacations.

(b) For graduates after July 1, 1991, credit may be allowed:

(i) Up to seven hundred hours of experiential classes as part of the curriculum of an accredited college or school of pharmacy commonly referred to as externship/clerkship;

(ii) Eight hundred or more hours for experience obtained after completing the first quarter/semester of pharmacy education, and including any breaks or vacations of which at least two hundred hours must be gained within the last twelve months prior to licensure.

(c) The board will document hours in excess of these requirements for students qualifying for out-of-state licensure.

(3) An applicant for licensure as a pharmacist who has completed seven hundred internship hours will be permitted to take the state board examination for licensure; however, no pharmacist license will be issued to the applicant until the fifteen hundred internship hours have been completed.

(4) To retain a certificate as a pharmacy intern, the intern must make continuing satisfactory progress in completing the pharmacy course.

(5) Experience must be obtained under the guidance of a preceptor who has met certification requirements prescribed in WAC ((360-10-050)) 246-858-060 and has a certificate except as hereinafter provided for experience gained outside the state of Washington.

(6) Experience obtained in another state may be accepted toward the fulfillment of the fifteen hundred hour requirement provided that a letter is received from the board of pharmacy of that state in which the experience is gained and such letter indicates the experience gained would have been acceptable internship experience to the board of pharmacy in that state.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-858-030 REGISTRATION OF INTERNS. ((~~to be registered~~)) To register as a pharmacy intern, ((~~the~~)) an applicant ((~~must~~)) shall file with the ((~~board of pharmacy~~)) department an application for registration as a pharmacy intern as provided for in RCW 18.64.080. The application shall be accompanied by a fee as specified in WAC ((360-18-020)) 246-907-030. Prior to engaging in the practice of pharmacy as an intern or extern, under the supervision of a preceptor, the applicant must be registered by the board as a pharmacy intern.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-858-040 RULES FOR THE PHARMACY INTERN. (1) The intern shall send notification to the board of pharmacy on or before the intern's first day of ((~~beginning of his/her~~)) training. Such notification shall consist of the date, the name of the pharmacy, and the name of the preceptor where the intern expects to begin his/her internship. The board of pharmacy shall promptly notify the intern of the acceptability of the preceptor under whom the intern expects to gain experience. Internship credit will not be accepted until the preceptor has been certified.

(2) The pharmacy intern shall engage in the practice of pharmacy, and the selling of items restricted to sale under the supervision of a licensed pharmacist, only while ((~~he/she~~)) the intern is under the direct and personal supervision of a certified preceptor or a licensed pharmacist designated by the preceptor to supervise that intern during the preceptor's absence from the site. Provided, that hours of experience gained while the certified preceptor is absent from the site shall not be counted toward fulfilling any internship requirement.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-858-060 REQUIREMENTS FOR PRECEPTOR CERTIFICATION. (1) A pharmacist who is licensed and actively engaged in practice in a Class A pharmacy in the state of Washington, and who has met certification requirements prescribed in this section of the regulation and who has completed a board approved training program within the last five years, and who has been certified by the board of pharmacy shall be known as "pharmacist preceptor." The requirement for completion of an approved training program becomes effective June 30, 1991.

(2) The pharmacist preceptor must have completed twelve months as a licensed pharmacist engaged in the practice of pharmacy as defined in RCW 18.64.011(11).

(3) Any preceptor or preceptor applicant who has been found guilty of a drug or narcotic violation or whose pharmacist license has been revoked, suspended, or placed on probation by the state board of pharmacy shall not be eligible for certification as a preceptor, until completion of the probationary period, and a showing of good cause for certification as a pharmacist preceptor.

(4) The preceptor shall be responsible for the quality of the internship training under his/her supervision and he/she shall assure that the intern actually engages in pharmaceutical activities during that training period.

(5) The board of pharmacy shall withdraw a preceptor's certification upon proof that the preceptor failed to meet or maintain the requirements as stated in this section.

(6) In considering the approval of special internship programs pursuant to WAC ((360-10-080)) 246-858-080, the board may approve alternative qualification requirements for the preceptors of such programs.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-858-070 RULES FOR PRECEPTORS. (1) The pharmacist preceptor, or his or her designee in accordance with WAC ~~((360-10-030))~~ 246-858-040(2), shall supervise the pharmacy intern and shall be responsible for the sale of restricted items, and the compounding and dispensing of pharmaceuticals dispensed by an intern.

(2) The pharmacist preceptor must use the board approval plan of instruction for interns.

(3) Upon completion of the intern's experience at each site, the preceptor under whom this experience was obtained shall file a report with the board. Such report shall briefly describe the type of professional experience received under the preceptor's supervision and the preceptor's evaluation of the intern's ability to practice pharmacy at that stage of internship.

(4) The board of pharmacy shall provide the necessary affidavit forms to certify hours of experience under the personal supervision of a preceptor. Affidavits must be certified and recorded in the office of the board not later than thirty days after the completion of any site intern experience; provided that any experience necessary for eligibility to take the licensing examination must be in the board office no later than thirty days prior to the examination.

(5) The pharmacist preceptor may supervise more than one intern during a given time period; however, two interns may not dispense concurrently under the direct supervision of the same preceptor.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-863-060 LICENSED PHARMACISTS—EMPLOYED AS RESPONSIBLE MANAGERS—DUTY TO NOTIFY BOARD. Licensed pharmacists employed as responsible managers for a pharmacy shall at once notify the state board of pharmacy of such employment and shall comply with such instructions as may be received. A pharmacist shall also at once notify the state board of pharmacy of termination of employment as a responsible manager. Please refer to WAC ~~((360-16-050))~~ 246-869-070 for additional information.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-863-070 INACTIVE PHARMACIST LICENSE. Any pharmacist who desires to leave the active practice of pharmacy in the state of Washington may request an inactive license from the board. The request for an inactive license ~~((must))~~ shall be submitted on a form provided by the ~~((board))~~ department. It must be renewed in the same manner as an active license upon payment of a fee as specified by the ~~((board))~~ secretary.

The holder of an inactive license shall not practice pharmacy in the state of Washington. The holder of an inactive license need not comply with the continuing education requirements contained in chapter ~~((360-11))~~ 246-861 WAC.

In order to reactivate an inactive license, the holder of the inactive license ~~((must))~~ shall comply with the provisions of WAC ~~((360-12-130))~~ 246-863-090.

**AMENDATORY SECTION** (Amending Order 194, filed 9/10/91, effective 10/11/91)

WAC 246-863-080 RETIRED PHARMACIST LICENSE. (1) Any pharmacist who has been licensed in the state for twenty-five consecutive years, who wishes to retire from the practice of pharmacy, may apply ~~((to the board of pharmacy))~~ for a retired pharmacist license ~~((The fee for the original retired pharmacist license shall be twenty dollars))~~ by submitting to the board:

- (a) An application on a form provided by the department; and  
(b) A fee as specified in WAC 246-907-030.

(2) The holder of a retired pharmacist license shall not be authorized to practice pharmacy and need not comply with the continuing education requirements of chapter ~~((360-11))~~ 246-861 WAC.

(3) A retired pharmacist license shall be granted to any qualified applicant and shall entitle such person to receive mailings from the board of pharmacy: PROVIDED, That lawbook updates shall not be mailed without charge.

(4) In order to reactivate a retired pharmacist license, the holder must comply with the provision of WAC ~~((360-12-130))~~ 246-863-090.

(5) The annual renewal fee for a retired pharmacist license ~~((shall be twenty-five dollars))~~ is set by the secretary in WAC 246-907-030.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-863-090 PHARMACISTS—REINSTATEMENT OR REACTIVATION OF LICENSE. (1) A pharmacist who desires to reinstate or reactivate his or her license after having been out of the active practice of pharmacy ~~((must))~~ shall meet the following requirements, as applicable, in addition to paying the fee required by RCW 18.64.140.

(a) If the pharmacist has been unlicensed or the holder of an inactive license for three years or less, ~~((he or she must))~~ the pharmacist shall take and pass the jurisprudence examination given by the board.

(b) If the pharmacist has been unlicensed or the holder of an inactive license for between three and five years, ~~((he or she must))~~ the pharmacist shall take and pass the jurisprudence examination given by the ~~((board))~~ department and either serve an internship of 300 hours or take and pass such further written practical examinations as are specified by the board in each individual case.

(c) If the pharmacist has been unlicensed or the holder of an inactive license for over five years, ~~((he or she must))~~ the pharmacist shall take and pass the full board examination and serve an internship of 300 hours.

(2) A pharmacist desiring to reinstate or reactivate his or her license ~~((must))~~ shall complete such continuing education credits as the board may specify in each individual case.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-863-110 MONITORING OF DRUG THERAPY BY PHARMACISTS. The term "monitoring of drug therapy" used in RCW 18.64.011(11) shall mean a review of the drug therapy regimen of patients by a pharmacist for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. Monitoring of drug therapy shall include, but not be limited to:

- (1) Collecting and reviewing patient drug use histories;
- (2) Measuring and reviewing routine patient vital signs including, but not limited to, pulse, temperature, blood pressure and respiration; and
- (3) Ordering and evaluating the results of laboratory tests relating to drug therapy including, but not limited to, blood chemistries and cell counts, drug levels in blood, urine, tissue or other body fluids, and culture and sensitivity tests when performed in accordance with policies and procedures or protocols applicable to the practice setting, which have been developed by the pharmacist and prescribing practitioners and which include appropriate mechanisms for reporting to the prescriber monitoring activities and results.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-865-030 EMERGENCY KIT. (1) The contents and quantity of drugs and supplies in the emergency kit shall be determined by the pharmaceutical services committee as defined in WAC ~~((360-13-045))~~ 246-865-010(9) which shall consider the number of residents to be served and their potential need for emergency medications.

(2) A copy of the approved list of contents shall be conspicuously posted on or near the kit.

(3) The emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner.

(4) Records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the nursing home and the supplying pharmacy.

(5) The pharmaceutical services committee shall be responsible for ensuring proper storage, security and accountability of the emergency kit

(a) The emergency kit shall be stored in a locked area or be locked itself;

(b) Emergency kit drugs shall be accessible only to licensed nurses as defined in WAC ~~((360-13-045))~~ 246-865-010(6).

(6) The contents of the emergency kit, the approved list of contents, and all related records shall be made freely available and open for inspection to representatives of the board of pharmacy and the department.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-865-060 PHARMACEUTICAL SERVICES.** (1) Administration of pharmaceutical services.

(a) There shall be provision for timely delivery of drugs and biologicals from a pharmacy so a practitioner's orders for drug therapy can be implemented without undue delay.

(b) Unless the nursing home operates a licensed pharmacy and employs a director of pharmaceutical services, the nursing home shall have a written agreement with one or more licensed pharmacists who provide for pharmaceutical consultant services. The staff pharmacist or consultant pharmacist supervises the entire spectrum of pharmaceutical services in the nursing home.

(c) There shall be a pharmaceutical services committee whose membership includes at least a staff or consultant pharmacist, a physician, the director of nursing or his/her designee, and the administrator or his/her designee. The pharmaceutical services committee develops and maintains written policies and procedures for safe and effective drug therapy, distribution, control, and use which are current and followed in practice.

(d) Reference material regarding the use of medication, adverse reactions, toxicology, and poison control center information shall be available to facility staff.

(e) There shall be procedures established for the reporting and recording of medication errors and adverse drug reactions.

(2) A staff pharmacist or consultant pharmacist shall be responsible for coordinating pharmaceutical services which include:

(a) Provision of pharmaceutical services evaluations and recommendations to the administrative staff.

(b) On-site reviews to ensure that drug handling and utilization procedures are carried out in conformance with recognized standards of practice.

(c) Regularly reviewing each resident's therapy to screen for potential or existing drug therapy problems and documenting recommendations.

(d) Provision of drug information to the nursing home staff and physicians as needed.

(e) Planning and participating in the nursing home staff development program.

(f) Consultation regarding resident care services with other departments.

(3) Security and storage of drugs.

(a) The nursing home shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security as defined by regulation and accepted standards of practice.

(b) All drugs shall be stored in locked cabinets, rooms, or carts, and shall be accessible only to personnel licensed to administer or dispense drugs.

(c) Schedule III controlled substances shall be stored apart from other drugs on a separate shelf or in a separate compartment or cabinet, provided, however, Schedule III controlled substances may be stored with Schedule II controlled substances. Schedule III controlled substances can be stored with other drugs when distributed in a unit dose drug distribution system.

(d) Drugs for external use shall be stored apart from drugs for internal use, on a separate shelf or in a separate compartment or cabinet. Any shelf, compartment, or separate cabinet used for storage of external drugs shall be clearly labeled to indicate it is to be used for external drugs only.

(e) At all times, all keys to drug boxes, cabinets, and rooms shall be carried by persons legally authorized to administer drugs and on duty on the premises.

(f) If a supplemental dose kit within a unit dose drug distribution system is provided it must comply with WAC ((~~360-13-030~~) 246-865-040).

(g) If an emergency kit is provided, it shall comply with Washington state board of pharmacy regulations WAC ((~~360-13-010 and 360-13-020~~) 246-865-020 and 246-865-030).

(4) Labeling of drugs.

(a) The label for each legend drug which is not dispensed in a unit dose shall have the name and address of the pharmacy from which the

drug was dispensed; the prescription number; the physician's name; the resident's full name; the date of issue; the initials of the dispensing pharmacist; the name and strength of the drug; a controlled substances schedule, if any; the amount (e.g., number of tablets or cc's) of the drug dispensed, and the expiration date. In the case of a compounded drug which contains Schedule II or III controlled substances, the quantity of each controlled substance per cc or teaspoonful shall be shown on the label.

(b) In a unit dose drug distribution system, a clear, legible label shall be printed or affixed securely to each unit dose package. Each unit dose drug label shall include: the name, strength and, for each unit dose package, the dosage amount of the drug; the expiration date for any time-dated drug; the lot or control number; and controlled substances schedule number, if any. Each individual drug compartment shall be labeled with the full name of the resident whose drug the compartment contains and the name of the resident's physician.

(c) Nonlegend drugs shall be clearly labeled with at least the patient's name, date of receipt by the facility, as well as display a manufacturer's original label or a pharmacy label if repackaged by the pharmacist. Nonlegend drugs supplied by the extended care facility pursuant to WAC 388-88-050 need not be labeled with the patient's name.

(d) A label on a container of drugs shall not be altered or replaced except by the pharmacist. Drug containers having soiled, damaged, incomplete, or makeshift labels shall be returned to the pharmacy for relabeling or disposal. Drugs in containers having no labels or illegible labels shall be destroyed.

(5) Control and accountability.

(a) The nursing home shall maintain and follow written procedures which provide for the accurate control and accountability of all drugs in the nursing home.

(b) No drugs may be returned from the nursing home to a pharmacy except as provided in paragraph (4)(d) or if the drug is returned in unopened unit dose packages.

(c) Drugs shall be released to a resident upon discharge only on specific written authorization of the attending physician. A receipt containing information sufficient to document the drug's destination, the person who received the drug, and the name and quantity of drugs released shall be entered in the resident's health record.

(d) All of an individual resident's drugs including Schedule III, IV and V controlled substances, that are discontinued by the physician and remain unused, shall be destroyed by a licensed nurse employee of the nursing home in the presence of a witness within 90 days after having been discontinued, and accurate records of destruction maintained except from drugs which are sealed in unit dose packages.

(e) Outdated, unapproved, contaminated, deteriorated, adulterated, or recalled drugs shall not be available for use in the nursing home.

(f) Except in the case of Schedule II controlled substances and drugs which are sealed in unit dose packages, drugs which remain in the nursing home after the patient has died or been discharged, and drugs in containers with illegible or missing labels, shall be immediately and irretrievably disposed of by a licensed nurse employee in the presence of a witness and proper records maintained of such disposal. Destruction of Schedule II drugs shall be handled in accordance with (6)(g). Unit dose packages may be returned to the pharmacy.

(6) Special requirements for controlled substances.

(a) All Schedule II controlled substances shall be stored in separately keyed and locked secure storage within a drug facility.

(b) Schedule III controlled substances shall be stored apart from other drugs and may be stored on a separate shelf, drawer, or compartment with Schedule II controlled substances.

(c) There shall be a record book for Schedule II and Schedule III controlled substances which shall be a bound book with consecutively numbered pages in which complete records of receipt and withdrawal of Schedule II and III controlled substances are maintained.

(d) At least once each 24 hours, the amount of all Schedule II controlled substances stored in the facility shall be counted by at least two persons who are legally authorized to administer drugs. A similar count shall be made of all Schedule III controlled substances at least weekly. Records of counts shall be entered in the Schedule II and III controlled substances book(s).

(e) When a resident is discharged, a record of release for any Schedule II or III controlled substances released shall be entered on the appropriate page for the given drug in the controlled substances record book.

(f) Any discrepancy in actual count of Schedule II or III controlled substances and the record shall be documented in the Schedule II or

III controlled substances books and reported immediately to the responsible supervisor who shall investigate the discrepancy. Any discrepancy which has not been corrected within seven calendar days shall be reported to the consultant pharmacist and the Washington state board of pharmacy.

(g) Discontinued Schedule II controlled substances and all Schedule II controlled substances which remain after the discharge or death of residents shall:

(i) Be destroyed at the nursing home within 30 days by a registered pharmacist and the director or nursing or a registered nurse designee with appropriate documentation maintained, or

(ii) Be destroyed at the nursing home by a representative of the Washington state board of pharmacy if so requested by the board or the nursing home.

(h) A nursing home may establish procedures which vary from those paragraphs (6)(a)(g) if they are using a unit dose drug distribution system and if that system provides for the accurate accounting, by the nursing home and the supplying pharmacy, of the receipt and disposition of all Schedule II and III controlled substances.

(7) Drug administration.

(a) Staff shall follow written procedures which provide for the safe handling and administration of drugs to residents.

(i) Drugs shall be administered only by persons licensed to administer drugs.

(ii) The resident shall be identified prior to administration.

(b) All drugs shall be identified up to the point of administration.

(c) Drugs shall be prepared immediately prior to administration and administered by the same person who prepares them except under a unit dose system.

(d) Drug administration shall be documented as soon as possible after the act of administration, and shall include:

(i) Verification of administration

(ii) Reasons for ordered doses not taken

(iii) Reasons for administration of, and response to drugs given on and as needed basis (PRN).

(e) Drug orders shall be received only by a licensed nurse and administered only on the written or verbal order of a practitioner. Verbal orders shall be signed by the prescribing practitioner in a timely manner.

(f) The self-administration of medication program shall provide evidence of:

(i) Assessment of the resident's capabilities

(ii) Instructions for administration

(iii) Monitoring of progress and compliance with orders

(iv) Safe storage of drugs.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-865-070 PROVISION FOR CONTINUITY OF DRUG THERAPY FOR RESIDENTS.** When a resident of a long term care facility has the opportunity for an unscheduled therapeutic leave that would be precluded by the lack of an available pharmacist to dispense drugs prescribed by an authorized practitioner, a registered nurse designated by the facility and its consultant or staff pharmacist and who agrees to such designation, may provide the resident or a responsible person with up to a 72-hour supply of a prescribed drug or drugs for use during that leave from the resident's previously dispensed package of such drugs. The drugs shall only be provided in accordance with protocols developed by the pharmaceutical services committee and the protocols shall be available for inspection. These protocols shall include the following:

(1) Criteria as to what constitutes an unscheduled therapeutic leave requiring the provision of drugs by the registered nurse;

(2) Procedures for repackaging and labeling the limited supply of previously dispensed drugs by the designated registered nurse that comply with all state and federal laws concerning the packaging and labeling of drugs;

(3) Provision to assure that none of the medication provided to the resident or responsible person may be returned to the resident's previously dispensed package of such drug or to the facility's stock.

(4) A record-keeping mechanism that will provide for the maintenance of a permanent log that includes the following information:

(a) The name of the person to whom the drug was provided;

(b) The drug and quantity provided;

(c) The date and time that the request for the drug was made;

(d) The date and time that the drug was provided;

(e) The name of the registered nurse that provided the drug;

(f) The conditions or circumstances that precluded a pharmacist from providing the drug.

Refer to WAC ((~~308-120-270~~)) 246-839-810 for related regulations on this practice.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-867-010 DEFINITIONS.** For the purpose of this chapter:

(1) "Chemical dependence - Substance abuse" means a chronic progressive illness which involves the use of alcohol and/or other drugs to a degree that it interferes in the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

(2) "Board" means the Washington state board of pharmacy.

(3) "Diversion" means illicit dispensing, distribution, or administration of a scheduled controlled substance or other legend drug not in the normal course of professional practice.

(4) "Drug" means a chemical substance alone or in combination, including alcohol.

(5) "Impaired pharmacist" means a pharmacist who is unable to practice pharmacy with judgment, skill, competence, or safety to the public due to chemical dependence, mental illness, the aging process, loss of motor skills, or any other mental or physical condition.

(6) "Approved substance abuse monitoring program" means a pharmacy recovery assistance program or program which the board has determined meets the requirement of the law and the criteria established by the board in WAC ((~~360-15-050~~)) 246-867-040 which enters into a contract with pharmacists who have substance abuse problems regarding the required components of the pharmacists recovery activity and oversees the pharmacist's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating pharmacists.

(7) "Contract" means a comprehensive, structured agreement between the recovering pharmacist and the approved monitoring program stipulating the pharmacist's consent to comply with the monitoring program and its required components of the pharmacist's recovery program.

(8) "Approved treatment ((~~facility~~)) program" means a facility approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(3) to provide concentrated alcoholism or drug addiction treatment if located within Washington state. Drug and alcohol addiction treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020(3).

(9) "Aftercare" means that period of time after intensive treatment that provides the pharmacist and the pharmacist's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(10) "Twelve-step groups" means groups such as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, and related organizations based on a philosophy of anonymity, peer group associations, self-help belief in a power outside of oneself which offer support to the recovering individual to maintain a chemically free lifestyle.

(11) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluid must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

(12) "Recovering" means that a chemically dependent pharmacist is in compliance with a treatment plan of rehabilitation in accordance with criteria established by an approved treatment facility and an approved substance abuse monitoring program.

(13) "Rehabilitation" means the process of restoring a chemically dependent pharmacist to a level of professional performance consistent with public health and safety.

(14) "Reinstatement" means the process whereby a recovering pharmacist is permitted to resume the practice of pharmacy.

(15) "Pharmacist support group" means a group of pharmacists meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced pharmacist facilitator in which pharmacists may safely discuss drug diversion, licensure issues, return to work, and other issues related to recovery.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-867-060 CONFIDENTIALITY.** (1) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in WAC ((~~360-15-060~~) 246-867-050) (1) and (2). Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(2) Notwithstanding subsection (1) of this section, board orders shall be subject to RCW 42.17.250 through 42.17.450.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-020 PHARMACIES AND DIFFERENTIAL HOURS.** (1) A pharmacy must provide adequate security for its drug supplies and records and in the absence of a pharmacist the pharmacy must be closed and access limited to persons authorized by the pharmacist; for example, janitorial services, inventory services, etc. If a pharmacy is located within a larger mercantile establishment which is open to the public for business at times when a pharmacist is not present then the pharmacy must be enclosed by solid partitions at least seven feet in height, from the floor, which are sufficient to provide adequate security for the pharmacy. In the absence of a pharmacist such pharmacies must be locked and secured so that only persons authorized by the pharmacist can gain access, provided however that employees of the mercantile establishment cannot be authorized to enter the closed pharmacy during those hours that the mercantile establishment is open to the public for business.

(2) All equipment and records referred to in WAC ((~~360-16-230~~) 246-869-180) and all drugs, devices, poisons and other items or products which are restricted to sale either by or under the personal supervision of a pharmacist must be kept in the pharmacy area.

(3) Written prescription orders and refill request can be delivered to a pharmacy at any time. But if no pharmacist is present then the prescription orders must be deposited, by the patient or his agent delivering the prescription order or refill request to the establishment, into a "mail slot" or "drop box" such that the prescription order is stored in the pharmacy area. The times that the pharmacy is open for business must be so displayed that they are prominently visible to the person depositing the prescription orders.

(4) Prescriptions shall be stored in the pharmacy and cannot be removed from the pharmacy unless the pharmacist is present and the removal is for the immediate delivery to the patient, person picking up the prescription for the patient, or person delivering the prescription to the patient at his residence or similar place.

(5) No drugs, devices, poisons and other items or products which are restricted to sale either by or under the personal supervision of a pharmacist can be sold or delivered without a pharmacist being present in the pharmacy.

(6) Any pharmacy having hours differing from the remainder of an establishment shall have a separate and distinct telephone number from that business establishment. The phone shall not be answerable in the remainder if the establishment unless all conversations, when the pharmacist is absent, are recorded and played back by the pharmacist.

(7) Oral prescriptions cannot be taken if a pharmacist is not present unless it is taken on a recording which must inform the caller as to the times the pharmacy is open.

(8) A pharmacy must prominently display in a permanent manner on or adjacent to its entrance the times that it is open for business. If a pharmacy is located within a larger mercantile establishment having hours of operation different from the pharmacy then the pharmacy times of being open for business shall be prominently displayed in a permanent manner at the pharmacy area and on or adjacent to the entrance to the mercantile establishment.

(9) Any advertising by the mercantile establishment which makes reference to the pharmacy or those products which are sold only in the pharmacy which in such advertising sets forth the days and hours that the mercantile establishment is open to the public for business must also indicate the days and hours that the pharmacy is open to the public for business.

(10) Any person desiring to operate a pharmacy within an establishment having hours of business differing from the pharmacy must

notify the board of pharmacy at least thirty days prior to commencing such differential hours. In order to constitute notification the applicant must complete the file forms provided by the board providing the required information. Board inspection and approval must be completed prior to the commencing of such differential hours. Such inspection and approval or disapproval shall be within 10 days of receiving notification that the premises are ready for inspection. Approval or disapproval shall be predicated upon compliance with this rule and pharmacy standards under chapter ((~~360-16~~) 246-869) WAC.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-050 PHARMACY LICENSE RENEWAL.** The state board of pharmacy will not renew any pharmacy license unless the following are submitted:

- (1) A complete renewal application form; and
- (2) The fee as established by WAC ((~~360-18-020~~) 246-907-030).

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-070 RESPONSIBLE MANAGER—APPOINTMENT.** Every nonlicensed proprietor of one or more pharmacies shall place in charge of each pharmacy a licensed pharmacist who shall be known as the "responsible manager." The nonlicensed proprietor shall immediately report to the state board of pharmacy the name of the "responsible manager," who shall ensure that the pharmacy complies with all the laws, rules and regulations pertaining to the practice of pharmacy. Every portion of the establishment coming under the jurisdiction of the pharmacy laws shall be under the full and complete control of such responsible manager. A now-licensed proprietor shall at once notify the board of pharmacy of the termination of employment of a responsible manager. Please refer to WAC ((~~360-12-120~~) 246-863-060) for additional information.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-100 PRESCRIPTION RECORD REQUIREMENTS.** (1) Records for the original prescription and refill records shall be maintained on the filled prescription or in a separate record book or patient medication record. Such records must be maintained for a period of at least two years and shall be made available for inspection to representatives of the board of pharmacy.

(2) The pharmacist shall be required to insure that the following information be recorded:

(a) Original prescription—At the time of dispensing, a serial number, date of dispensing, and the initials of the responsible pharmacist shall be placed on the face of the prescription. The patient's address must be readily available to the pharmacist, either from the face of the prescription, a record book, patient medication record, or hospital or clinic record.

(b) Refill prescription authorization—Refills for prescription for legend drugs must be authorized by the prescriber prior to the dispensing of the refill prescription.

(c) Refill prescription—At the time of dispensing, the date of refilling, quantity of the drug (if other than original), the name of authorizing person (if other than original), and the initials of the responsible pharmacist shall be recorded on the back side of the prescription, or in a separate record book or patient medication record.

(d) Prescription refill limitations—No prescription may be refilled for a period longer than one year from the date of the original prescription. "PRN" prescriptions shall expire at the end of one year. Expired prescriptions require authorization before refilling. If granted a new prescription shall be written and placed in the files.

(e) Prescription copies—Prescription copies and prescription labels presented for filling must be considered as informational only, and may not be used as the sole document. The prescriber shall be contacted for complete information and authorization. If granted, a new prescription shall be written and placed on file. Copies of prescriptions must be clearly identified as such on the face of the prescription. The transfer of original prescription information is permitted if the provisions of WAC ((~~360-16-094~~) 246-869-090) are met.

(f) Emergency refills—If the prescriber is not available and in the professional judgment of the pharmacist an emergency need for the medication has been demonstrated, the pharmacist may dispense enough medication to last until a prescriber can be contacted – but not



to exceed 72 hours' supply. The prescriber shall be promptly notified of the emergency refill.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-120 MECHANICAL DEVICES IN HOSPITALS.** Mechanical devices for storage of floor stock, shall be limited to hospitals and shall comply with all the following provisions:

(1) All drugs and medicines to be stocked in the device shall be prepared for use in the device by or under the direct supervision of a registered pharmacist in the employ of the hospital and shall be prepared in the hospital from the hospital stock in which the drug is to be administered. "Hospital" shall mean any hospital licensed by the state department of health or under the direct supervision of the state department of institutions.

(2) Such device shall be stocked with drugs and medicines only by a registered pharmacist in the employ of the hospital.

(3) A registered pharmacist in the employ of the hospital shall be personally responsible for the inventory and stocking of drugs and medicines in the device and he shall be personally responsible for the condition of the drugs and medicines stored in the device.

(4) A registered pharmacist in the employ of the hospital shall be the only person having access to that portion, section, or part of the device in which the drugs or medicines are stored.

(5) All containers of drugs or medicines to be stored in the device shall be correctly labeled to include: Name, strength, route of administration and if applicable, the expiration date.

(6) At the time the removal of any drug or medicine from the device, the device shall automatically make a written record showing the name, strength, and quantity of the drug or medicine removed, the name of the patient for whom the drug or medicine was ordered, and the identification of the nurse removing the drug or medicine from the device. The record must be maintained for ~~(five)~~ two years by the hospital and shall be accessible to the pharmacist.

(7) Medical practitioners authorized to prescribe, pharmacists authorized to dispense, or nurses authorized to administer such drugs shall be the only persons authorized to remove any drug or medicine from the device and such removal by a nurse or medical practitioner shall be made only pursuant to a chart order. An identification mechanism, required to operate the device shall be issued permanently to each operator while the operator is on the staff of, or employed by the hospital. Such mechanism must imprint the operator's name or number if it permits the device to operate.

(8) The device shall be used only for the furnishing of drugs or medicines for administration in the hospital to registered in-patients or emergency patients in the hospital.

(9) Every hospital seeking approval to use any device shall, prior to installation of the device, register with the board by filing an application. Such application shall contain: The name and address of the hospital; the name of the registered pharmacist who is to be responsible for stocking the device; the manufacturer's name and model, description, and the proposed location of each device in the hospital.

(10) No such device shall be used until approval has been granted by the board, and no change in the location of the device or in the registered pharmacist responsible for stocking the device shall be made without prior written notice to the board. No such device shall be removed from the licensed premises without prior approval of the board.

(11) As used in this section, a "pharmacist in the employ of the hospital" shall not include any pharmacist who is, or is employed by, a manufacturer, wholesaler, distributor, or itinerant vendor of drugs or medicines.

(12) Each and every device approved by the board shall be issued a certificate of location. Such certificate must be conspicuously displayed on the device and contain the following:

- (a) Name and address of the hospital
- (b) Name of the registered pharmacist who is to be responsible for stocking the device
- (c) Location of the device in the hospital
- (d) Manufacturer's name of the device and the serial number of the device.

(13) Upon any malfunction the device shall not be used until the malfunction has been corrected.

(14) A copy of this regulation shall be attached to each and every device certified by the board of pharmacy.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-190 PHARMACY INSPECTIONS.** (1) All pharmacies shall be subject to periodic inspections to determine compliance with the laws regulating the practice of pharmacy.

(2) Each inspected pharmacy shall receive a classification rating which will depend upon the extent of that pharmacy's compliance with the inspection standards.

(3) There shall be three rating classifications:

- (a) "Class A" - for inspection scores of 90 to 100;
- (b) "Conditional" - for inspection scores of 80 to 89; and,
- (c) "Unsatisfactory" - for inspection scores below 80.

(4) Any pharmacy receiving a conditional rating shall have sixty days to raise its inspection score rating to 90 or better. If upon reinspection after sixty days, the pharmacy fails to receive a rating of 90 or better, then the pharmacy will be subject to disciplinary action.

(5) Any pharmacy receiving an unsatisfactory rating shall have fourteen days to raise its inspection score rating to 90 or better. If upon reinspection after fourteen days, the pharmacy fails to receive a rating of 90 or better, then the pharmacy will be subject to disciplinary action.

(6) The certificate of inspection must be posted in conspicuous view of the general public and shall not be removed or defaced.

(7) Noncompliance with the provisions of chapter 18.64A RCW (Pharmacy assistants) and, chapter ~~((360-52))~~ 246-901 WAC (Pharmacy assistants) resulting in a deduction of at least five points shall result in an automatic unsatisfactory rating regardless of the total point score.

(8) Pharmacies receiving an unsatisfactory rating which represent a clear and present danger to the public health, safety and welfare will be subject to summary suspension of the pharmacy license.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-210 PRESCRIPTION LABELING.** To every prescription container, there shall be fixed a label or labels bearing the following information:

(1) All information as required by RCW 18.64.246, provided that in determining an appropriate period of time for which a prescription drug may be retained by a patient after its dispensing, the dispenser shall take the following factors into account:

- (a) The nature of the drug;
- (b) The container in which it was packaged by the manufacturer and the expiration date thereon;
- (c) The characteristics of the patient's container, if the drug is repackaged for dispensing;
- (d) The expected conditions to which the article may be exposed;
- (e) The expected length of time of the course of therapy; and
- (f) Any other relevant factors.

The dispenser shall, on taking into account the foregoing, place on the label of a multiple unit container a suitable beyond-use date or discard by date to limit the patient's use of the drug. In no case may this date be later than the original expiration date determined by the manufacturer.

(2) The quantity of drug dispensed, for example the volume or number of dosage units.

(3) The following statement, "Warning: State or federal law prohibits transfer of this drug to any person other than the person for whom it was prescribed."

(4) The information contained on the label shall be supplemented by oral or written information as required by WAC ~~((360-16-250))~~ 246-869-220.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-869-220 PATIENT INFORMATION REQUIRED.** Except in those cases when the prescriber has advised that the patient is not to receive specified information regarding the medication:

(1) In order to assure the proper utilization of the medication or device prescribed, with each new prescription dispensed by the pharmacist, in addition to labeling the prescription in accordance with the requirements of RCW 18.64.245 and WAC ~~((360-16-255))~~ 246-869-210, the pharmacist must:

(a) Orally explain to the patient or the patient's agent the directions for use and any additional information, in writing if necessary, for those prescriptions delivered inside the confines of the pharmacy; or

(b) Explain by telephone or in writing for those prescriptions delivered outside the confines of the pharmacy.

(2) In those instances where it is appropriate, when dispensing refill prescriptions, the pharmacist shall communicate with the patient or the patient's agent, by the procedure outlined in subsection (1)(a) or (b) of this section or the patient's physician regarding adverse effects, over or under utilization, or drug interaction with respect to the use of medications.

(3) Subsections (1) and (2) of this section shall not apply to those prescriptions for inpatients in hospitals or institutions where the medication is to be administered by a nurse or other individual authorized to administer medications.

(4) In the place of written statements regarding medications, the pharmacist may use abstracts of the Patient USP DI 1988 edition, or comparable information.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-871-040 PERSONNEL.** (1) Pharmacist-in-charge. Each pharmacy shall be managed on site by a pharmacist who is licensed to practice pharmacy in this state and who has been trained in the specialized functions of preparing and dispensing compounded parenteral products, including the principles of aseptic technique and quality assurance. This training may be obtained through residency training programs, continuing education programs, or experience in an IV admixture facility. The pharmacist-in-charge shall be responsible for the purchasing, storage, compounding, repackaging, dispensing, and distribution of all parenteral products. He/she shall also be responsible for the development and continuing review of all policies and procedures, training manuals, and the quality assurance programs. The pharmacist-in-charge may be assisted by additional pharmacists trained in this area of practice.

(2) Supportive personnel. The pharmacist-in-charge may be assisted by a level A pharmacy assistant. The level A pharmacy assistant shall have specialized training in this field and shall work under the immediate supervision of a pharmacist. The training provided to these personnel shall be described in writing in a training manual pursuant to chapter ((360-52)) 246-901 WAC and chapter 18.64A RCW. The duties and responsibilities of the level A pharmacy assistant must be consistent with his/her training and experience.

(3) Staffing. A pharmacist shall be accessible twenty-four hours per day for each pharmacy to respond to patient's and other health professionals' questions and needs.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-873-060 EMERGENCY OUTPATIENT MEDICATIONS.** The director of pharmacy of a hospital shall, in concert with the appropriate committee of the hospital medical staff, develop policies and procedures, which shall be implemented, to provide emergency pharmaceuticals to outpatients during hours when normal community or hospital pharmacy services are not available. The delivery of a single dose for immediate administration to the patient shall not be subject to this regulation. Such policies shall allow the designated registered nurse(s) to deliver medications other than controlled substances, pursuant to the policies and procedures which shall require that:

(1) An order of a practitioner authorized to prescribe a drug is presented. Oral or electronically transmitted orders must be verified by the prescriber in writing within 72 hours.

(2) The medication is prepackaged by a pharmacist and has a label that contains:

(a) Name, address, and telephone number of the hospital.

(b) The name of the drug (as required by chapter ((360-49)) 246-899 WAC), strength and number of units.

(c) Cautionary information as required for patient safety and information.

(d) An expiration date after which the patient should not use the medication.

(3) No more than a 24-hour supply is provided to the patient except when the pharmacist has informed appropriate hospital personnel that normal services will not be available within 24 hours.

(4) The container is labeled by the designated registered nurse(s) before presenting to the patient and shows the following:

(a) Name of patient;

(b) Directions for use by the patient;

(c) Date;

(d) Identifying number;

(e) Name of prescribing practitioner;

(f) Initials of the registered nurse;

(5) The original or a direct copy of the order by the prescriber is retained for verification by the pharmacist after completion by the designated registered nurse(s) and shall bear:

(a) Name and address of patient;

(b) Date of issuance;

(c) Units issued;

(d) Initials of designated registered nurse.

(6) The medications to be delivered as emergency pharmaceuticals shall be kept in a secure place in or near the emergency room in such a manner as to preclude the necessity for entry into the pharmacy.

(7) The procedures outlined in this rule may not be used for controlled substances except at the following rural hospitals which met all three of the rural access project criteria on May 17, 1989:

Hospital	City
1. Lake Chelan Community Hospital	Chelan
2. St. Joseph's Hospital	Chewelah
3. Whitman Community Hospital	Colfax
4. Lincoln Hospital	Davenport
5. Dayton General Hospital	Dayton
6. Ocean Beach Hospital	Ilwaco
7. Newport Community Hospital	Newport
8. Jefferson General Hospital	Port Townsend
9. Ritzville Memorial Hospital	Ritzville
10. Willapa Harbor Hospital	South Bend

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-873-080 DRUG PROCUREMENT, DISTRIBUTION AND CONTROL.** (1) General. Pharmaceutical service shall include:

(a) Procurement, preparation, storage, distribution and control of all drugs throughout the hospital.

(b) A monthly inspection of all nursing care units or other areas of the hospital where medications are dispensed, administered or stored. Inspection reports shall be maintained for one year.

(c) Monitoring the drug therapy.

(d) Provisions for drug information to patients, physicians and others.

(e) Surveillance and reporting of adverse drug reactions and drug product defect(s).

(2) Additional pharmaceutical services should include:

(a) Obtaining and recording comprehensive drug histories and participation in discharge planning in order to affect appropriate drug use.

(b) Preparation of all sterile products (e.g., IV admixtures, piggybacks, irrigation solutions), except in emergencies.

(c) Distribution and control of all radiopharmaceuticals.

(d) Administration of drugs.

(e) Prescribing.

(3) The director shall be responsible for establishing specifications for procurement, distribution and the maintenance of a system of accountability for drugs, IV solutions, chemicals, and biologicals related to the practice of pharmacy.

(4) The director shall establish, annually review and update when necessary comprehensive written policies and procedures governing the responsibilities and functions of the pharmaceutical service. Policies affecting patient care and treatment involving drug use shall be established by the director of pharmacy with the cooperation and input of the medical staff, nursing service and the administration.

(5) Labeling:

(a) Inpatient. All drug containers in the hospital shall be labeled clearly, legibly and adequately to show the drug's name (generic and/or trade) and strength when applicable. Accessory or cautionary statements and the expiration date shall be applied to containers as appropriate.

(b) Outpatients. Labels on medications used for outpatients, emergency room, and discharge drug orders shall meet the requirements of RCW 18.64.246.

(c) Parenteral and irrigation solutions. When drugs are added to intravenous solutions, a suitable label shall be affixed to the container.

As a minimum the label shall indicate name and location of the patient, name and amount of drug(s) added, appropriate dating, initials of the personnel who prepared and checked the solution.

(6) Medication orders. Drugs are to be dispensed and administered only upon orders of authorized practitioners. A pharmacist shall review the original order or direct copy thereof, prior to dispensing any drug, except for emergency use or as authorized in WAC ((~~360-17-050~~)) 246-873-050.

(7) Controlled substance accountability. The director of pharmacy shall establish effective procedures and maintain adequate records regarding use and accountability of controlled substances, and such other drugs as appropriate, in compliance with state and federal laws and regulations.

(a) Complete, accurate, and current records shall be kept of receipt of all controlled substances and in addition, a Schedule II perpetual inventory shall be maintained.

(b) The pharmacy shall maintain records of Schedule II drugs issued from the pharmacy to other hospital units which include:

- (i) Date
- (ii) Name of the drug
- (iii) Amount of drug issued
- (iv) Name and/or initials of the pharmacist who issued the drug
- (v) Name of the patient and/or unit to which the drug was issued.

(c) Records shall be maintained by any unit of the hospital which utilizes Schedule II drugs indicating:

- (i) Date
- (ii) Time of administration
- (iii) Name of the drug (if not already indicated on the records)
- (iv) Dosage of the drug which was used which shall include both the amount administered and any amount destroyed.
- (v) Name of the patient to whom the drug was administered
- (vi) Name of the practitioner who authorized the drug
- (vii) Signature of the licensed individual who administered the drug.

(d) When it is necessary to destroy small amounts of controlled substances following the administration of a dose by a nurse, the destruction shall be witnessed by a second nurse who shall countersign the records of destruction.

(e) The director of the pharmacy shall develop written procedures for the proper destruction of controlled substances not covered by (d) above conforming with federal and state statutes. A copy of the procedures shall be forwarded to the Drug Enforcement Administration (DEA) and the state board of pharmacy. As a minimum, procedures shall include the following:

- (i) All destructions shall render the drugs unrecoverable.
- (ii) Destruction shall be accomplished by the pharmacist and one other licensed health professional.
- (iii) Records of all destructions shall be maintained by the pharmacy. Quarterly summary reports shall be mailed to the DEA with copies to the state board of pharmacy.
- (iv) A copy of the destruction record shall be maintained in the pharmacy for ((~~five~~)) two years.

(f) Periodic monitoring of controlled substances records shall be performed by a nurse or a pharmacist to determine whether the drugs recorded on usage records have also been recorded on the patient's chart.

(g) Use of multiple dose vials of controlled substances shall be discouraged.

(h) Controlled substances, Schedule II and III, which are floor stocked, in any hospital patient or nursing service area shall be checked by actual count at the change of each shift by two authorized persons licensed to administer drugs.

(i) All controlled substance records shall be kept for ((~~five~~)) two years.

(j) Hospitals wishing to use record systems other than that described above shall make application and receive written approval from the board of pharmacy prior to implementation.

(k) Significant losses or disappearances of controlled substances and the facts surrounding the discrepancy shall be reported to the board of pharmacy, the drug enforcement agency, the chief executive officer of the hospital and other appropriate authorities.

(8) Drug recall. The director shall develop and implement a recall procedure to assure that potential harm to patients within the hospital is prevented and that all drugs included on the recall are returned to the pharmacy for proper disposition.

(9) All medications administered to inpatients shall be recorded in the patient's medical record.

(10) Adverse drug reactions. All adverse drug reactions shall be appropriately recorded in the patient's record and reported to the prescribing practitioner and to the pharmacy.

(11) Drug errors. All drug errors shall upon discovery be recorded in an incident report and reported to the prescribing practitioner and to the pharmacy.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-875-020 MINIMUM REQUIRED INFORMATION IN AN AUTOMATED PATIENT MEDICATION RECORD SYSTEM. An automated patient medication record system is an electronic system that must have the capability of capturing any data removed on a hard copy of microfiche copy. The hard copy of the original prescription and all documents in the audit trail shall be considered a part of this system.

(1) All automated patient medication record systems must maintain the following information with regard to ambulatory patients:

- (a) Patient's full name and address.
- (b) A serial number assigned to each new prescription.
- (c) The date of all instances of dispensing a drug.
- (d) The identification of the dispenser who filled the prescription.
- (e) The name, strength, dosage form and quantity of the drug dispensed.

(f) Any refill instructions by the prescriber.

(g) The prescriber's name, address, and DEA number where required.

(h) The complete directions for use of the drug. The term "as directed" is prohibited pursuant to RCW 18.64.246 and 69.41.050.

(i) Any patient allergies, idiosyncrasies, or chronic condition which may relate to drug utilization. If there is no patient allergy data the pharmacist should indicate none or "NKA" (no known allergy) on the patient medication record.

(j) Authorization for other than child-resistant containers pursuant to WAC ((~~360-16-270~~)) 246-869-230, if applicable.

(2) All automated patient medication record systems must maintain the following information with regard to institutional patients:

- (a) Patient's full name.
- (b) Unique patient identifier.
- (c) Any patient allergies, idiosyncrasies, or chronic conditions which may relate to drug utilization. If there is no patient allergy data the pharmacist should indicate none or "NKA" (no known allergy) on the patient medication record.

- (d) Patient location.
- (e) Patient status, for example, active, discharge, or on-pass.
- (f) Prescriber's name, address, and DEA number where required.
- (g) Minimum prescription data elements:
  - (i) Drug name, dose, route, form, directions for use, prescriber.
  - (ii) Start date and time when appropriate.
  - (iii) Stop date and time when appropriate.

(h) The system shall indicate any special medication status for an individual prescription, for example, on hold, discontinued, self-administration medication, investigational drugs, patient's own medications, special administration times, restrictions, controlled substances.

(i) The system shall indicate on the labeling, and in the system, (for the pharmacist, nursing and/or physician alert) any special cautionary alerts or notations deemed necessary by the dispenser for the patient safety.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-875-060 RETRIEVAL OF INFORMATION FROM AN AUTOMATED SYSTEM. All automated patient medication record systems must provide within 72 hours, via CRT or hard copy printout, the information required by WAC ((~~360-19-030~~)) 246-875-020 and by 21 CFR § 1306.22(b) as amended July 1, 1980. Any data purged from an automated patient medication record system must be available within 72 hours.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-875-070 CONFIDENTIALITY AND SECURITY OF DATA. (1) Information contained in patient medication record

systems shall be considered to be a part of prescription records maintained in accordance with RCW 18.64.245 and shall be maintained for a period of at least ~~((five))~~ two years in the same manner as provided, for all prescription records (see WAC ~~((360-16-096))~~ 246-869-100).

(2) The information in the patient medication record system which identifies the patient shall be deemed confidential and may be released to persons other than the patient or a pharmacist, or a practitioner authorized to prescribe only on written release of the patient. If in the judgment of the dispenser, the prescription presented for dispensing is determined to cause a potentially harmful drug interaction or other problem due to a drug previously prescribed by another practitioner, the dispenser may communicate this information to the prescribers.

(3) Security codes or systems must be established on automated medication record systems to prevent unauthorized modification of data.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-875-080 EXTENSION OF TIME FOR COMPLIANCE. The rules regarding patient medication record systems contained in chapter ~~((360-19))~~ 246-875 WAC shall apply to all pharmacists practicing pharmacy in the state of Washington upon the effective date of the chapter unless an extension is granted by the board pursuant to this rule. In order to seek an extension that will allow compliance with this chapter to be delayed, good cause for granting such extension must be shown. The board shall consider requests for extensions and if, in the board's judgment good cause is shown, the board may grant an extension for a period of time, specifying those portions of the rules with respect to which an extension is being granted.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-875-090 EFFECTIVE DATE.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-879-020 MINIMUM STANDARDS FOR WHOLESALE OUTLETS. The following minimum standards shall apply to all wholesale outlets for which licenses have been issued by the board:

(1) Light and ventilation: All wholesale outlets including all storage areas, shall be well lighted, well ventilated and properly heated.

(2) Sanitary facilities: All wholesale outlets shall have sanitary facilities constructed in accordance with the laws and ordinances applying thereto. Facilities shall include a restroom for employees which shall be provided with a wash basin supplied with hot and cold running water and toilet.

(3) All drugs and chemicals shall be stored at appropriate temperatures according to label requirements to maintain stability.

(4) A residence shall not be considered to be an acceptable location for issuance of a wholesaler's license unless the wholesaler's business is operated in a separate space within the residence which otherwise meets the requirements of this section.

(5) Adequate space shall be provided consistent with the wholesale drug outlet operation.

(6) Minimum equipment shall be maintained consistent with the wholesale drug outlet's operation and shall be in proper working order at all times.

(7) Adequate security shall be provided as specified in WAC ~~((360-21-050))~~ 246-879-050.

(8) Surrounding environmental conditions shall be adequate to prevent contamination of stored products.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-879-030 INSPECTIONS. Inspections shall be performed by representatives of the board of pharmacy to ensure compliance with chapter ~~((360-21))~~ 246-879 WAC. The following items shall be included in these inspections:

(a) The walls, ceilings, windows, and floors of the premises shall be clean and maintained in good repair and order.

(b) The licensee's premises shall be free from obnoxious odors.

(c) All persons working in premises are required to keep themselves and their apparel in a clean and sanitary condition.

(d) Other areas of inspection include, but are not limited to house-keeping, sanitation, record keeping, accountability, security, types of outlets sold to and sources of drugs purchased.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-879-040 RECORDS. Invoices shall be maintained for a period of ~~((five))~~ two years, and show the source of supply for all drugs and to whom they were sold or distributed. Lack of such records shall be grounds for suspension or revocation of wholesale license. These records shall be available during regular business hours for inspection by any authorized representative of the board of pharmacy. In those instances in which records are stored in a location other than the wholesaler's premises, the records must be available for inspection within 72 hours.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-879-070 APPLICATION FOR FULL LINE WHOLESALE LICENSE AND OVER-THE-COUNTER ONLY WHOLESALE LICENSE. No person shall act as a wholesaler unless he/she has obtained a license from the board.

(1) All application for licensure of a new or relocated wholesaler shall be accompanied by the required fee as set forth in WAC ~~((360-18-020))~~ 246-907-030.

(2) Applications shall specify the location of the wholesaler premises. When the applicant is not the owner of the business, the application shall indicate the owner and the applicant affiliation with the owner:

(a) If the owner is a partnership or other multiple owner, the names of the partners or person holding the three largest interests shall be indicated on the application.

(b) If the owner is a corporation, the name filed shall be the same as filed with the secretary of state. The name of the corporation, and the names of the corporation officers shall be indicated on the application.

(3) All license renewal applications shall be accompanied by the annual fee and contain the same information required in subsection (2) of this rule.

(4) A change of ownership or location requires a new license.

(5) The license is issued to a person or firm and is nontransferable. Additions or deletions of a partner/partners shall be considered as a change of ownership.

(6) The license fee cannot be prorated.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-879-080 APPLICATION FOR CONTROLLED SUBSTANCE WHOLESALE LICENSE. No person shall act as a controlled substance wholesaler unless he/she has obtained a controlled substance wholesaler license from the board.

(1) He/she must be licensed as a full line wholesaler.

(2) He/she must meet all security requirements as set forth in WAC ~~((360-21-050))~~ 246-879-050(4).

(3) He/she must meet additional requirements for registration and fees as set forth in WAC ~~((360-36-010))~~ 246-887-020.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-883-040 REGULATED STEROIDS. The board finds that the following drugs shall be classified as steroids for the purposes of ~~((section 1, chapter 369, Laws of 1989))~~ RCW 69.41.310. The drugs designated shall include the following and any synthetic derivatives or any isomer, ester, salt, or derivative of the following that act in the same manner on the human body from the attached list:

- (1) Anabolicum
- (2) Anadrol
- (3) Anatrofin
- (4) Anavar
- (5) Androxon
- (6) Andriol
- (7) Android
- (8) bolandiol
- (9) bolasterone
- (10) boldenone

- (11) boldenone undecylenate
- (12) bolenol
- (13) Bolfortan
- (14) bolmantalate
- (15) Cheque
- (16) chlorotestosterone
- (17) clostebol
- (18) Deca Durabolin
- (19) dehydrochlormethyl--testosterone
- (20) Delatestyl
- (21) Dianabol
- (22) Dihydroxolone
- (23) dihydrotestosterone
- (24) dimethazine
- (25) Drive
- (26) Drolban
- (27) drostanolone
- (28) Durabolin
- (29) Durateston
- (30) Equipoise
- (31) Esiclone
- (32) ethylestrenol
- (33) Exoboline
- (34) Finaject
- (35) Fluoxymesterone
- (36) formebolone
- (37) Halotestin
- (38) Halostein
- (39) Hombreol
- (40) Iontanyl
- (41) Laurabolin
- (42) Lipodex
- (43) Maxibolin
- (44) mesterolone
- (45) metanabol
- (46) methenolone acetate
- (47) methenolone enanthate
- (48) methandienone
- (49) methandranone
- (50) methandriol
- (51) methandrostenolone
- (52) methyltestosterone
- (53) mibolerone
- (54) Myagen
- (55) Nandrolin
- (56) nandrolone
- (57) nandrolone decanoate
- (58) nandrolone cyclotat
- (59) nandrolone phenpropionate
- (60) Nelavar
- (61) Nerobol
- (62) Nilevar
- (63) nisterime acetate
- (64) Norbolethone
- (65) Nor-Diethylin
- (66) norethandrolone
- (67) Normethazine
- (68) Omnifin
- (69) oxandrolone
- (70) oxymesterone
- (71) oxymetholone
- (72) Parabolan
- (73) Permastril
- (74) pizotyline
- (75) Primobolone/Primobolan depot
- (76) Primotestin/Primotestin depot
- (77) Proviron
- (78) Quinalone
- (79) Quinbolone
- (80) Restandol
- (81) silandrone
- (82) Sostanon
- (83) Spectriol
- (84) stanolone
- (85) stanozolol
- (86) stenbolone acetate
- (87) Stromba

- (88) Sustanon
- (89) Tes-10
- (90) Tes-20
- (91) Tes-30
- (92) Teslac
- (93) testolactone
- (94) testosterone
- (95) testosterone cypionate
- (96) testosterone enanthate
- (97) testosterone ketolaurate
- (98) testosterone phenylacetate
- (99) testosterone propionate
- (100) testosterone undecanoate
- (101) Thiomucase
- (102) tibolone
- (103) trenbolone
- (104) trenbolone acetate
- (105) trestolone acetate
- (106) Trophobolene
- (107) Winstrol

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-020 REGISTRATION. Humane societies and animal control agencies registered with the board under RCW 69.50.310 and WAC ((360-36-210)) 246-887-050 to purchase, possess, and administer sodium pentobarbital as provided therein may also, under that registration, purchase, possess, and administer approved legend drugs as provided in RCW 69.41.080 and herein.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-030 APPROVED LEGEND DRUGS. (1) The following legend drugs are hereby designated as "approved legend drugs" for use by registered humane societies or animal control agencies for limited purposes:

- (a) Acetylpromazine.
- (b) Ketamine.
- (c) Xylazine.

(2) A humane society or animal control agency shall not be permitted to purchase, possess, or administer approved legend drugs unless that society or agency:

- (a) Is registered with the board under RCW 69.50.310 and WAC ((360-36-210)) 246-887-050 to purchase, possess, and administer sodium pentobarbital;
- (b) Submits to the board written policies and procedures ensuring that only those of its agents and employees who have completed a board-approved training program will possess or administer approved legend drugs; and
- (c) Has on its staff at least one individual who has completed a board-approved training program.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-060 RESPONSIBLE INDIVIDUALS. (1) Each agency or society registered in accordance with WAC ((360-36-210)) 246-887-050 shall name a designated individual as the person who shall be responsible for maintaining all records and submitting all reports required by applicable federal or state law or regulation, including chapter ((360-36)) 246-887 WAC.

(2) This designated individual shall also be responsible for the ordering, possession, safe storage, and utilization of the sodium pentobarbital and approved legend drugs.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-887-050 SODIUM PENTOBARBITAL FOR ANIMAL EUTHANASIA. (1) Registration eligibility. Any humane society or animal control agency who designates a responsible individual under WAC ((360-36-260)) 246-887-070 may apply to the Washington state board of pharmacy for a limited registration under chapter 69.50 RCW (Controlled Substances Act) to purchase, possess and administer sodium pentobarbital. The sodium pentobarbital will be used only to euthanize injured, sick, homeless or unwanted domestic pets and domestic or wild animals.

(2) Sodium pentobarbital restrictions. Sodium pentobarbital obtained under this limited registration shall be labeled "For veterinary use only." The board will make available a list of approved products.

(3) Sodium pentobarbital storage. The registered location supply of sodium pentobarbital shall be kept or stored in a safe or a substantial well-built double-locked drawer or cabinet.

(a) Registrants may designate only the following agents to possess and administer sodium pentobarbital at locations other than the registered location:

- (i) Humane officer;
- (ii) Animal control enforcement officer;
- (iii) Animal control authority;
- (iv) Peace officer authorized by police chief, sheriff or county commissioners.

(b) Specially designated agents of the registrant may possess a supply of sodium pentobarbital for emergency field use. Such emergency supply shall be stored in a locked metal box securely attached to the vehicle. The designated agent shall be responsible to insure that the sodium pentobarbital is present at the beginning and is present or accounted for at the end of each shift. A log book shall be kept in which all receipts and use of sodium pentobarbital from the emergency supply shall be recorded.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-887-060 SODIUM PENTOBARBITAL ADMINISTRATION. All agencies registered under WAC ((360-36-210)) 246-887-050 will establish written policies and procedures to insure that any of their agents or personnel which administer sodium pentobarbital for animal euthanasia have received sufficient training in its handling and administration, and have demonstrated adequate knowledge of the potentials and hazards, and proper techniques to be used in administering the drug. A copy of the written policies and procedures shall be filed with the board at the time of initial application for registration. The board shall be notified in writing of any individuals who have qualified to administer sodium pentobarbital or of any amendments or deletions to the policies and procedures.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-887-070 SODIUM PENTOBARBITAL RECORDS AND REPORTS. (1) Each agency or society registered in accordance with WAC ((360-36-210)) 246-887-050 shall designate an individual as the registrant who shall be responsible for maintaining all records and submitting all reports required by applicable federal or state law or regulation, including chapter ((360-36)) 246-887 WAC.

(2) This designated individual shall also be responsible for the ordering, possession, safe storage and utilization of the sodium pentobarbital.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-887-200 OTHER CONTROLLED SUBSTANCE REGISTRANTS—REQUIREMENTS. (1) All persons and firms, except persons exempt from registration, shall register with the board in order legally to possess or use controlled substances.

(2) Persons or firms which are not classified as pharmacies, wholesalers, manufacturers, or researchers shall be classified as other controlled substance registrants. Examples of persons or firms in this classification include analytical laboratories, dog handlers/trainers who use dogs for drug detection purposes, school laboratories and other agencies which have a legitimate need to use precursor chemicals as defined in WAC ((360-36-425)) 246-887-150.

(3) The applicant for a controlled substance registration shall complete and return an application form supplied by the board. Either on the form or on an addendum, the applicant shall list the controlled substances to be used, the purpose for such use, and the names of the persons authorized to access the controlled substances.

(4) All controlled substances shall be stored in a substantially constructed locked cabinet. The registrant shall maintain records in sufficient detail in order to account for the receipt, use, and disposition of all controlled substances. An inventory of all controlled substances in

the possession of the registrant shall be completed every two years on the anniversary of the issuances of the registration and shall be maintained for two years. Unwanted, outdated, or unusable controlled substances shall be returned to the source from which obtained or surrendered to the Federal Drug Enforcement Administration.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-889-020 PRECURSOR SUBSTANCE DEFINED.

(1) For the purpose of this chapter a precursor substance is any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chloephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

Provided; that this definition shall not include any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine or any cosmetic if that drug or cosmetic can be lawfully sold, transferred, or furnished over-the-counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) The board finds that the reference to methylformamide in ((section 1, chapter 147, Laws of 1988;)) RCW 69.43.010 was intended to refer to methylformamide and corrects that reference by deleting "methylformamide" and adding "methylformamide." This change is based upon the finding that this revision conforms to the tests set forth in ((section 1(2), chapter 147, Laws of 1988)) RCW 69.43.010(2).

(3) Registrants should be aware that precursor substances in subsection (1)(a), (f), (k), (m), (n), (s), and (v) of this section are also regulated as schedule II immediate precursors pursuant to WAC ((360-36-425)) 246-887-150 and all applicable rules and laws governing the distribution of schedule II controlled substances must also be complied with.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-889-030 REPORTS OF PRECURSOR RECEIPT.

(1) Any manufacturer, wholesaler, retailer, or any other person who receives from any source outside the state of Washington any precursor substance listed in WAC ((360-38-010)) 246-889-020 shall submit a report of such transaction within fourteen days of the receipt of that substance.

(2) The report shall contain the following information:

- (a) Name of substance;
- (b) Quantity received;
- (c) Date received;
- (d) Name and address of firm or person receiving substance; and
- (e) Name and address of the source selling, transferring, or furnishing the substance.

(3) The report shall be on a form approved by the board: PROVIDED, That in lieu of an approved form the board will accept a copy of an invoice, packing list, or other shipping document which contains the information set forth in subsection (2) of this section. Under this option purchase price information appearing on the document can be deleted.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-889-040 MONTHLY REPORTING OPTION. (1) Permit holders who regularly transfer the same precursor substance to the same recipient can apply to the board for authorization to submit the report of said transactions on a monthly basis. Requests for monthly reporting authorization must be received at the board office at least thirty days prior to the board meeting at which the request will be considered. The board will review each request to determine if the requirements of ((section 1(5), chapter 147, Laws of 1988)) RCW 69.43.010(5), are met and will notify the permit holder of its decision and the reporting format that will be authorized.

(2) Permit holders may also petition the board to accept the monthly report on a computer-generated basis. The report can be furnished in hard copy, on board-approved data storage methods or by computer interface with a board-operated computer. The permit holder will be responsible for the accuracy of the report and the prompt correction of any data entry or transmission errors.

(3) The authorization to use monthly reports or computer-generated monthly reports can be rescinded at the board's discretion and with thirty days notice.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-020 DESCRIPTION OF CENTRAL AND FIELD ORGANIZATION OF THE BOARD. The board is a drug control agency. The administrative office of the board and its staff are located at ((319 East 7th Avenue)) 1300 SE Quince, PO BOX 47863, Olympia, Washington 98504-7863.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-030 OPERATIONS AND PROCEDURES. (1) The board of pharmacy consists of seven members, one of whom is designated as a chairperson. The members are appointed by the governor for staggered four year terms.

(2) The board meets approximately once a month in various places throughout the state. The time and place of the meeting can be learned by writing or calling the administrative office of the board.

(3) The executive ((secretary)) director is the board's chief executive. The executive secretary is responsible for carrying out the board's directions and for directing the board's staff.

(4) It is the board's duty to administer the law in chapters 18.64, 18.64A, 69.04, 69.38, 69.40, 69.41, 69.43, 69.45, 69.50, 69.51, 69.60, and 70.54 RCW.

(a) Chapter 18.64 RCW - Pharmacy Act - creation of board of pharmacy, definition of terms used in pharmacy act, examination and licensing of pharmacists, interns, wholesalers, shopkeepers and vendors, grounds for license suspension or revocation, unlawful practices, prescription labels and records.

(b) Chapter 18.64A RCW - Pharmacy Assistants Law - creation of pharmacy assistants, definition of terms, regulation of classifications and services, limitations on practice, grounds for certificate suspension or revocation, applications, fees, employment of pharmacy assistants, and pharmacists liability and responsibility.

(c) Chapter 69.04 RCW - Food, Drug and Cosmetic Act. Board has joint responsibility with director of department of agriculture. Board regulates only the drug and devices portion of the act. DMSO sales and use provisions are contained in this law.

(d) Chapter 69.38 RCW - Poisons—Sales and Manufacturing Act - defines poisons, provides for exemptions, requires a poison register with the identification of purchasers, provides for the inspection of poison registers and penalties for failure to maintain a register or for giving false information and provides for licensing poison manufacturers and sellers.

(e) Chapter 69.40 RCW - Poison Act - labeling of drugs incorrectly and selling poisons without labeling.

(f) Chapter 69.41 RCW - Legend Drug Act - definition of terms, prohibited acts, regulation of sale, delivery, or possession of legend drugs, requirements for prescriptions and labels, search and seizure procedures. Penalties for violations are created and rules regarding legend drugs are authorized. The procedures and requirements for substitution of legend drugs, manufacturing standards and liability of pharmacists are outlined. Requirements for identification and labeling marking of legend drugs are created.

(g) Chapter 69.43 RCW - Precursor Drugs Act - requires certain transactions concerning certain described substances to be reported to the board, provides for the reports of out-of-state receipts, creates exemptions, a reporting form, authorizes the board to adopt rules, requires the report of theft or loss of regulated substances, creates penalties and provides for the issuance of a permit and the refusal, suspension, or revocation of permits.

(h) Chapter 69.45 RCW - Drug Samples Act - defines terms, provides for the registration of drug sample manufacturers and the maintenance of records, the storage and transportation of drug samples, the manner of distribution, the disposal of surplus, outdated or damaged samples, registration fees, penalty for violations and the confidentiality of reports.

(i) Chapter 69.50 RCW - Controlled Substances Act - places all narcotics, barbiturates, amphetamines, hallucinogenics and marijuana into five schedules. Sets standards and definitions for the five schedules. Regulates the manufacture, distribution and dispensing of controlled substances. Sets forth offenses, penalties and prohibited acts. Enforcement and administrative provisions include administrative and criminal search warrants.

(j) Chapter 69.51 RCW - Controlled Substance Therapeutic Research Act - defines terms and provides for the board's regulation of controlled substance research programs.

(k) Chapter 69.60 RCW - Over-the-counter medications - requires over-the-counter medication to be imprinted with identifying information and gives the board enforcement authority.

(l) Chapter 70.54 RCW - Laetrile - board given authority to sample and test laetrile and promulgate rules regarding it.

(5) Information concerning all licenses or registrations issued by the board may be obtained by writing or calling the administrative office of the board.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-040 PUBLIC RECORDS AVAILABLE. All public records of the board, as defined in WAC ((360-44-020)) 246-893-010 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17-255, 42.17.310, WAC ((360-44-100)) 246-893-090, or any other duty to withhold information as imposed by other state or federal law.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-090 EXEMPTIONS. (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC ((360-44-080)) 246-893-070 is exempt under provisions of RCW 42.17.310.

(2) In addition, the board reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by RCW 42.17.255. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-120 INDEX OF PUBLIC RECORDS AVAILABLE. (1) The board has available to all persons:

(a) A current index which provides identifying information concerning all licenses issued by the board;

(b) A current index to all rules and regulations adopted by the board.

(2) Final orders in the adjudication of cases are filed in the investigative file of the subject licensee.

(3) Correspondence and materials referred to therein by and with the board relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is about to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party is filed chronologically, with one copy also filed in a licensee's file, if applicable.

(4) The board has determined that it would be unduly burdensome to maintain an index, except as set forth herein, due to fiscal and personnel limitations and to the general nature and large volume of correspondence of the board.

(5) The board shall not give, sell or provide access to lists of individuals requested for commercial purposes except as authorized by RCW 42.17.260((5)) (6).

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-130 ADDRESS WHERE REQUESTS TO BE DIRECTED. All communications with the board including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.17 RCW and these rules; requests for copies of the board's decisions and other matters, shall be addressed as follows: Washington State Board of Pharmacy, c/o Public Records Officer, (~~319 East 7th Avenue~~) 1300 SE Quince, PO BOX 47863, Olympia, Washington 98504-7863.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-893-998 APPENDIX A—FORM.

WASHINGTON STATE BOARD OF PHARMACY  
(~~319 East Seventh Avenue — WEA Bldg.~~)  
1300 SE Quince, PO BOX 47863  
Olympia, Washington 98504-7863

REQUEST FOR PUBLIC RECORDS

1. Name .....

Street City State Zip

2. .... day of ..... 19.. at ..... O'clock ....  
Date and Time of Request

3. Nature of Request:  
.....  
.....  
.....

4. Current Index Reference .....

5. Record Description if not Indexed .....

6. Signature of Requestor .....

FOR AGENCY USE ONLY

Received by ..... Staff Time Expended .....

Request: Time Completed .....

No. Pages Copied ..... @ 10¢ a copy — Total .....

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-020 FINISHED PHARMACEUTICALS—MANUFACTURING PRACTICE. (1) The criteria in WAC (~~360-46-040 through 360-46-150~~) 246-895-040 through 246-895-160, inclusive, shall apply in determining whether the methods used in, or the facilities or controls used for, the manufacture, processing, packing, or holding of a drug conform to or are operated or administered in conformity with current good manufacturing practice to assure that a drug meets the requirements of the act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess as required by the act.

(2) The regulations in this chapter permit the use of precision automatic, mechanical, or electronic equipment in the production and control of drugs when written inspection and checking policies and procedures are used to assure proper performance.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-040 BUILDINGS OR FACILITIES. Buildings shall be maintained in a clean and orderly manner and shall be of suitable size, construction, and location to facilitate adequate cleaning, maintenance, and proper operations in the manufacturing, processing, packing, repacking, labeling, or holding of a drug. The buildings shall:

- (1) Provide adequate space for:
  - (a) Orderly placement of equipment and materials to minimize any risk of mixups between different drugs, drug components, drug products, in-process materials, packaging materials, or labeling, and to minimize the possibility of contamination.
  - (b) The receipt, storage, and withholding from use of components pending sampling, identification, and testing prior to release by the quality control unit for manufacturing or packaging.
  - (c) The holding of rejected components prior to disposition to preclude the possibility of their use in manufacturing or packaging procedures for which they are unsuitable.
  - (d) The storage of components, containers, packaging materials, and labeling.
  - (e) Any manufacturing and processing operations performed.
  - (f) Any packaging or labeling operations.
  - (g) Storage of finished products.
  - (h) Control and production-laboratory operations.

(2) Provide adequate lighting, ventilation, and screening and, when necessary for the intended production or control purposes, provide facilities for adequate air—pressure, microbiological, dust humidity, and temperature controls to:

- (a) Minimize contamination of products by extraneous adulterants, including cross-contamination of one product by dust or particles of ingredients arising from the manufacture, storage, or handling of another product.
  - (b) Minimize dissemination of micro-organisms from one area to another.
  - (c) Provide suitable storage conditions for drug components, in-process materials, and finished drugs in conformance with stability information as derived under WAC (~~360-46-100~~) 246-895-110.
- (3) Provide adequate locker facilities and hot and cold water washing facilities, including soap or detergent, air drier or single service towels, and clean toilet facilities near working areas.
- (4) Provide an adequate supply of potable water under continuous positive pressure in a plumbing system free of defects that could cause or contribute to contamination of any drug. Drains shall be of adequate size and, where connected directly to a sewer, shall be equipped with traps to prevent back-siphonage.
- (5) Provide suitable housing and space for the care of all laboratory animals.
- (6) Provide for safe and sanitary disposal of sewage, trash, and other refuse within and from the buildings and immediate premises.
- (7) Be maintained in a clean, orderly, and sanitary condition. There shall be written procedures assigning responsibility for sanitation and describing the cleaning schedule and methods.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-080 COMPONENT AND DRUG PRODUCT CONTAINERS AND CLOSURES. (1) Component and drug product containers and closures shall:

- (a) Not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quantity, or purity of the product or its components beyond the official or established requirements;
- (b) Provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the drug product; and
- (c) Be clean and, where indicated by the nature of the drug, sterilized and processed to remove pyrogenic properties to assure that they are suitable for their intended use.

Containers and their components for parenterals shall be cleansed with water which has been filtered through a nonfiber-releasing filter.



(2) Standards or specifications, methods of testing, and, where indicated, processing to remove pyrogenic properties shall be written and followed for component and drug product containers and closures.

(3) Except as provided for in WAC ((~~360-46-082~~)) 246-895-090, drug product containers and closures shall not be reused for component or drug product packaging.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-895-100 LABORATORY CONTROLS.** Laboratory controls shall include the establishment of scientifically sound and appropriate written specifications, standards, and test procedures to assure that components, in-processed drugs, and finished products conform to appropriate standards of identity, strength, quality and purity. Laboratory controls shall include:

(1) The establishment of master records containing appropriate specifications for the acceptance of each lot of drug components, product containers, and their components used in drug production and packaging and a description of the sampling and testing procedures used for them. Said samples shall be representative and adequately identified. Such records shall also provide for appropriate retesting of drug components, product containers, and their components subject to deterioration.

(2) A reserve sample of all active ingredients as required by WAC ((~~360-46-070(2)~~)) 246-895-070.

(3) The establishment of master records, when needed, containing specifications and a description of sampling and testing procedures for in-process drug preparations. Such samples shall be adequately representative and properly identified.

(4) The establishment of master records containing a description of sampling procedures and appropriate specifications for finished drug products. Such samples shall be adequately representative and properly identified.

(5) Adequate provisions for checking the identity and strength of drug products for all active ingredients and for assuring:

(a) Sterility of drugs purported to be sterile and freedom from objectionable microorganisms for those drugs which should be so by virtue of their intended use.

(b) The absence of pyrogens for those drugs purporting to be pyrogen-free.

(c) Minimal contamination of ophthalmic ointments by foreign particles and harsh or abrasive substances.

(d) That the drug release pattern of sustained release products is tested by laboratory methods to assure conformance to the release specifications.

(6) Adequate provision for auditing the reliability, accuracy, precision, and performance of laboratory test procedures and laboratory instruments used.

(7) A properly identified reserve sample of the finished product (stored in the same immediate container-closure system in which the drug is marketed) consisting of at least twice the quantity necessary to perform all the required tests, except those for sterility and determination of the absence of pyrogens, and stored under conditions consistent with product labeling shall be retained for at least two years after the drug distribution has been completed or one year after the drug's expiration date, whichever is longer.

(8) Provision for retaining complete records of all laboratory data relating to each batch or lot of drug to which they apply. Such records shall be retained for at least two years after distribution has been completed or one year after the drug's expiration date, whichever is longer.

(9) Provision that animals shall be maintained and controlled in a manner that assures suitability for their intended use. They shall be identified and appropriate records maintained to determine the history of use.

(10) Provision that firms which manufacture nonpenicillin products (including certifiable antibiotic products) on the same premises or use the same equipment as that used for manufacturing penicillin products, or that operate under any circumstances that may reasonably be regarded as conducive to contamination of other drugs by penicillin, shall test such nonpenicillin products to determine whether any have become cross-contaminated by penicillin. Such products shall not be marketed if intended for use in humans and the product is contaminated with an amount of penicillin equivalent to 0.5 unit or more of penicillin G per maximum single dose recommended in the labeling of a drug intended for parenteral administration, or an amount of penicillin

equivalent to 0.5 unit or more of penicillin G per maximum single dose recommended in the labeling of a drug intended for oral use.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-895-120 EXPIRATION DATING.** To assure that drug products liable to deterioration meet appropriate standards of identity, strength, quality, and purity at the time of use, the label of all such drugs shall have suitable expiration dates which relate to stability tests performed on the product.

(1) Expiration dates appearing on the drug labeling shall be justified by readily available data from stability studies such as described in WAC ((~~360-46-100~~)) 246-895-110.

(2) Expiration dates shall be related to appropriate storage conditions stated on the labeling wherever the expiration date appears.

(3) When the drug is marketed in the dry state for use in preparing a liquid product, the labeling shall bear expiration information for the reconstituted product as well as an expiration date for the dry product.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

**WAC 246-895-130 PACKAGING AND LABELING.** Packaging and labeling operations shall be adequately controlled: To assure that only those drug products that have met the standards and specifications established in their master production and control records shall be distributed; to prevent mixups between drugs during filling, packaging, and labeling operations; to assure that correct labels and labeling are employed for the drug; and to identify the finished product with a lot or control number that permits determination of the history of the manufacture and control of the batch. An hour, day, or shift code is appropriate as a lot or control number for drug products manufactured or processed in continuous production equipment. Packaging and labeling operations shall:

(1) Be separated (physically or spatially) from operations on other drugs in a manner adequate to avoid mixups and minimize cross-contamination. Two or more packaging or labeling operations having drugs, containers, or labeling similar in appearance shall not be in process simultaneously on adjacent or nearby lines unless these operations are separated either physically or spatially.

(2) Provide for an inspection of the facilities prior to use to assure that all drugs and previously used packaging and labeling materials have been removed.

(3) Include the following labeling controls:

(a) The holding of labels and package labeling upon receipt pending review and proofing against an approved final copy by a competent and responsible individual to assure that they are accurate regarding identity, content, and conformity with the approved copy before release to inventory.

(b) The maintenance and storage of each type of label and package labeling representing different products, strength, dosage forms, or quantity of contents in such a manner as to prevent mixups and provide proper identification.

(c) A suitable system for assuring that only current labels and package labeling are retained and that stocks of obsolete labels and package labeling are destroyed.

(d) Restriction of access to labels and package labeling to authorized personnel.

(e) Avoidance of gang printing of cut labels, cartons, or inserts when the labels, cartons, or inserts are for different products or different strengths of the same products or are of the same size and have identical or similar format and/or color schemes. If gang printing is employed, packaging and labeling operations shall provide for added control procedures. These added controls should consider sheet layout, stacking, cutting, and handling during and after printing.

(4) Provide strict control of the package labeling issued for use with the drug. Such issue shall be carefully checked by a competent and responsible person for identity and conformity to the labeling specified in the batch production record. Said record shall identify the labeling and the quantities issued and used and shall reasonably reconcile any discrepancy between the quantity of drug finished and the quantities of labeling issued. All excess package labeling bearing lot or control numbers shall be destroyed. In event of any significant unexplained discrepancy, an investigation should be carried out according to WAC ((~~360-46-060~~)) 246-895-060(9).

(5) Provide for adequate examination or laboratory testing of representative samples of finished products after packaging and labeling to

safeguard against any errors in the finishing operations and to prevent distribution of any batch until all specified tests have been met.

(6) Provide for compliance with the Poison Prevention Packaging Act, (16 CFR Part 1700).

(7) Provide for compliance with WAC ((~~360-46-080~~)) 246-895-080(2).

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-140 MASTER PRODUCTION AND CONTROL RECORDS—BATCH PRODUCTION AND CONTROL RECORDS. (1) To assure uniformity from batch to batch, a master production and control record for each drug product and each batch size of drug product shall be prepared, dated, and signed or initialed by a competent and responsible individual and shall be independently checked, reconciled, dated, and signed or initialed by a second competent and responsible individual. The master production and control record shall include:

(a) The name of the product, description of the dosage form, and a specimen or copy of each label and all other labeling associated with the retail or bulk unit, including copies of such labeling signed or initialed and dated by the person or persons responsible for approval of such labeling.

(b) The name and weight or measure of each active ingredient per dosage unit or per unit of weight or measure of the finished drug and a statement of the total weight or measure of any dosage unit.

(c) A complete list of ingredients designated by names or codes sufficiently specific to indicate any special quality characteristic; and accurate statement of the weight or measure of each ingredient regardless of whether it appears in the finished product, except that reasonable variations may be permitted in the amount of components necessary in the preparation in dosage form provided that provisions for such variations are included in the master production and control record; an appropriate statement concerning any calculated excess of an ingredient; an appropriate statement of theoretical weight or measure at various stages of processing; and a statement of the theoretical yield.

(d) A description of the containers, closures, and packaging and finishing materials.

(e) Manufacturing and control instructions, procedures, specifications special notations, and precautions to be followed.

(2) The batch production and control record shall be prepared for each batch of drug produced and shall include complete information relating to the production and control of each batch. These records shall be retained for at least two years after the batch distribution is complete or at least one year after the batch expiration date, whichever is longer. These records shall identify the specific labeling and lot or control numbers used on the batch and shall be readily available during such retention period. The batch record shall include:

(a) An accurate reproduction of the appropriate master formula record checked, dated, and signed or initialed by a competent and responsible individual.

(b) A record of each significant step in the manufacturing, processing, packaging, labeling testing, and controlling of the batch, including: Dates; individual major equipment and lines employed; specific identification of each batch of components used; weights and measures of components and products used in the course of processing; in-process and laboratory control results; and identifications of the individual(s) actively performing and the individual(s) directly supervising or checking each significant step in the operation.

(c) A batch number that identifies all the production and control documents relating to the history of the batch and all lot or control numbers associated with the batch.

(d) A record of any investigation made according to WAC ((~~360-46-060~~)) 246-895-060(9).

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-160 COMPLAINT FILES. Records shall be maintained of all written and oral complaints regarding each product. An investigation of each complaint shall be made in accordance with WAC ((~~360-46-060~~)) 246-895-060(8). The record of each investigation shall be maintained for at least two years after distribution of the drug has been completed or one year after the expiration date of the drug, whichever is longer.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-895-170 VARIANCE AND PROCEDURE. Licensees may request that the board issue a variance from specific requirements of WAC ((~~360-46-040 through 360-46-150~~)) 246-895-040 through 246-895-160. The request must be in writing and must explain why the criteria should not apply and how the public's safety would be protected. Issuance of a variance shall be based on the information supplied by the manufacturer requesting the variance, as well as any other information available as a result of any investigation by the board and/or any other relevant information available. After due consideration of all the information, the board may issue or deny the requested variance. Any variance granted shall be limited to the particular case described in the request and shall be posted at the manufacturing location during the time it is in effect. Variances will be reviewed at least every three years. Variances shall be subject to withdrawal or modification at any time if the board finds the variance has resulted in actual or potential harm to the public.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-897-040 LICENSE APPLICATION. Applications for the production of amygdalin (laetrile) for use pursuant to ((~~chapter 122, Laws of 1977, 1st ex. sess.~~)) RCW 70.54.130 through 70.54.150 shall be filed with the board of pharmacy. Such applications shall include:

(1) A full list of the articles used as components of such drug;

(2) A full statement of the composition of such drug;

(3) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(4) Such samples of such drug and of the articles used as components thereof as the board may require; and

(5) Specimen of the labeling proposed to be used for such drug. Labels must include the name of the drug (amygdalin or laetrile), its strength per unit, manufacturer's name and address, lot number, and expiration date, if any.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-897-050 GOOD MANUFACTURING PRACTICES. Manufacturers of amygdalin (laetrile) shall conform to the standards for good manufacturing practices of finished pharmaceuticals, as provided in WAC ((~~360-46-010 through 360-46-150~~)) 246-895-010 through 246-895-160.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-897-150 GOOD MANUFACTURING PRACTICES. Manufacturers of DMSO shall conform to the standards for good manufacturing practices of finished pharmaceuticals, as provided in WAC ((~~360-46-010 through 360-46-150~~)) 246-895-010 through 246-895-160. Further, manufacturers shall comply with the state Food, Drug, and Cosmetic Act, chapter 69.04 RCW.

**AMENDATORY SECTION** (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-899-040 MANUFACTURERS, WHOLESALERS, DISTRIBUTORS, PHARMACY LOCATION, REQUIREMENT THAT DRUG PRODUCTS OFFERED FOR SALE COMPLY WITH 21 USC 355—IMMEDIATE SUSPENSION AND SUBSEQUENT REVOCATION OF LICENSES AUTHORIZED FOR VIOLATION. (1) In order to provide for enforcement of RCW 69.41.100 through 69.41.180 and to protect the public health and safety when generic drugs are substituted for brand name drugs pursuant to ((~~chapter 110, Laws of 1979;~~)) RCW 69.41.110 through 69.41.180 drug products which are offered for sale by, or stored at the premises of, any manufacturer, distributor, wholesaler or pharmacy location must have an approved new drug application (NDA) or abbreviated new drug application (ANDA) designation by the Federal Food and Drug Administration pursuant to 21 USC 355 unless they are exempt from the requirements for such a designation.

(2) In order to provide for enforcement of RCW 69.41.100 through 69.41.180 and to protect the public health and safety drug products

offered for sale by, or stored at the premises of, a manufacturer, wholesaler, distributor or pharmacy location which do not have the required NDA or ANDA, or exemption therefrom referenced in subsection (1) of this section, are hereby declared to be contraband and subject to surrender to and destruction by the Washington state board of pharmacy. This surrender and destruction shall take place as specified below.

(3) The board shall publish in its newsletter the source from which the current list compiled by the Federal Food and Drug Administration of generic drugs which do not have an NDA or ANDA and are not exempt from such a requirement and are therefore contraband as provided in subsection (2) of this section may be obtained. The board shall also respond to both written and telephone inquiries from any source regarding the status of any generic drug.

(4) Whenever it is made to appear to the board that a manufacturer, wholesaler, distributor or pharmacy location within the state of Washington is in possession of a stock of drugs which are contraband as defined in subsection (2) of this section, a representative of the board shall confirm with the Federal Food and Drug Administration, by telephone, that the particular drug or drugs involved do not have the required NDA or ANDA and that they are not exempt from this requirement. Upon receipt of this confirmation, the board shall direct such of its investigative personnel as it deems necessary to proceed to the premises of the manufacturer, wholesaler, distributor or pharmacy location and to then inform the owner, or person in charge, of the contraband status of the drugs in question.

(5) The pharmacy board investigative personnel shall offer the owner, or person in charge, of the premises at which the drug products are being kept the opportunity to immediately voluntarily surrender to the board all stocks of the drug products whether kept at the premises of the manufacturer, wholesaler, distributor, or pharmacy location, or at any separate storage facility under the control of the manufacturer, wholesaler, distributor or retailer, which are contraband under subsection (2) of this section. A receipt shall be given to the owner, or person in charge, for all drug products voluntarily surrendered.

(6) All drug products voluntarily surrendered pursuant to subsection (5) of this section shall be destroyed by the board of pharmacy unless they are ordered returned to the manufacturer, wholesaler, distributor or pharmacy location by order of a court of competent jurisdiction. No destruction of any drug products surrendered will be accomplished until thirty days after the date of their surrender to the board.

(7) Retention, dispensing, promotion or advertisement, of any drug products by a manufacturer, wholesaler, distributor or pharmacy location, either at their business premises or at any separate storage facility after notification of their contraband status under subsection (2) of this section shall constitute a direct and immediate danger to the public health and safety and will be good and sufficient cause for the immediate summary suspension and subsequent revocation of any license issued by the board of pharmacy to the manufacturer, wholesaler, distributor or pharmacy location and will also constitute good and sufficient cause for revocation of any license issued by the board of pharmacy to the owner of any manufacturer, wholesaler, distributor or pharmacy location or any person in charge thereof who knowingly retains, dispenses, promotes or advertises, any drug products which are contraband under subsection (2) of this section after notification of their status.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-899-050 OUT-OF-STATE PRESCRIPTIONS. (1) When dispensing a prescription issued by a practitioner licensed in a state other than Washington, and recognized in RCW 69.41.030, the pharmacist must honor the instructions of the practitioner regarding substitution. These instructions may be on a prescription blank different than that required for Washington practitioners by RCW 69.41.120 and may include the use of the words "dispense as written," words of similar meaning, a checkoff box, or some other indication ((or) of intent.

(2) If the practitioner has not clearly provided instructions regarding substitution, a pharmacist may substitute a therapeutically equivalent generic drug only if the pharmacist has determined substitution is permitted by one of the following means:

(a) The pharmacist has personal knowledge and is familiar with the laws and rules regarding substitution in the state of origin; or

(b) The pharmacist obtains oral or written authorization from the practitioner; or

(c) The pharmacist obtains current information regarding the manner in which an out-of-state practitioner provides instruction from:

(i) The Washington state board of pharmacy; or

(ii) The board of pharmacy in the state, other than Washington, in which the practitioner practices; or

(iii) Some other professional source.

(3) Drug product selection shall be based on Washington law and rule as set forth in WAC ((360-49-020)) 246-899-030.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-901-020 LEVEL A PHARMACY ASSISTANTS UTILIZATION. (1) Level A pharmacy assistants may assist in performing, under the immediate supervision and control of a licensed pharmacist, manipulative, nondiscretionary functions associated with the practice of pharmacy.

(2) Immediate supervision shall include visual and/or physical proximity that will insure adequate safety controls, except that the board of pharmacy may apply the standards of the joint commission on accreditation of hospitals for facilities licensed pursuant to chapters 70.41 or 71.12 RCW.

(3) The following shall not be considered to be manipulative and nondiscretionary functions associated with the practice of pharmacy:

(a) Consultation with the prescriber regarding the patient and his prescription.

(b) Receipt of a verbal prescription other than refill approval or denial from a prescriber.

(c) Consultation with the patient regarding the prescription, both prior to and after the prescription filling and/or regarding any information contained in a patient medication record system.

(d) Interpretation and identification of the contents of the prescription document.

(e) Determination of the product required for the prescription.

(f) Extemporaneous compounding of the prescription, except in accordance with written policies and procedures in accordance with WAC ((360-52-090)) 246-901-100(2), whereby the accuracy, correct procedure and preparation, and safety of pharmaceutical constituents can be verified by the pharmacist.

(g) Interpretation of data in a patient medication record system.

(h) Final check on all aspects of the completed prescription and assumption of the responsibility for the filled prescription, including but not limited to accuracy of drug, strength, labeling, and proper container.

(i) Dispense prescriptions to patient with proper patient information as required by WAC ((360-16-250)) 246-869-220.

(j) Any duty required by law, rule or regulation to be performed only by a registered pharmacist.

#### AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-903-010 DEFINITIONS. (1) A "nuclear pharmacy" is a class A pharmacy providing radiopharmaceutical services.

(2) "Nuclear pharmacist" means a licensed pharmacist who has submitted evidence to the board of pharmacy that he or she meets the requirements of WAC ((360-54-040)) 246-903-030 of these regulations regarding training, education, and experience, and who has received notification by letter from the board of pharmacy that, based on the evidence submitted, he or she is recognized by the board of pharmacy as qualified to provide radiopharmaceutical services.

(3) "Radiopharmaceutical service" shall mean, but shall not be limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation management and control of a nuclear pharmacy.

(4) A "radiopharmaceutical" is any substance defined as a drug in section 201(g)(1) of the Federal Food, Drug and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes nonradioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such

as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

(5) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

(6) "Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to insure the integrity of the test.

(7) "Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and intermediate handling of any component of a radiopharmaceutical.

(8) "Authorized practitioner" means a practitioner duly authorized by law to possess, use, and administer radiopharmaceuticals.

**WSR 92-07-099**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 [Order 256—Filed March 18, 1992, 10:46 a.m.]

Date of Adoption: March 17, 1992.

Purpose: Amends pharmacy related license fees to support the 1991-93 biennium program budget and eliminates the sixty day grace period to renew licenses without penalty.

Citation of Existing Rules Affected by this Order: Amending WAC 246-907-020 and 246-907-030.

Statutory Authority for Adoption: RCW 43.70.250.

Pursuant to notice filed as WSR 92-03-124 on January 21, 1992.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-863-080 is being withdrawn and will be adopted by the Board of Pharmacy. The fee for retired renewal license was added to WAC 246-907-080.

Effective Date of Rule: Thirty-one days after filing.  
 March 17, 1992  
 Kristine M. Gebbie  
 Secretary

**AMENDATORY SECTION** (Amending Order 194, filed 9/10/91, effective 10/11/91)

WAC 246-907-020 LICENSING PERIODS. (1) The following are established by the ~~((board of pharmacy))~~ secretary as the licensing periods for each license specified:

(a) Pharmacist licenses will expire on February 1 of each year.

(b) Pharmacy location, controlled substance registration (pharmacy), pharmacy assistant utilization, and shopkeeper differential hours licenses will expire on June 1 of each year.

(c) All other licenses, permits, or registrations will expire on October 1 of each year.

(2) Any license, permit, or registration that is not renewed on or before the expiration date established herein shall expire and shall no longer be valid to practice or conduct the activity for which it is issued. Any license, permit, or registration that has not been renewed

~~((within sixty days of))~~ by the expiration date shall be renewed only upon payment of the renewal fee and penalty fee as specified in WAC ~~((360-18-020))~~ 246-907-030.

**AMENDATORY SECTION** (Amending Order 194, filed 9/10/91, effective 10/11/91)

WAC 246-907-030 FEES. The following fees shall be charged by the ~~((board of pharmacy))~~ professional licensing division of the department of health:

(a) PHARMACY LOCATION	
Original pharmacy fee	<del>((285.00))</del> 275.00
Original pharmacy assistant utilization fee	50.00
Renewal pharmacy fee	200.00
Renewal pharmacy assistant utilization fee	<del>((75.00))</del> 60.00
Penalty pharmacy fee	275.00
(b) VENDOR	
Original fee	60.00
Renewal fee	60.00
Penalty fee	60.00
(c) PHARMACIST	
Exam fee (full exam)	<del>((275.00))</del> 200.00
Reexamination fee (jurisprudence portion)	40.00
Original license fee	<del>((125.00))</del> 100.00
Renewal fee, active and inactive license	<del>((115.00))</del> 105.00
Renewal fee, retired license	25.00
Penalty fee	<del>((115.00))</del> 105.00
Reciprocity fee	250.00
Certification of license status to other states	20.00
Retired license	20.00
(d) SHOPKEEPER	
(i) SHOPKEEPER - sixteen or more drugs	
Original fee	25.00
Renewal fee	25.00
Penalty fee	<del>((10.00))</del> 12.50
(ii) SHOPKEEPER - with differential hours	
Original fee	25.00
Renewal fee	25.00
Penalty fee	10.00
(e) DRUG MANUFACTURER	
Original fee	450.00
Renewal fee	450.00
Penalty fee	450.00
(f) DRUG WHOLESALER - full line	
Original fee	450.00
Renewal fee	450.00
Penalty fee	450.00

(g)	DRUG WHOLESALER – OTC only	
	Original fee	250.00
	Renewal fee	250.00
	Penalty fee	250.00
(h)	DRUG WHOLESALER – export	
	Original fee	450.00
	Renewal fee	450.00
	Penalty	450.00
(i)	PHARMACY ASSISTANT – Level "A"	
	Original fee	40.00
	Renewal fee	30.00
	Penalty fee	30.00
(j)	PHARMACY INTERN	
	Original registration fee	15.00
	Renewal registration fee	15.00
(k)	CONTROLLED SUBSTANCES ACT (CSA) REGISTRATIONS	
	Dispensing registration fee (i.e. pharmacies)	65.00
	Dispensing renewal fee (i.e. pharmacies)	<del>((55.00))</del> <u>50.00</u>
	Distributors registration fee (i.e. wholesalers)	90.00
	Distributors renewal fee (i.e. wholesalers)	90.00
	Manufacturers registration fee	90.00
	Manufacturers renewal fee	90.00
	Physician assistant registration fee	15.00
	Physician assistant renewal fee	10.00
	ARNP with prescriptive authorization registration fee	20.00
	ARNP with prescriptive authorization renewal fee	20.00
	Sodium pentobarbital for animal ethanization registration fee	30.00
	Sodium pentobarbital for animal ethanization renewal fee	30.00
	Other CSA registrations	30.00
(l)	LEGEND DRUG SAMPLE – distributor registration fees	
	Original fee	<del>((285.00))</del> <u>275.00</u>
	Renewal fee	200.00
	Penalty fee	200.00
(m)	POISON MANUFACTURER/SELLER – license fees	
	Original fee	30.00
	Renewal fee	30.00
(n)	Facility inspection fee	150.00
(o)	PRECURSOR CONTROL PERMIT	
	Original fee	50.00
	Renewal fee	50.00
(p)	LICENSE REISSUE	
	Reissue fee	15.00

**WSR 92-07-100**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 18, 1992, 11:17 a.m., effective May 1, 1992]

Date of Adoption: March 18, 1992.

Purpose: To limit chiropractic treatments to 17 treatments.

Citation of Existing Rules Affected by this Order: Amending WAC 296-23-610 [(3)](b), 296-20-03001, and 296-20-030.

Statutory Authority for Adoption: RCW 51.04.020(4), 51.04.030, and 51.16.120(3).

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: ESB 6054 relating to chiropractic care is enrolled and pending the governor's signature. This bill will expand the scope of chiropractic practice and give authority to all state health care purchasers to set service and fee limitations on chiropractic costs. The bill has an immediate effective date [date]. In order to assure the quality of care provided to injured workers, and to protect the stability of the medical aid fund, in light of this pending legislation, immediate amendment of the cited rules is necessary.

Effective Date of Rule: May 1, 1992.

March 18, 1992  
Dorette M. Markham  
for Joseph A. Dear  
Director

**AMENDATORY SECTION** (Amending Order 81-28, filed 11/30/81, effective 1/1/82)

**WAC 296-23-610 GENERAL INSTRUCTIONS.**

(1) Please refer to WAC 296-20-010 through WAC 296-20-125 for general information and rules pertaining to treatment of injured workers.

(2) The maximum fee is determined by multiplying the unit value of a procedure by a conversion factor. The appropriate conversion factor table for chiropractic services is the medicine tables. For x-ray services – use radiology conversion tables and procedure numbers.

(3) In addition to the rules found in WAC 296-20-010 to 296-20-125, the following rules apply when chiropractic treatment is being rendered:

(a) No more than one chiropractic adjustment per day will be authorized or paid, except on the initial and next two subsequent visits. The attending doctor must submit a detailed report regarding the need for the additional treatment.

(b) Treatment beyond the first ~~((20))~~ 17 treatments or 60 days, whichever comes first, will not be authorized ~~((without submission of a consultation report or a comprehensive comparative exam report regarding need for further care)).~~ ~~((See WAC 296-20-051 re: Consultation.))~~

(c) If needed, x-rays immediately prior to and immediately following the initial chiropractic treatment may be allowed without prior authorization.

(d) X-rays before and after subsequent chiropractic treatment will not be paid unless previously authorized. Prior authorization must be obtained for x-rays subsequent to the initial treatment.

(e) No payment will be made for excessive or unnecessary x-rays taken on initial or subsequent visits.

(f) No services or x-rays will be paid on rejected or closed claims except those rendered in conjunction with a reopening application.

(g) See WAC 296-23-01002 for custody requirements for x-rays.

(h) Treatment as a maintenance or supportive measure will not be authorized nor paid.

(4) Billing procedures itemized in WAC 296-20-125 must be followed.

**AMENDATORY SECTION** (Amending Order 86-19, filed 2/28/86, effective 4/1/86)

WAC 296-20-030 TREATMENT NOT REQUIRING AUTHORIZATION FOR ACCEPTED CONDITIONS. (1) A maximum of twenty office calls for the treatment of the industrial condition, during the first sixty days, following injury. Subsequent office calls must be authorized. Provided, however, that chiropractic services are limited in accordance with the provisions of WAC 296-23-610. Reports of treatment rendered must be filed at sixty day intervals to include number of office visits to date. See WAC 296-20-03001 for report requirements and further information.

(2) Initial diagnostic x-rays necessary for evaluation and treatment of the industrial injury or condition. See WAC 296-20-121 for further information.

(3) The first twelve physical therapy treatments as provided by WAC 296-23-710 and 296-21-095, upon consultation by the attending doctor or under his direct supervision. Additional physical therapy treatment must be authorized and the request substantiated by evidence of improvement. In no case will the department or self-insurer pay for inpatient hospitalization of a claimant to receive physical therapy treatment only. **USE OF DIAPULSE, THERMATIC (standard model only), SPECTROWAVE AND SUPERPULSE MACHINES AND IONTOPHORESIS IS NOT AUTHORIZED FOR WORKERS ENTITLED TO BENEFITS UNDER THE INDUSTRIAL INSURANCE ACT.**

(4) Routine laboratory studies reasonably necessary for diagnosis and/or treatment of the industrial condition. Other special laboratory studies require authorization.

(5) Routine standard treatment measures rendered on an emergency basis or in connection with minor injuries not otherwise requiring authorization.

(6) Consultation with specialist when indicated. See WAC 296-20-051 for consultation guidelines.

(7) Nonscheduled drugs and medications during the acute phase of treatment for the industrial injury or condition.

(8) Scheduled drugs and other medications known to be addictive, habit forming or dependency inducing may be prescribed in quantities sufficient for treatment for a

maximum of twenty-one days. If drug therapy extends beyond thirty days, see WAC 296-20-03003 regarding management.

(9) Injectable scheduled and other drugs known to be addictive, habit forming, or dependency inducing may be provided only on an in-patient basis. Hospital admission for administration of drugs for relief of chronic pain only will not be allowed.

(10) Diagnostic or therapeutic nerve blocks. See WAC 296-20-03001 for restrictions.

(11) Intra-articular injections. See WAC 296-20-03001 for restrictions.

(12) Myelogram if prior to emergency surgery.

**AMENDATORY SECTION** (Amending WSR 90-04-057, filed 2/2/90, effective 3/5/90)

WAC 296-20-03001 TREATMENT REQUIRING AUTHORIZATION. Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; ICD-9-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first twenty visits or sixty days whichever occurs first. Provided, however, that chiropractic services are limited in accordance with the provisions of WAC 296-23-610.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X-ray and radium therapy.

(4) Diagnostic studies other than routine x-ray and blood or urinalysis laboratory studies.

(5) Myelogram and discogram in nonemergent cases.

(6) Physical therapy treatment beyond initial twelve treatments as outlined in WAC 296-21-095 and 296-23-710.

(7) Diagnostic or therapeutic injection. Epidural or caudal injection of substances other than anesthetic or contrast solution will be authorized under the following conditions only:

(a) When the worker has experienced acute low back pain or acute exacerbation of chronic low back pain of no more than six months duration.

(b) The worker will receive no more than three injections in an initial thirty-day treatment period, followed by a thirty-day evaluation period. If significant pain relief is demonstrated one additional series of three injections will be authorized. No more than six injections will be authorized per acute episode.

(8) Home nursing or convalescent center care must be authorized per provision outlined in WAC 296-20-091.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; TNS units; masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) *Biofeedback program; pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. See WAC 296-21-0501 and 296-21-0502 for details.*

(11) *Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending doctor can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.*

(12) *Injections of anesthetic and/or antiinflammatory agents into the vertebral facet joints will be authorized to qualified specialists in orthopedics, neurology, and anesthesia, or other physicians who can demonstrate expertise in the procedure, AND who can provide certification their hospital privileges include the procedure requested under the following conditions:*

(a) *Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the department or self-insurer.*

(b) *Procedure must be performed in an accredited hospital under radiographic control.*

(c) *Not more than four facet injection procedures will be authorized in any one patient.*

(13) *The long term prescription of medication under the specific conditions and circumstances in (a) and (b) are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.*

(a) *Nonsteroidal antiinflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.*

(b) *Anticonvulsive agents for the treatment of seizure disorders caused by trauma.*

(14) *Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per patient. The attending doctor must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one patient.*

(15) *The department may designate those diagnostic and surgical procedures which can be performed in other than a hospital inpatient setting. Where a worker has a medical condition which necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.*

**WSR 92-07-101**  
**PROPOSED RULES**  
**BATES TECHNICAL COLLEGE**  
 [Filed March 18, 1992, 11:27 a.m.]

Original Notice.

Title of Rule: Regular meeting, board agenda items, delegation of authority, practice and procedure, student conduct code, withholding services, tuition and fees, scholarships, financial aid, organization, rules coordinator, facilities use, public records access, etc.

Purpose: To adopt a basic set of rules for this new technical college.

Statutory Authority for Adoption: RCW 42.30.075, 28B.10.140, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 238, Laws of 1991 (ESB 5184).

Summary: Adoption of a basic set of rules as required for a technical college.

Reasons Supporting Proposal: The technical college currently has no rules in effect.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jon Thorpe, Senior Vice President, Bates Technical College, (206) 596-1619; and Implementation: William Mohler, President, Bates Technical College, (206) 596-1610.

Name of Proponent: Bates Technical College board of trustees, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To adopt a basic set of rules for a newly created technical college: Regular meeting, board agenda items, delegation of authority, practice and procedure, student conduct code, withholding services, tuition and fees, scholarships, financial aid, organization, rules coordinator, use of facilities, access to public records, Family Educational Rights and Privacy Act, grievance rules for Title IX and handicapped, SEPA.

Proposal does not change existing rules.

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

Hearing Location: Board Room, Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405, on April 22, 1992, at 2:30 p.m.

Submit Written Comments to: Jon Thorpe, Senior Vice President, Bates Technical College, 1101 South Yakima Avenue, Tacoma, by April 10, 1992.

Date of Intended Adoption: April 22, 1992.

March 18, 1992  
 Richard M. Montecucco  
 Senior Assistant  
 Attorney General

Chapter 495A-104 WAC  
 BOARD OF TRUSTEES

NEW SECTION

WAC 495A-104-010 TIME AND PLACE OF BOARD MEETINGS. The board of trustees shall hold one regular meeting on the third Wednesday of each month except for the month of August at 2:00 p.m. and such special meetings as may be requested by the chairman of the board or by a majority of the members of the board and announced in accordance with law.

All regular and special meetings of the board of trustees shall be held at Bates Technical College, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

NEW SECTION

WAC 495A-104-020 REQUEST FOR ITEMS TO BE PLACED ON BOARD AGENDA. Anyone, other than a board member or a representative of the president's office wishing an item placed on the agenda of a board meeting, must have a written request in the

office of the board secretary no later than twelve o'clock noon ten business days before the next scheduled meeting of the board. The secretary will relate the request to the college president and the chairman of the board as soon as feasible. The chairman will determine whether the item is to be placed on the agenda. The chairman or a designee will notify the individual initiating the request as to whether or not the item will be placed on the agenda.

#### NEW SECTION

WAC 495A-104-030 DELEGATION TO COLLEGE PRESIDENT. The board of trustees delegates to the college president its authority and responsibility to administer Bates Technical College in accordance with laws, policies, and rules approved or sanctioned by the board of trustees. At the operational level, the president has final administrative authority over all matters affecting the college district.

#### Chapter 495A-108 WAC PRACTICE AND PROCEDURE

#### NEW SECTION

WAC 495A-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 are adopted for use at this college. 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 previously adopted by this college, the model rules prevail.

#### NEW SECTION

WAC 495A-108-020 APPOINTMENT OF PRESIDING 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, the president or president's designee shall designate one person to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

#### NEW SECTION

WAC 495A-108-030 METHOD OF RECORDING. Proceedings shall be recorded by a method determined by the presiding officer, among those available under the model rules of procedure.

#### NEW SECTION

WAC 495A-108-040 APPLICATION FOR ADJUDICATIVE PROCEEDING. An application for adjudicative proceeding shall be in writing. Application forms are available at the following address: Bates Technical College, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

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 495A-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 adopted by reference. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations;
- (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 college-sponsored athletic events.

#### NEW SECTION

WAC 495A-108-060 DISCOVERY. Discovery in adjudicative proceedings may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall refer to the civil rules of procedure. The presiding officer may control the frequency and nature of discovery permitted, and order discovery conferences to discuss discovery issues.

#### NEW SECTION

WAC 495A-108-070 PROCEDURE FOR CLOSING PARTS OF THE HEARINGS. Any party may apply for a protective order to close part of a hearing. The party making the request shall 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 in writing within twenty days of receiving the request.

#### NEW SECTION

WAC 495A-108-080 RECORDING DEVICES. No cameras or recording devices are allowed in those parts of proceedings that the presiding officer has determined shall be closed under WAC 495A-108-070, except for the method of official recording selected by the college.

#### Chapter 495A-120 WAC STUDENT CONDUCT CODE

#### NEW SECTION

WAC 495A-120-010 DEFINITIONS. The definitions set forth in this section apply throughout this chapter.

(1) "Board" means the board of trustees of Bates Technical College District No. 28.

(2) "College" means Bates Technical College.

(3) "Liquor" means the definition of liquor as contained within RCW 66.04.010.

(4) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.

(5) "College facilities" means the real property controlled or operated by the college and includes all buildings and appurtenances affixed thereon or attached thereto.

(6) "President" means the chief executive officer of the college appointed by the board of trustees.

(7) "Disciplinary officials" means the hearing committee as denominated in WAC 495A-120-170, the director of student services, the senior vice-president for instruction, and the president.

(8) "Student" means a person who is regularly enrolled at the college.

(9) "Disciplinary action" means the warning, probation, expulsion, suspension, or reprimand of a student under WAC 495A-120-120 for the violation of a rule adopted in this chapter.

#### NEW SECTION

WAC 495A-120-020 STATEMENT OF PURPOSE. (1) Bates Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct himself or herself as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs will be dealt with by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.



NEW SECTION

WAC 495A-120-030 JURISDICTION. All rules in this chapter concerning student conduct and discipline apply to every student enrolled at the college whenever the student is engaged in or present at a college-related activity whether occurring on or off college facilities.

NEW SECTION

WAC 495A-120-040 STUDENT MISCONDUCT. Disciplinary action may be taken for a violation of any provision of this student code, for a violation of other college rules which may from time to time be properly adopted, or for any of the following types of misconduct:

- (1) Smoking is prohibited in all classrooms, shop areas, and the library and other areas so posted by college officials;
- (2) The possession, use, sale, or distribution of any alcoholic beverage or illegal drug on the college campus is prohibited. The use of illegal drugs by any student attending a college-sponsored event is also prohibited, even though the event does not take place at the college. The use of alcohol by any student attending such events on noncollege property shall conform to state law;
- (3) Engaging in lewd, indecent, or obscene behavior;
- (4) Where the student presents an imminent danger to college property or to himself or herself or other students or persons in college facilities on or off campus, or to the education process of the college;
- (5) Academic dishonesty, including cheating, plagiarism, or knowingly furnishing false information to the college;
- (6) The intentional making of false statements or filing of false charges against the college and members of the college community;
- (7) Forgery, alteration, or misuse of college documents, records, funds, or instruments of identification with the intent to defraud;
- (8) Theft from or damage to college premises or property, or theft of or damage to property of a member of the college community or college premises;
- (9) Failure to comply with the direction of college officials acting in the legitimate performance of their duties.

NEW SECTION

WAC 495A-120-045 LOSS OF ELIGIBILITY—STUDENT ATHLETIC PARTICIPATION. Any student found to have violated chapter 69.41 RCW, legend drugs, by virtue of a criminal conviction or by final decision of the college president shall, in lieu of or in addition to any other disciplinary action which may be imposed, be disqualified from participation in any school-sponsored athletic events or activities.

NEW SECTION

WAC 495A-120-050 CIVIL DISTURBANCES. In accordance with provisions contained in RCW 28B.10.571 and 28B.10.572:

- (1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty member or student of the college who is in the peaceful discharge or conduct of his duties or studies.
- (2) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty member or student of the college who is in the peaceful discharge of his duties or studies.
- (3) The crimes described in RCW 28B.10.571 and 28B.10.572 shall not apply to any administrator or faculty member who is engaged in the reasonable exercise of their disciplinary authority.
- (4) Any person or persons who violate the provisions of subparagraphs (1) and (2) above will be subject to disciplinary action and referred to the authorities for prosecution.

NEW SECTION

WAC 495A-120-060 FREE MOVEMENT ON CAMPUS. The president is authorized in the instance of any event that he or she deems impedes the movement of persons or vehicles or which he or she deems to disrupt the ingress or egress of persons from the college facilities, to prohibit the entry of, or withdraw the license of, or privileges of a person or persons or any group of persons to enter onto or remain upon any portion of the college facility. The president may act through the director of student services or any other person he may designate.

NEW SECTION

WAC 495A-120-070 RIGHT TO DEMAND IDENTIFICATION. For the purpose of determining whether probable cause exists for the application of any section of this code to any behavior by any person on a college facility, any college personnel or other authorized personnel may demand that any person on college facilities produce evidence of student enrollment at the college by tender of that person's student identification card.

NEW SECTION

WAC 495A-120-080 PERFORMANCE DISHONESTY/CLASSROOM CONDUCT. (1) Performance dishonesty: Honest assessment of student performance is of crucial importance to all members of the college community. Acts of dishonesty are serious breaches of honor and shall be dealt with in the following manner:

(a) It is the responsibility of the college administration and teaching faculty to provide reasonable and prudent security measures designed to minimize opportunities for acts of performance dishonesty which occur at the college.

(b) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as the student's work product, shall be deemed to have committed an act of performance dishonesty. Acts of performance dishonesty shall be cause for disciplinary action.

(c) Any student who aids or abets the accomplishment of an act of performance dishonesty, as described in subparagraph (b) above, shall be subject to disciplinary action.

(d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action when the instructor is required to act upon such breach of performance dishonesty in order to preserve order and prevent disruptive conduct in the classroom. This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for performance dishonesty.

(2) Classroom conduct: Instructors have the authority to take whatever summary actions may be necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(a) Any student who, by any act of misconduct, substantially disrupts any college class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty member's class shall be subject to disciplinary action.

(b) The instructor of each course offered by the college is authorized to take such steps as may be necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the objectives of the course; provided that; a student shall have the right to appeal such disciplinary action to the director of student affairs.

NEW SECTION

WAC 495A-120-090 CAMPUS SPEAKERS. (1) Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if suitable space is available and there is no interference with the regularly scheduled program of the college. Although properly allowed by the college, the appearance of such speakers on the campus implies neither approval nor disapproval of them or their viewpoints. In case of speakers who are candidates for political office, equal opportunities shall be available to opposing candidates if desired by them. Speakers are subject to the normal considerations for law and order and to the specific limitations imposed by the state constitution which prohibits religious worship, exercise or instruction on state property.

(2) In order to insure an atmosphere of open exchange and to insure that the educational objectives of the college are not obscured, the president, in a case attended by strong emotional feeling, may prescribe conditions for the conduct of the meeting, such as requiring a designated member of the faculty as chairman, or requiring permission for comments and questions from the floor. Likewise, the president may encourage the appearance of one or more additional speakers at any meeting or at a subsequent meeting so that other points of view may be expressed. The president may designate representatives to recommend conditions such as time, manner, and place for the conduct of particular meetings.

NEW SECTION

## WAC 495A-120-100 DISTRIBUTION OF INFORMATION.

(1) Handbills, leaflets, newspapers and similar materials may be sold or distributed free of charge by any student or students, or by members of recognized student organizations, or by college employees on or in college facilities at locations specifically designated by the director of student services; provided such distribution or sale does not interfere with the ingress or egress of persons or interfere with the free flow of vehicular or pedestrian traffic.

(2) Such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual.

(3) All nonstudents shall register with the director of student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution or sale must not interfere with the free flow of vehicular or pedestrian traffic.

(4) Any person or persons who violate provisions of subparagraphs (1) and (2) above will be subject to disciplinary action.

NEW SECTION

WAC 495A-120-110 COMMERCIAL ACTIVITIES. (1) College facilities will not be used for a commercial solicitation, advertising or promotional activities except when such activities clearly serve educational objectives, including but not limited to display of books of interest to the college community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or at the request of the college, or the office of the associated students of the college if such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(2) For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers and similarly related materials as regulated in WAC 495A-120-100.

NEW SECTION

WAC 495A-120-120 DISCIPLINARY PROCESS. (1) Any infractions of college rules may be referred by any college faculty or staff member to the director of student services or in his or her absence the senior vice-president. That official shall then follow the appropriate procedures for any disciplinary action which he or she deems necessary relative to the alleged misconduct. In addition, a student may appeal disciplinary action taken by an instructor or faculty member pursuant to the provisions in WAC 495A-120-180.

(2) The disciplinary official may take whatever action deemed appropriate within the framework of these rules. If the student concludes that any sanctions imposed are inappropriate, the student may appeal to the student/faculty disciplinary committee.

(3) If a referral or an appeal is made to the student/faculty disciplinary committee, the committee shall hold a hearing, reach conclusions and may impose sanctions. If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college.

(4) The president of the college, after reviewing the case, may reverse, sustain or modify any sanctions which may have been imposed by the student/faculty disciplinary committee. The decision of the president is final.

NEW SECTION

WAC 495A-120-130 DISCIPLINARY TERMS. The definitions set forth in this section apply throughout WAC 495A-120-200.

(1) Disciplinary warning means oral notice of violation of college rules.

(2) Reprimand means formal action after censuring a student for violation of college rules for failure to satisfy the college's expectations regarding conduct. Reprimands are made in writing to the student by the disciplinary official. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one or more serious disciplinary actions described below.

(3) Disciplinary probation means formal action placing conditions upon the student's continued attendance because of violation of college rules or failure to satisfy the college's expectations regarding conduct. The disciplinary official placing the student on probation will specify, in writing, the period of probation and the conditions, such as limiting

the student's participation in extra-curricular activities. Disciplinary probation warns the student that any further misconduct will automatically raise the question of dismissal from the college. Disciplinary probation may be for a specified term or for an indefinite period which may extend to completion or other termination of the student's enrollment in the college.

(4) Summary suspension means temporary dismissal from the college and temporary termination of a student's status for a period of time not to exceed ten days which occurs prior to invocation of the formal hearing procedures specified in these rules due to a necessity to take immediate disciplinary action, where a student presents an imminent danger to the college property, or to himself or herself or other students or persons in college facilities on or off campus, or to the educational process of the college.

(5) Suspension means temporary dismissal from the college and temporary termination of student status for violation of college rules or for failure to meet college standards of conduct.

(6) Expulsion means dismissal from the college and termination of student status for violation of college rules or for failure to meet the college standards of conduct for an indefinite period of time or permanently.

NEW SECTION

WAC 495A-120-135 REFUNDS AND ACCESS. (1) Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.

(2) A student suspended on the basis of conduct which disrupted the orderly operation of the campus or any facility of the district, may be denied access to all or any part of the campus or other facility.

NEW SECTION

WAC 495A-120-140 READMISSION AFTER SUSPENSION OR EXPULSION. Any student suspended from the college for disciplinary reasons will normally be readmitted upon expiration of the time period for which the suspension was issued. If the student has been expelled or feels that circumstances warrant reconsideration of a temporary suspension prior to its expiration, or if the student was suspended with conditions imposed for readmission, the student may be readmitted following approval of a written petition submitted to the director of student services. Such petition must state reasons which support a reconsideration of the matter. Before readmission may be granted, such petition must be reviewed and approved by the college president or designee.

NEW SECTION

WAC 495A-120-150 REESTABLISHMENT OF PERFORMANCE STANDING. Students who have been suspended pursuant to disciplinary procedures set forth in WAC 495A-120-120 and 495A-120-130 and whose suspension upon appeal is found to have been unwarranted shall be provided the opportunity to reestablish their performance and student standing to the extent possible within the abilities of the college, including an opportunity to retake examinations or otherwise complete course offerings missed by reason of such action.

NEW SECTION

WAC 495A-120-160 DISCIPLINARY AUTHORITY OF THE DIRECTOR OF STUDENT SERVICES AND SENIOR VICE-PRESIDENT. (1) The director of student services or, in his or her absence, the senior vice-president of the college is responsible for initiating disciplinary proceedings for infractions of rules. The director of student services or, in his or her absence, the senior vice-president, may delegate this responsibility to members of their staff and they may also establish committees or other hearing bodies to advise or act for them in disciplinary matters.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student involved shall be informed at the initial conference or hearing of the several sanctions that may be involved for the misconduct.

(3) After considering the evidence in a case and interviewing the student or students involved, the director of student services, or in his absence, the senior vice-president, may take any of the following actions:

(a) Terminate the proceeding, exonerating the student or students;

(b) Dismiss the case after whatever counseling and advice may be appropriate;

(c) Impose disciplinary sanctions directly, subject to the student's right of appeal as described in this chapter. The student shall be notified in writing of the action taken except that disciplinary warnings may be given verbally;

(d) Refer the matter to the student/faculty disciplinary committee for appropriate action. The student shall be notified in writing that the matter has been referred to the committee.

(4) This section shall not be construed as preventing the appropriate official from summarily suspending a student. In the event of summary suspension, the student will be given oral or written notice of the charges, an explanation of the evidence, and an informal opportunity to present his or her side of the matter. The student will also be given an opportunity to invoke the formal hearing process set forth in this chapter.

#### NEW SECTION

**WAC 495A-120-170 STUDENT/FACULTY DISCIPLINARY COMMITTEE.** (1) The student/faculty disciplinary committee, convened for that purpose, will hear, de novo, and make recommendations on all disciplinary cases referred to it by the appropriate authority or appealed to it by students. The committee will be composed of the following persons:

(a) A member appointed by the president of the college;

(b) Two members of the faculty, appointed by the president of the faculty association;

(c) Two representatives from the student council, appointed by the student body president.

(2) None of the above-named persons shall sit on any case in which he or she has a complainant or witness, in which he or she has a direct or personal interest, or in which he or she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole. The disciplinary committee chairperson will be elected by the members of the disciplinary committee.

(3) The committee may decide that the student involved:

(a) Be given a disciplinary warning;

(b) Be given a reprimand;

(c) Be placed on disciplinary probation;

(d) Be given a suspension;

(e) Be expelled;

(f) Be exonerated with all proceedings terminated and with no sanctions imposed;

(g) Be disqualified from participation in any school-sponsored athletic events or activities.

#### NEW SECTION

**WAC 495A-120-180 PROCEDURAL GUIDELINES.** (1) The student, if he wishes to appeal, has a right to a fair and impartial hearing before the committee on any charge of misconduct. The failure of a student to cooperate with the hearing procedures, however, shall not preclude the committee from making its findings of fact, reaching conclusions and imposing sanctions. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties.

(2) The student shall be given notice of the date, time and place of the hearing, the charges, a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. This notice shall be given to the student in writing and shall be provided in sufficient time to permit him to prepare a defense. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.

(3) The student or his representative shall be entitled to hear and examine the evidence against him or her and be informed of the identity of its sources; and shall be entitled to present evidence in his or her own behalf and question witnesses as to factual matters. The student shall have all authority which is possessed by the college to obtain information or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.

(4) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past

record of conduct may be taken into account in formulating the committee's recommendation for disciplinary action.

(5) The student may be represented by counsel and/or accompanied by an advisor of his choice.

(6) Hearings conducted by the committee may be held in closed session at the discretion of the committee, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of the hearing invited persons are disruptive of the proceedings, the chairperson of the committee may exclude such persons from the hearing room.

(7) A majority of the committee shall set the time, place and available seating capacity for a hearing.

(8) All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as fairness to all parties involved permits.

(9) An adequate summary of the proceedings will be kept. As a minimum, such summary would include a tape recording of testimony. Such record will be available for inspection and copying in the office of student services during regular business hours.

(10) The student will be provided with a copy of the findings of fact and the conclusions of the committee. The student will also be advised of his right to present, within ten calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of an unmarried student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation is sent to the parents or guardian of the student.

(11) The committee chairman shall establish general rules of procedure for conducting hearings consistent with these procedural guidelines.

(12) The president of the college or his designated representative, after reviewing the case, including the report of the committee and any statement filed by the student, shall either indicate his approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision, or shall nullify previous sanctions imposed by reversing its decision. He shall then notify the official who initiated the proceedings, the student and the committee chairperson.

#### NEW SECTION

**WAC 495A-120-190 APPEALS.** Any disciplinary action may be appealed as described below. Notice of an appeal by a student shall be made in writing and addressed to the director of student services within ten calendar days of the college's giving of the notice of the disciplinary action.

(1) Disciplinary action by a faculty member or other college staff member may be appealed to, and shall be reviewed by, the director of student services, or in his absence, the senior vice-president.

(2) Disciplinary action by the appropriate disciplinary official may be appealed to, and shall be reviewed by, the student/faculty disciplinary committee.

(3) Disciplinary action by the student/faculty disciplinary committee may be appealed to, and shall be reviewed by, the college president or his designee.

(4) Disciplinary action by the president shall either indicate approval of the conclusions by sustaining the decision or shall give directions as to what other disciplinary action shall be taken by modifying the decision, or shall nullify previous sanctions imposed by reversing its decision. All appeals to the president shall be final.

#### NEW SECTION

**WAC 495A-120-200 REPORTING, RECORDING AND MAINTAINING RECORDS.** Records of all disciplinary cases shall be kept by the disciplinary official taking or initiating the action. Except in proceedings where the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved, insofar as possible, for not more than five years. No other records of proceedings wherein the student is exonerated, other than the fact of exonerated, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than five years.

Chapter 495A-122 WAC  
WITHHOLDING SERVICES FOR OUTSTANDING DEBTS

NEW SECTION

WAC 495A-122-010 POLICY. If any person, including any faculty, staff, student, or former student, is indebted to the institution for an outstanding overdue debt, the college need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, transcripts or other services which have been requested by such person.

NEW SECTION

WAC 495A-122-020 NOTIFICATION. (1) Upon receiving a request for services where there is an outstanding debt due to the college from the requesting person, the college shall notify the person by registered mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, requested services will not be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding before a person designated by the president of the college. The proceeding must be requested within twenty days of the date of mailing notification of refusal to provide services.

NEW SECTION

WAC 495A-122-030 PROCEDURE FOR BRIEF ADJUDICATIVE PROCEEDING. Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the college available for review and shall hold an informal hearing concerning whether the individual in fact owes any outstanding debts to the college. The hearing must be conducted within ten days of the request for a hearing. After the informal hearing, a decision shall be rendered by the president's designee indicating whether in fact the college is correct in withholding services for the outstanding debt. If the outstanding debt is owed by the individual involved, no further services shall be provided. Notification of this decision shall be sent by registered mail to the individual within five days after the hearing. This hearing shall constitute a brief adjudicative proceeding established by the Administrative Procedure Act at RCW 34.05.482 through 34.05.494.

Chapter 495A-130 WAC  
TUITION AND FEE SCHEDULES

NEW SECTION

WAC 495A-130-020 LOCATION OF SCHEDULES. Additional and detailed information and specific amounts to be charged for each category of students will be found in the college catalog and in the following locations on the Bates Technical College campus:

- (1) The office of admissions;
- (2) The registration and records office.

Chapter 495A-131 WAC  
SCHOLARSHIPS

NEW SECTION

WAC 495A-131-010 SCHOLARSHIPS. Detailed information concerning the criteria, eligibility, procedures for application, and other information regarding scholarships at Bates Technical College is located in the office of student services on the downtown college campus.

Chapter 495A-132 WAC  
FINANCIAL AID

NEW SECTION

WAC 495A-132-010 FINANCIAL AID. Federal, state, and private financial aid applications and information may be obtained at the following address:

Office of Financial Aid  
Bates Technical College  
1101 South Yakima Avenue  
Tacoma, WA 98405

Award of federal and state aid will be made in accordance with applicable federal and state laws and regulations.

Chapter 495A-133 WAC  
ORGANIZATION

NEW SECTION

WAC 495A-133-020 ORGANIZATION—OPERATION—INFORMATION. (1) Organization. Bates Technical College is established in Title 28B RCW as a public institution of higher education. The college 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 college. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

1101 South Yakima Avenue  
Tacoma, WA 98405

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:

South Campus  
2201 South 78th Street  
Tacoma, WA 98409

Home and Family Life Center  
5214 North Shirley Street  
Tacoma, WA 98407

Business and Management Center  
7030 Tacoma Mall Boulevard  
Tacoma, WA 98409

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

1101 South Yakima Avenue  
Tacoma, WA 98405

Chapter 495A-134 WAC  
DESIGNATION OF RULES COORDINATOR

NEW SECTION

WAC 495A-134-010 RULES COORDINATOR. The rules coordinator for Bates Technical College as designated by the president is:

Jon G. Thorpe  
Senior Vice-President  
1101 South Yakima Avenue  
Tacoma, WA 98405

Chapter 495A-140 WAC  
USE OF COLLEGE FACILITIES

NEW SECTION

WAC 495A-140-010 USE OF COLLEGE FACILITIES. Bates Technical College serves Pierce and other counties by providing continued educational opportunity for its citizens. In keeping with this general purpose, the college believes that facilities should be available for a variety of uses which are of benefit to the general public if such general uses do not interfere with the educational mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

NEW SECTION

WAC 495A-140-020 LIMITATION OF USE TO SCHOOL ACTIVITIES. (1) When allocating use of college facilities, the highest priority is always given to activities specifically related to the college's mission. No arrangements will be made that may interfere with or operate to the detriment of, the college's own teaching, research, or public service programs. In particular, college buildings, properties, and facilities, including those assigned to student programs, are used primarily for:

(a) The regularly established teaching, research, or public service activities of the college and its departments;

(b) Cultural, educational, or recreational activities of the students, faculty, or staff;

(c) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(d) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees and presented with their active sponsorship and active participation;

(e) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies or civic or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(2) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community. The appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration, or the board of trustees, implicitly or explicitly, of the speaker's views.

(3) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Arrangements by both organizations and individuals must be made through the designated administrative officer. Allocation of space shall be made in accordance with college rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.

(4) The college may restrict an individual's or a group's use of college facilities if that person or group has, in the past, physically abused college facilities. Charges may be imposed for damage or for any unusual costs for the use of facilities. The individual, group or organization requesting space will be required to state in advance the general purpose of any meeting.

#### NEW SECTION

WAC 495A-140-030 STATEMENT OF INTENTIONS. The college neither intends nor desires to compete with any local agency or private enterprise in making its facilities available to the community. Privately operated facilities exist which are well qualified to best meet many community needs. The college encourages the community to patronize local businesses or agencies. With this approach, the college will work cooperatively with local private enterprise to the mutual benefit of all concerned.

#### NEW SECTION

WAC 495A-140-040 GENERAL POLICIES LIMITING USE.

(1) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities or forums.

(2) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use may be intermittent only.

(3) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and rules.

(4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(5) These rules shall apply to recognized student groups using college facilities.

(6) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful may be distributed only in designated areas on the campus where, and at times when, such distribution will not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.

(7) Use of audio amplifying equipment is permitted only in locations and at times which will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.

(8) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.

(9) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(10) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.

(11) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities), groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.

(12) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might also be available through local law enforcement agencies.

#### NEW SECTION

WAC 495A-140-050 ADMINISTRATIVE CONTROL. The board hereby delegates to the president authority to set up administrative procedures for the use of college facilities; and to establish rental schedules where appropriate.

#### NEW SECTION

WAC 495A-140-060 TRESPASS. (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with these rules.

#### NEW SECTION

WAC 495A-140-070 PROHIBITED CONDUCT AT COLLEGE FACILITIES. (1) The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities are subject to disciplinary action.

(2) The use of tobacco is prohibited in accordance with health regulations.

(3) Destruction of property is also prohibited by state law in reference to public institutions.

#### NEW SECTION

WAC 495A-140-080 CONTROL OF PETS IN COLLEGE FACILITIES. Pets are not permitted in campus buildings or on the grounds except guide or service dogs for the visually or hearing impaired.

NEW SECTION

WAC 495A-140-090 BASIS OF FEE ASSESSMENT. (1) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and an evaluation of the intended purpose and its relationship to the purposes of this college. The board of trustees has determined that groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use. A current fee schedule is available to interested persons from the office of director of college operations.

(2) The college does not wish to compete with private enterprise. Therefore, the college reserves the right to deny applications for facility use when the administration and/or the board of trustees feels a commercial facility should be patronized. At no time will facility use be granted for a commercial activity at a rental rate, or upon terms, less than the full and fair rental value of premises used.

NEW SECTION

WAC 495A-140-100 APPLICATION PROCEDURES. (1) At least seven working days prior to date of intended use of any college facility, an authorized representative of the requesting organization must submit proper and complete written application which may be obtained through the college's office of director of college operations. A single application may be sufficient for a series of meetings by an organization unless those meetings vary significantly in some substantive way; if so, separate applications will be required.

(2) Upon approval of the application, an authorized representative of the using organization shall sign the rental agreement. By affixing a signature as representing the using organization, the signatory specifies he or she has authority to enter into agreement on behalf of the organization and if the organization fails to pay the amount due, the signatory becomes responsible for all charges which may include interest payment for overdue accounts as specified on the rental form but not less than one percent per month.

(3) Large events, events requiring expenditures on the part of the college, or where significant areas are blocked out for the renter, a minimum of up to fifty percent advance deposit may be required at the time of application.

(4) The college reserves the right to make pricing changes without prior written notice.

(5) Use of a facility is limited to the facilities specified on the agreement.

(6) The priorities for facility use place primary emphasis on regular college events and activities. The president and the board of trustees reserve the right to cancel any permit and refund any payments for use of college facilities and equipment when they deem such action advisable and in the college's best interests.

(7) In the event of a cancellation of a facility use permit by the applicant, that organization is liable for all college costs and expenses in preparing the facility for its use.

(8) Any admission charge is to be specified and approved by the college.

(9) Organizations using Bates Technical College's facilities shall conduct all activities in accordance with applicable local, state, and federal laws including all rules adopted by the board of trustees.

NEW SECTION

WAC 495A-140-110 SUPERVISION DURING ACTIVITY. (1) Signatories of the rental agreement as well as adult organization leaders are responsible for group conduct and are expected to remain with their group during activities. When the use of special facilities makes it necessary that supervision be provided, the trustees reserve the right to require a staff member represent the college at any activity on college facilities. Such service shall be paid at the current rate, by the organization requesting use of the facility, and does not relieve the organization from safeguarding the college's property.

(2) The security staff or some other authority of the college will open and lock all rented facilities. Keys to buildings or facilities will not be issued or loaned on any occasion to any using organization with the exception of keys to designated off-campus locations.

Chapter 495A-276 WAC  
ACCESS TO PUBLIC RECORDSNEW SECTION

WAC 495A-276-010 PURPOSE. The purpose of this chapter is to ensure that Bates Technical College complies with the provisions of chapter 42.17 RCW and in particular with those sections of that chapter dealing with public records.

NEW SECTION

WAC 495A-276-020 DEFINITIONS. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums and other documents.

(3) "Bates Technical College" is an agency organized by statute pursuant to RCW 28B.50.040. Bates Technical College shall hereafter be referred to as the "district." Where appropriate, the term "district" also refers to the staff and employees of the district.

NEW SECTION

WAC 495A-276-030 DESCRIPTION OF CENTRAL AND FIELD ORGANIZATION OF TECHNICAL COLLEGE DISTRICT NO. 28. (1) Bates Technical College is a state agency established and organized under the authority of chapter 28B.50 RCW for the purpose of implementing the educational goals established by the legislature in RCW 28B.50.020. The administrative office of the district is located on the downtown campus within the city of Tacoma, Washington. The downtown campus likewise comprises the central headquarters for all operations of the district. Field activities for the south campus, home and family life center, and business and management center branches of the district are administered by personnel located at those branches in Tacoma, Washington; all other field activities of the district are directed and administered by personnel located on the campus at 1101 South Yakima Avenue, Tacoma, WA 98405.

(2) The district is operated under the supervision and control of a board of trustees. The board of trustees consists of five members appointed by the governor. The board of trustees normally meets at least once each month, as provided in WAC 495A-104-010. The board of trustees employs a president, an administrative staff, members of the faculty and other employees. The board of trustees takes such actions and promulgates such rules, and policies in harmony with the rules established by the state board for community and technical colleges, as are necessary to the administration and operation of the district.

(3) The president of the district is responsible to the board of trustees for the operation and administration of the district. A detailed description of the administrative organization of the district is contained within the Policies and Procedures Manual for Bates Technical College, a current copy of which is available for inspection at the administrative office of the district.

NEW SECTION

WAC 495A-276-040 OPERATIONS AND PROCEDURES. (1) Formal decision-making procedures are established by the board of trustees through rules promulgated in accordance with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(2) Informal decision-making procedures at the college, as established by the board of trustees, are set forth in the Policies and Procedures Manual of Bates Technical College, a current copy of which is available for inspection at the administrative office of the district.

NEW SECTION

WAC 495A-276-050 PUBLIC RECORDS AVAILABLE. All public records of the district, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 or other statutes.

NEW SECTION

**WAC 495A-276-060 PUBLIC RECORDS OFFICER.** The district's public records shall be in the charge of the public records officer designated by the chief administrative officer of the district. The person so designated shall be located in the district administrative office. The public records officer shall be responsible for the following: Implementation of the district's rules regarding release of public records, coordinating district employees in this regard, and generally ensuring compliance by district employees with the public records disclosure requirements in chapter 42.17 RCW.

NEW SECTION

**WAC 495A-276-070 OFFICE HOURS.** Public records shall be available for inspection and copying during the customary office hours of the district. For purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and holidays established by the college calendar.

NEW SECTION

**WAC 495A-276-080 REQUESTS FOR PUBLIC RECORDS.** In accordance with the requirements of RCW 42.17.290 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at the district administrative office. The form shall be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

NEW SECTION

**WAC 495A-276-090 COPYING.** No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records and such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official. All charges must be paid by money order, cashier's check, or cash in advance.

NEW SECTION

**WAC 495A-276-100 DETERMINATION REGARDING EXEMPT RECORDS.** (1) The district reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 495A-276-080 is exempt pursuant to the provisions set forth in RCW 42.17.310 or other statute. Such determination may be made in consultation with the public records officer, president of the college district, or an assistant attorney general assigned to the district.

(2) Pursuant to RCW 42.17.260, the district reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy or impair a vital governmental interest: PROVIDED, HOWEVER, In each case, the justification for the deletion shall be explained fully in writing.

(3) Response to requests for a public record must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is notified within two business days as to whether his request for a public record will be honored.

(4) All denials of request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the public record withheld.

NEW SECTION

**WAC 495A-276-110 REVIEW OF DENIALS OF PUBLIC RECORDS REQUESTS.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the president of the district, or his or her designee.

(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, the president of the district, or his or her designee, shall complete such review.

(4) During the course of the review the president or his or her designee shall consider the obligations of the district to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW 42.17.310 or other pertinent statutes, and the provisions of the statute which require the district to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

NEW SECTION

**WAC 495A-276-120 PROTECTION OF PUBLIC RECORDS.** Requests for public records shall be made at the administrative office of the district at 1101 South Yakima Avenue, Tacoma, WA 98405. Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated. Copies of such records may be arranged according to the provisions of WAC 495A-276-090.

NEW SECTION

**WAC 495A-276-130 RECORDS INDEX.** (1) The district has available for the use of all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated by the district after September 1, 1991:

- (a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;
- (c) Administrative staff manuals and instructions to staff that affect a member of the public;
- (d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index maintained by the district shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

NEW SECTION

**WAC 495A-276-140 ADOPTION OF FORM.** The district hereby adopts for use by all persons requesting inspection and/or copying or copies of its records the following form:

REQUEST FOR PUBLIC RECORD TO BATES TECHNICAL COLLEGE

(a) Name (please print) Signature
Name or Organization, if applicable
Mailing Address of Applicant Phone Number
(b) Date Request Made Time of Day Request Made
(c) Nature of Request
(d) Identification Reference on Current Index (Please describe)
(e) Description of Record, or Matter, Requested if not Identifiable by Reference to the Bates Technical College Index
Request: APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ Date \_\_\_\_\_
By \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_
Reasons for Denial: \_\_\_\_\_
Referred to \_\_\_\_\_ Date \_\_\_\_\_
By \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

Chapter 495A-280 WAC FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

NEW SECTION

WAC 495A-280-010 GENERAL POLICY. Bates Technical 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, Bates Technical 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 495A-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 Bates Technical 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 Bates Technical 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 or certificate 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 that is maintained by the student programs 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 495A-280-070.

(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; and
(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; or a list of personal characteristics which would make the student's identity easily traceable.

NEW SECTION

WAC 495A-280-020 ANNUAL NOTIFICATION OF RIGHTS. Bates Technical College will notify students of their rights under the Family Educational Rights and Privacy Act of 1974 by publication in the college catalog and 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 495A-280-030 PROCEDURE TO INSPECT EDUCATION RECORDS. (1) Students may inspect and review their education records upon request to the appropriate college official as designated in WAC 495A-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.

NEW SECTION

WAC 495A-280-040 DISCLOSURE OF EDUCATION 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 officially elected or appointed to the associated students of Bates Technical 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 consistent 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; and
(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 disclosure to other parties listed in (a) through (h) of this subsection.

**NEW SECTION**

**WAC 495A-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 or her.

(2) Bates Technical 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 Bates Technical College if that application was denied; and
- (d) Those records which are excluded from the Federal Rights and Privacy Act definition of education records.

(3) Bates Technical 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 495A-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 495A-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 interest the parties had in requesting or obtaining the information; and
- (c) The names and 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; and
- (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 495A-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 continues in effect according to its terms unless revoked in writing by the student.

**NEW SECTION**

**WAC 495A-280-080 REQUESTS FOR CORRECTIONS, 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 495A-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 director of student services within ten 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 director of student services shall notify the student of the hearing within thirty days after receipt of a properly filed request. In no case will the notification be less than ten 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 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, at the student's expense.

(4) The student services or other appropriate committee will prepare a written decision, within thirty 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 495A-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 495A-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 continues in effect according to its terms unless revoked in writing which is signed and dated.

**NEW SECTION**

**WAC 495A-280-110 TYPE AND LOCATION OF EDUCATION RECORDS.**

Types	Location	Custodian
Admission Records, Cumulative Academic Records, Testing Records, Registration and Payment of Tuition Records	Archives	Student Records Clerk
Student Government Participation Records	Archives	Student Records Clerk
Financial Aid Records, Student Employment Records	Archives	Financial Aid Office

NEW SECTION

WAC 495A-280-120 REMEDY FOR STUDENTS 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

Chapter 495A-300 WAC  
GRIEVANCE RULES—TITLE IX

NEW SECTION

WAC 495A-300-010 PREAMBLE. Bates Technical College is covered by Title IX of the Civil Rights Act of 1964 prohibiting sex discrimination in education. Any applicant for admission, enrolled student, applicant for employment or employee of Bates Technical College who believes she/he has been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below.

NEW SECTION

WAC 495A-300-020 INFORMAL PROCEDURE. All employees and students should feel free to discuss perceived discrimination with the individual immediately in charge, such as the first-line supervisor or instructor, to see if the situation can be resolved informally. Employees and students may also consult directly with the college affirmative action officer without making a formal written complaint, and this consultation will be considered confidential. Employees and students are not required to use the informal process and may go directly to the formal procedure.

Any college official receiving a discrimination complaint shall contact the affirmative action officer or designee as soon as reasonably convenient. The college official shall arrange for the complainant to receive a copy of the complaint procedure.

NEW SECTION

WAC 495A-300-030 FORMAL PROCEDURE. Step one: Employees and students must make a written complaint concerning discriminatory behavior to the affirmative action officer or designee.

(1) Complaints will be held in confidence. No action against the person accused will be taken on behalf of the complainant unless the complainant consents to be identified to the one accused in connection with the investigation.

(2) The complainant may bring a person of his or her choice to the initial or subsequent complaint meetings.

(3) The affirmative action officer or designee shall give a copy of these regulations and any applicable board policy to the person making the formal complaint and to the accused.

(4) The result of that consultation and any investigation made will be communicated to the complainant before any further action is taken.

(5) An informal hearing may be substituted for investigation if the complainant and the accused agree. The affirmative action officer or designee will be responsible for investigating the complaint and discussing the complaint with the accused. The affirmative action officer will make a written recommendation to the president within a reasonable time following the close of the investigation or hearing.

(6) Appropriate corrective measures will be decided by the president of the college upon consultation with the affirmative action officer and the appropriate administrators or supervisors involved. If an accused employee or student disagrees with the determination or appropriateness of the corrective measures, that individual may contest those measures through the formal faculty or classified grievance procedures, if they are covered by an agreement, or the student disciplinary code.

(7) Information will be entered in the personnel or student file only to the extent that a formal reprimand or other disciplinary action has been taken. If no disciplinary action is taken, the affirmative action officer will keep a record of the investigation accessible to the president, the complainant and the accused for a period of three years and then that record will be destroyed. If a formal complaint is filed with an outside state or federal agency, files will be maintained until the complaint is resolved. When such files are used, written notice will be placed in the file indicating the person using the file and the date used.

NEW SECTION

WAC 495A-300-040 OTHER REMEDIES. These procedures outlined in WAC 495A-300-010 through 495A-300-030, are internal college procedures and, as such, serve to resolve complaints within the college's administrative framework. These procedures do not replace an individual's timely complaint with an external agency such as the Office of Civil Rights, Equal Employment Opportunity Commission, or the Washington state human rights commission.

Chapter 495A-310 WAC  
GRIEVANCE PROCEDURES—HANDICAPPED

NEW SECTION

WAC 495A-310-010 PREAMBLE. Bates Technical College is covered by section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap in education. Any applicant for admission, enrolled student, applicant for employment or employee of Bates Technical College who believes she/he has been discriminated against on the basis of handicap may lodge an institutional grievance by following the procedures below.

NEW SECTION

WAC 495A-310-020 INFORMAL PROCEDURE. All employees and students should feel free to discuss perceived discrimination with the individual immediately in charge, such as the first-line supervisor or instructor, to see if the situation can be resolved informally. Employees and students may also consult directly with the college affirmative action officer or coordinator for disabled student services without making a formal written complaint, and this consultation will be considered confidential. Employees and students are not required to use the informal process and may go directly to the formal procedure.

Any college official receiving a discrimination complaint shall contact the affirmative action officer or designee as soon as reasonably convenient. The college official shall arrange for the complainant to receive a copy of the grievance procedure.

NEW SECTION

WAC 495A-310-030 FORMAL PROCEDURE. Step one: Employees and students must make a written complaint concerning discriminatory behavior to the affirmative action officer or designee.

(1) Complaints will be held in confidence. No action against the person accused will be taken on behalf of the complainant unless the complainant consents to be identified to the one accused in connection with the investigation.

(2) The complainant may bring a person of his or her choice to the initial or subsequent complaint meetings.

(3) The affirmative action officer or designee shall give a copy of these regulations and any applicable board policy to the person making the formal complaint and to the accused.

(4) The result of that consultation and any investigation made will be communicated to the complainant before any further action is taken.

(5) An informal hearing may be substituted for investigation if the complainant and the accused agree. The affirmative action officer or designee will be responsible for investigating the complaint and discussing the complaint with the accused. The affirmative action officer will make a written recommendation to the president within a reasonable time following the close of the investigation or hearing.

(6) Appropriate corrective measures will be decided by the president of the college upon consultation with the affirmative action officer and the appropriate administrators or supervisors involved. If an accused employee or student disagrees with the determination or appropriateness of the corrective measures, that individual may contest those measures through the formal faculty or classified grievance procedures, if they are covered by an agreement, or the student disciplinary code.

(7) Information will be entered in the personnel or student file only to the extent that a formal reprimand or other disciplinary action has been taken. If no disciplinary action is taken, the affirmative action officer will keep a record of the investigation accessible to the president, the complainant and the accused for a period of three years and then that record will be destroyed. If a formal complaint is filed with an outside state or federal agency, files will be maintained until the complaint is resolved. When such files are used, written notice will be placed in the file indicating the person using the file and the date used.

**NEW SECTION**

WAC 495A-310-040 OTHER REMEDIES. These procedures, outlined in WAC 495A-310-010 through 495A-310-030, are internal college procedures and, as such, serve to resolve complaints within the college's administrative framework. These procedures do not replace an individual's timely complaint with an external agency such as the Office of Civil Rights, Equal Employment Opportunity Commission, or the Washington state human rights commission.

Chapter 495A-325 WAC  
STATE ENVIRONMENTAL POLICY ACT RULES

**NEW SECTION**

WAC 495A-325-010 IMPLEMENTATION OF STATE ENVIRONMENTAL POLICY ACT. (1) It shall be the policy of Bates Technical College that all actions taken by the district shall comply with the provisions of chapter 43.21C RCW (the State Environmental Policy Act), chapters 197-11 and 132-24 WAC.

(2) The president of the district or his or her designee shall be responsible for administering and implementing this policy.

**WSR 92-07-102**  
**EMERGENCY RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**  
[Filed March 18, 1992, 11:48 a.m.]

Date of Adoption: March 18, 1992.

Purpose: Rescinding WSR 92-07-001 filed on March 4, 1992.

Citation of Existing Rules Affected by this Order: Amending chapters 326-02 and 326-20 WAC.

Statutory Authority for Adoption: RCW 39.19.030(7).

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

Reasons for this Finding: The agency's current practices are not in compliance with chapter 34.05 RCW, the Washington Administrative Procedure Act. Without an immediate change to the rules, the agency lacks authority to perform functions required by its enabling legislation.

Effective Date of Rule: Immediately.

March 18, 1992  
James A. Medina  
Director

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-02-010 PURPOSE. The purpose and intent of chapter 120, Laws of 1983, and of ~~((these rules))~~ Title 326 WAC is to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses ~~((in participating))~~ in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. This purpose will be accomplished by encouraging the full use

of existing minority and women-owned and controlled businesses and the entry of new and diversified minority and women-owned and controlled businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-02-020 APPLICABILITY. ~~((This chapter))~~ Title 326 WAC applies to all applications for certification ~~((as a minority or women's business enterprise by the state of Washington))~~ and to all public works and procurement by state agencies and educational institutions: PROVIDED, That this ~~((chapter))~~ title does not apply where it is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state. In such a case, the conflicting portions of this chapter are inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

**AMENDATORY SECTION** (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-02-030 DEFINITIONS. Words and terms used in ~~((these rules))~~ this title shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in ~~((these rules))~~ this title, or the context in which they are used clearly indicates that they should be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Certified business" or "certified" means a business or the status of a business that has been examined by the Washington state office of minority and women's business enterprises and deemed to be a minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), or a combination business enterprise (CBE).

(3) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

~~((+3))~~ (4) "Combination ((minority and women's)) business enterprise" or "CBE" means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by ~~((this))~~ the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by ~~((this))~~ the office. The owners must be United States citizens or lawful permanent residents.

~~((+4))~~ (5) "Commercially useful function" means the performance of real and actual services which are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

~~((+a))~~ For purposes of certification, factors which may be considered in determining whether a business is or

will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible; and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section; and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition to those in (a) of this subsection which indicate that a supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials; or

(ii) Is the manufacturer of those goods or materials; or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser; and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm is not performing a commercially useful function include, but are not limited to, the following:

(A) A minimum amount of inventory is not maintained;

(B) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(C) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(D) The supplier does not take ownership of the product.

(5) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(6) "Contract by contract basis" means a single contract within a specific class of contracts.

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(8) "Director" means the director of the office of minority and women's business enterprises.

(9) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented.

(11) "Goods and/or services" means all goods and services, including professional services.

(12) "Joint venture" means a single enterprise partnership of two or more persons or businesses created to carry out a single business enterprise for profit for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(13) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office.

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents.

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise, and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington.

(16) "Office" means the office of minority and women's business enterprises of the state of Washington.

(17) "Procurement" means the purchase, lease, or rental of any goods or services.

(18) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

~~(19) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.~~

~~(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents.~~

~~(21)) (6) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.~~

~~((22)) (7) "Conduit" means a ((WBE, MBE, or combination MWBE)) certified business which agrees to be named as a subcontractor on a contract in which such ((WBE, MBE, or combination MWBE)) certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other ((non-MWBE)) noncertified business.~~

~~((23)) (8) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.~~

~~(9) "Contract by contract basis" means a single contract within a specific class of contracts.~~

~~(10) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.~~

~~(11) "Corporate-sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.~~

~~(12) "Director" means the director of the office of minority and women's business enterprises.~~

~~(13) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.~~

~~(14) "Front" means a business which purports to be((: (a) A WBE)) eligible for certification but is not in fact legitimately owned ((or)) and controlled by ((a man or men, (b) a MBE but is owned or controlled by a nonminority person or persons, or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3))) minorities, women, or a combination thereof.~~

~~((24) "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE and simply resells those goods to the state, state contractors or other persons doing business with the~~

~~state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.~~

~~(25)) (15) "Goods and/or services" means all goods and services, including professional services.~~

~~(16) "Joint venture" means a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.~~

~~(17) "Legitimately owned and controlled" means that minorities, women, or a combination thereof, own at least fifty-one percent interest in the business (unless the business qualifies as a corporate sponsored dealership under the provisions of subsection (11) of this section and WAC 326-20-050(4)); and the minorities, women, or combination thereof, possess and exercise sufficient expertise specifically in the firm's field of operation to make decisions governing the long-term direction and the day-to-day operations of the firm.~~

~~(18) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.~~

~~((26) "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.~~

~~(27)) (19) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:~~

~~(a) Black: Having origins in any of the black racial groups of Africa;~~

~~(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;~~

~~(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, or~~

~~(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.~~

~~(20) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.~~

~~(21) "Minority women's business enterprise" or "MWBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority women and is certified by the office. The owners must be United States citizens or lawful permanent residents.~~

~~(22) "Office" means the office of minority and women's business enterprises of the state of Washington.~~

~~(23) "Pass-through" means a certified business which buys goods from a noncertified business and simply resells those goods to the state, state contractors or other~~

persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(24) "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(25) "Procurement" means the purchase, lease, or rental of any goods or services.

(26) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(27) "Regular dealer" means a certified business that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

(28) "Services," in the context of "goods and/or services," means all services including, but not limited to, client services, personal services, and purchased services as defined in RCW 39.29.006.

(29) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(30) "Supplier" means a manufacturer, regular dealer, broker, or packager that (a) provides or furnishes goods or materials; (b) performs a commercially useful function; and (c) is not considered a conduit, front, or pass-through.

(31) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

((28) "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080:

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation:

(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete.

(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(e) The minority or women owner(s) must have operational control, and as such have day-to-day management control of the dealership, with responsibility for sales, service volume, and profits.

(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as: Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.

(i) The minority or women owner(s) must be president of any corporation formed by the business.

(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:

(a) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements, and

(b) Control over management, interest in capital, interest in profit or loss and contributions to capital;

~~equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The business must be independent and the minority and/or women owner(s) must possess and exercise the legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28).)~~ (32) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-040 PROHIBITED ACTIVITIES WITH REGARD TO CHAPTER 39.19 RCW. (1) RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

~~((1))~~ (a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

~~((2))~~ (b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

~~((3))~~ (c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

~~((4))~~ (d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

~~((5))~~ (e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

~~((6))~~ (f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter;

~~((7))~~ (g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter;

~~((8))~~ (h) To fail or refuse to comply with any provision of chapter 39.19 RCW or with a contract requirement established under this chapter.

(2) A certified business engages in prohibited activity when it fails to perform a commercially useful function on any public-sector contract or procurement. Failure to perform a commercially useful function occurs when a business:

(a) Functions as a conduit; or

(b) Functions as a pass-through; except brokers and firms operating in industries where such activity is common industry practice, e.g., insurance or real estate.

(3) A business that is deemed to be a switch business is also deemed to have engaged in prohibited activity.

NEW SECTION

WAC 326-02-045 FACTORS CONSIDERED IN DETERMINING PERFORMANCE OF COMMERCIALY USEFUL FUNCTION. (1) In determining the performance of a commercially useful function, factors which may be considered include, but are not limited to, the following:

(a) Whether the work to be performed by the business is within the scope of work included in the Standard Industrial Classification code(s) under which the business is listed in the directory of certified businesses published by the office or in the records of the office.

(b) Whether the business could be considered a conduit, front, or pass-through;

(c) Whether the minority and/or woman owner(s) has the skill and expertise to perform the work for which the business is being or has been certified;

(d) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and the principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible;

(2) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and execute material changes in the configuration of those goods or materials; or

(b) Prior to submitting an application for certification, secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(3) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained.

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners.

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user.

(d) The firm does not take ownership of the product.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-050 PENALTIES WHICH MAY BE IMPOSED. (1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this ((chapter)) title prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

(2) Penalties which may be imposed include one or more of the following:

- (a) Withhold payment until the violation is remedied;
- (b) Debarment from contracting with the state for up to one year; debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;
- (c) Suspension of the contract;
- (d) Termination of the contract;
- (e) Immediate suspension of the certification of a certified firm;

(f) Payment of civil penalties of up to five thousand dollars for each violation or up to ten percent of the amount of the contract; or

(g) Decertification.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either served personally ((served upon)) or ((transmitted)) by certified mail, return receipt requested, to the person or ((entity)) business incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is ((received)) served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, ((a contested case hearing)) the office shall conduct a show cause review as outlined in WAC 326-20-171 or an adjudicative proceeding shall be conducted on behalf of the office by the office of administrative hearings((: The administrative law judge shall issue a proposed decision, with findings of fact and conclusions of law, and a recommendation on the size and nature of the penalty to be imposed, if any. The director may adopt the recommendations of the administrative law judge, or affirm, or reduce the penalty, and shall issue a final order setting forth the civil penalty assessed, if any. The director's order may be appealed to the superior court within thirty days of service of the order. Any penalty imposed under this section is due and payable upon the issuance of the final order by the office, whether or not an appeal to superior court is pursued)) in accordance with the provisions in chapter 326-08 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-060 FACTORS CONSIDERED IN DETERMINING PENALTIES. In determining the nature of the penalty and monetary amount, if any, of a penalty to be imposed, the factors which may be considered include, but are not limited to:

- (1) The potential harm to the ((MWBE or non-MWBE firm)) certified or noncertified business;
- (2) Potential harm to the state, due to delay or other problems;
- (3) The potential for harm to the public;
- (4) Whether the violation occurs in the context of particular contract;
- (5) The stage or percent of completion of a contract at which the violation occurs;
- (6) The timing of the discovery of the violation;
- (7) The contracting history of the alleged violator;
- (8) The extent to which the alleged violator has cooperated with the investigation;
- (9) Whether there have been previous violations by the person.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-070 SUSPENSION OF CONTRACT. (1) The performance of a contract may be immediately suspended upon receipt of adequate evidence received by the office that the person has engaged in any of the prohibited activities described in WAC 326-02-040 and RCW 39.19.080.

(2) The decision of the office to suspend a contract is discretionary and will not be based on an unsupported allegation. Decisions to suspend shall be in the public interest, including the government's interest in doing business with firms that are responsible and ((the interest)) in preserving competition.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-080 SUSPENSION OF CERTIFICATION. The certification of a business ((certified under chapter 39.19 RCW and these regulations)) may be suspended for engaging in any of the activities prohibited by RCW 39.19.080 and WAC 326-02-040, upon a showing that immediate action is necessary to prevent harm to the public welfare.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-090 PROCEDURES FOR SUSPENSION, HEARING PROVIDED. (1) If the director determines that suspension of the certification of a ((firm)) business is necessary to prevent immediate harm to the public welfare, the ((suspended person or firm)) business will be notified by personal service or certified mail, return receipt requested, of the suspension and the



reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended (~~person or firm~~) business will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the administrative law judge may recommend that:

- (a) Suspension of certification remain in effect for up to one year,
- (b) The suspension be removed; or
- (c) That the (~~firm~~) business be decertified.

**AMENDATORY SECTION** (Amending Order 87-6, filed 8/27/87)

WAC 326-20-010 IN GENERAL. (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, or a combination minority and women's business enterprise or corporate-sponsored dealership as set forth in this title, is eligible to be certified by the state of Washington (~~as a minority business enterprise, a women's business enterprise or a combination minority and women's business enterprise. A business owned and controlled by one or more minority females may be certified as both a MBE and a WBE~~).

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities and/or women who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race or sex.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-030 PROOF OF MINORITY STATUS. Each minority owner of a business applying for (~~MBE or combination minority and women's business enterprise~~) certification who is visibly identifiable as a minority shall submit with the MWBE application form a photograph or copy of documentation containing the owner's photograph. Each minority owner who is not visibly identifiable as a minority shall submit a copy of his or her birth certificate, tribal enrollment papers, or other document which shows that the owner meets the definition of "minority" as set forth in these rules. The final determination will be in the sole discretion of the office.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-040 PROOF OF WOMAN'S STATUS. Each woman owner of a business applying for certification (~~as a WBE or as a combination minority and women's business enterprise must~~) shall submit with the (~~MWBE~~) application form a copy of her

birth certificate, valid driver's license, or other document which shows that the owner is a woman. The final determination will be in the sole discretion of the office.

**AMENDATORY SECTION** (Amending Order 87-6, filed 8/27/87)

WAC 326-20-050 PROOF OF OWNERSHIP OF BUSINESS. (1) All minority or women owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, cancelled check used to purchase ownership, or other recognized proof of ownership. The ownership shall be real, substantial, and continuing, shall go beyond the pro forma ownership of the business reflected in the ownership documents, and shall be based on the owner's capital contribution. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements.

(2) In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority or women owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority or women owners' interest in the business was acquired.

(3) The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the following standards (~~set out in WAC 326-02-030(28)~~):

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell, or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(c) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(d) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest shall be complete.

(e) The sponsoring corporation must have specifically developed a national or regional corporate sponsored

dealership program which includes such features as capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(f) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-20-060 COMMUNITY OWNERSHIP. An ownership interest arising in a nonapplicant spouse solely because of the operation of community property laws will not disqualify the applicant spouse from certification. Both spouses ~~((must))~~ shall certify that:

(a) Only one spouse participates in the management of the business.

(b) The nonparticipating spouse relinquishes control over his/her community interest in the subject business.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-070 COUNTING OWNERSHIP HELD IN TRUST. In determining whether the fifty-one percent ownership requirement is met, no stock or ownership held in trust shall be counted, except in the following cases:

(1) Where both the trustee and the beneficiary are minorities, or both are women, and the trustee meets the ~~((fifty-one percent))~~ control requirement; or

(2) Where the stock or ownership is held in an irrevocable trust for the benefit of a minority or a woman and the minority or woman beneficiary meets the ~~((fifty-one percent))~~ control requirement.

AMENDATORY SECTION (Amending Order 88-5, filed 5/31/88)

WAC 326-20-080 FACTORS CONSIDERED IN DETERMINING CONTROL. (1) The minority or woman owner(s) must possess and exercise managerial and operational control over the day-to-day affairs of the business.

(a) Managerial control. The minority or woman owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and direction of the firm.

(b) Operational control. The minority or woman owner(s) has the demonstrable ability to independently make basic decisions pertaining to the daily operations of the business.

(2) Whether a minority or woman owner meets the control requirement ~~((as defined in WAC 326-02-~~

~~030(29)))~~ is determined on an application-by-application basis. Office management, clerical, or other experience unrelated to the firm's field of operations, is insufficient to establish that the business is legitimately owned and controlled.

(3) Factors which may be considered in determining whether the minority or woman owner meets the control requirement include, but are not limited to, the following:

~~((1))~~ (a) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;

~~((2))~~ (b) The financial interest and/or participation in any other business by any owner or key personnel;

~~((3))~~ (c) Past and current employment history of minority and women owners involved in the business;

~~((4))~~ (d) Members of the board of directors and corporate officers;

~~((5))~~ (e) Experience, training, and expertise of any owners and key personnel;

~~((6))~~ (f) Recent changes in ownership and/or control of the business;

~~((7))~~ (g) Financial obligation to and capital contributions from owners and nonowners of the business; and

~~((8))~~ (h) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business.

~~((9) Control of a corporate-sponsored dealership will be evaluated using the standards set out in WAC 326-02-030(28).))~~

(4) If persons who are not minorities or women are disproportionately responsible for the operation of the business, then the business is not eligible for certification.

(5) The requirements of this section shall not apply, if the business qualifies as a corporate-sponsored dealership under the provisions of WAC 326-20-050(4). Control of a corporate-sponsored dealership will be evaluated using the following standards:

(a) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(b) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(c) The minority or women owner(s) must have and exercise managerial and operational control over the day-to-day management of the dealership, with responsibility for sales, service volume, and profits.

(d) The minority or women owner(s) must have prior business or management experience relating to the business being entered into as an owner.

(e) The minority or women owner(s) must be president of any corporation formed by the business.

AMENDATORY SECTION (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-20-081 INTERTWINEMENT. To be eligible for certification, a ~~((firm))~~ business must be independent. ~~((Significant))~~ Intertwinement with a non-certified ~~((firm))~~ business may be grounds for denial or decertification of a ~~((firm))~~ business. The office will determine whether a ~~((firm))~~ business is ~~((significantly))~~ intertwined with a noncertified ~~((firm))~~ business by looking for factors which include, but are not limited to, the following:

- (1) Shared ownership(:);
- (2) Common directors or partners(:);
- (3) Shared equipment, facilities, resources, or employees(:);
- (4) Beneficial financial arrangements which indicate less than arms length transactions with a noncertified ((firm,)) business;
- (5) Overdependency on a noncertified ((firm)) business to obtain and perform work(:);
- (6) Such an identity of interest exists between the ((firm)) business seeking certification and a noncertified ((firm)) business that an affiliation may be presumed(:); and
- (7) The degree to which financial, equipment, leasing, business and other relationships with noncertified ((firms)) businesses vary from normal industry practice.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-092 SMALL BUSINESS CONCERN REQUIREMENT. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW and these regulations, ~~((in order to be entitled to certification under chapter 39.19 RCW, a firm))~~ a business must qualify as a small business concern ~~((as defined in WAC 326-20-093))~~ to be eligible for certification or recertification.

(a) Except as otherwise provided in WAC 326-20-096 (for certain federal projects), a small business concern is a business which is independently owned and operated, is not dominant in its field of operations, and which does not exceed the size limitations as set forth in the current table of Standard Industrial Classification (SIC) codes and corresponding industry size standards as adopted by the United States Small Business Administration in Title 13 Code of Federal Regulations, Part 121, on file in the office.

(b) The number of employees or amount of annual receipts listed as the size standard for each SIC code indicates the maximum allowed for a business (including its affiliates) to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern shall be, whenever possible, based on criteria that is consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations.

(2) A ~~((firm))~~ business which exceeds the small business size limits after certification by the office shall be subject to decertification.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-094 ~~((APPLICATION OF SIZE STANDARD))~~ ASSIGNMENT OF STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE. (1) The office will determine which SIC code an applicant ~~((firm))~~ falls under based on information submitted by the ~~((firm))~~ business. The office will prepare conversion tables showing the department of general administration's commodity code designations ~~((listed in the MWBE directory and the corresponding SIC codes, and)),~~ the codes developed by the Construction Specifications Institute ~~((with)),~~ and the corresponding SIC codes listed in the directory of certified businesses as described in WAC 326-20-190.

(2) ~~((If an applicant's business activities encompass two or more SIC codes, the particular size standard to be applied will be based on the primary industry classification of the applicant concern. In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.~~

~~((3))~~ In the event ~~((a firm))~~ the business plans to expand the areas in which it ~~((does business))~~ operates, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-095 DETERMINATION OF FIRM SIZE. (1) At the time of application for certification, ~~((and again at each renewal, a firm))~~ a business must demonstrate to the office that it is a small business concern. The office ~~((, in turn, will))~~ may verify that ~~((each firm qualifies as))~~ the business continues to be a small business concern, once certified, at any time. In verifying the applicant's size, the office will review the annual financial statements and other relevant information.

(2) ~~((The size of the firm, including its affiliates, will be determined as of the time of application for certification, and at the time of each renewal of certification.))~~ Affiliates. Except as otherwise provided in this chapter, businesses are affiliates of each other when either directly or indirectly:

- (a) One controls or has power to control the other, or
- (b) A third party or parties controls or has the power to control both; or
- (c) Such an "identity of interest" exists between or among them that affiliation may be presumed.

(3) Annual receipts. Where the maximum size standard is set by reference to "annual receipts," a business that exceeds the annual receipts in that standard is not eligible for certification. Annual receipts includes all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or

commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(4) Period of measurement.

(a) The size of a business that has completed three or more fiscal years will be determined by averaging the annual receipts of the business for each of the most recent three years.

(b) The size of a business that has completed less than three fiscal years will be determined by computing the average of the annual receipts from the time the business was formed as follows: Total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by fifty-two.

(d) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the firm has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(4) Number of employees. Where the size standard is "number of employees" size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-096 ((STURAA PROJECT)) SIZE STANDARD. (1) No business, regardless of its primary SIC code, is eligible for certification if it exceeds the largest annual revenue limit contained in 13 Code of Federal Regulations, Part 121, on file in the office.

(2) In determining what is the primary industry in which an applicant (including its affiliates) is engaged, primary consideration shall be given to the distribution of receipts, employees and costs in the differing industry areas in which the business operated during its most recently completed fiscal year. Other factors (e.g., patents, contract awards, assets) may be considered.

(3) If the activities of the business encompass two or more SIC codes, the first SIC code listed in the directory is the primary industry classification of the business.

(4) A firm which exceeds the small business size limits after certification by the office shall be subject to decertification.

(5) For purposes of utilization on projects funded by the Federal Highway Administration or under The Surface Transportation and ((Urban)) Uniform Relocation Assistance Act of 1987, (P.L. 100-17, or STURAA) the maximum dollar size standard set out in STURAA and 49 CFR Part 23 ((of \$14 million average annual gross receipts over the preceding three fiscal years)) as adjusted for inflation, shall apply, even if the size standard would otherwise be set by reference to number of employees. ((The \$14 million figure)) This standard is a ceiling ((and firms)). Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-098 APPLICABILITY OF FEDERAL REGULATIONS. Whenever issues arise regarding whether a ((firm)) business qualifies as a small business concern which cannot be resolved by reference to these regulations, federal regulations adopted by the United States Small Business Administration at 13 CFR 121 shall provide guidance to resolve such issues.

AMENDATORY SECTION (Amending Order 86-2, filed 8/11/86)

WAC 326-20-110 APPLICATION PROCESS. (1) The office will develop and make available an application form for certification under chapter 39.19 RCW, and WAC 326-20-010 ((and 326-20-020)). The application form may be modified at any time. The form will solicit enough information to determine whether the applicant is eligible for ((MWBE)) certification for state-funded projects and may include supplemental questions necessary to determine whether the applicant is eligible for certification for a specific federally-funded project. As part of its investigation, the office may require minority and women owners to provide information in addition to that requested on the application forms.

(2) Where additional information is required from the applicant business to complete the investigation, the office may request the information ((by certified letter)) in writing and may impose a time limit of not ((less than 30)) more than twenty days in which the applicant must respond. The letter shall include notice to the applicant that, if the applicant fails to provide the information within the time requested, the file will be closed administratively. If all the requested information is not received by the office within the ((30)) twenty days, the office may administratively close the file. The applicant will be notified in writing that the file has been administratively closed.

(3) Upon timely receipt of a written request for extension of the time to respond to the request for additional information, (~~received by OMWBE prior to expiration of the 30-day time period,~~) an extension of time to respond may be granted by the director. A showing of extenuating circumstances may be required, and granting of such request for extension is in the sole discretion of the director.

(4) Administrative closure means that the file is placed in inactive status, and further processing of the application is suspended. An applicant may petition the (~~agency~~) office for reopening or reactivation of the application file, by written request to the director. Requests to reopen will be granted in the sole discretion of the (~~agency~~) director. The applicant will be notified in writing of the director's decision to grant or deny the request to reactivate the file. If the request is denied, the applicant may (~~resubmit an~~) submit a new application (~~pursuant to WAC 326-20-220~~): PROVIDED, That an applicant may not file more than one additional application within a year from the date of the closure. If the file is administratively reopened and processing resumed, the application will be processed as if it had been received on the date the request to reopen the file is granted by the director.

AMENDATORY SECTION (Amending Order 85-9, filed 9/26/85)

WAC 326-20-115 SIGNATURES OF APPLICANT BUSINESS OWNERS. An application for certification must be signed under oath by all individuals claiming an ownership interest in the business regardless of the structure of the applicant business. Upon written request, (~~OMWBE~~) the office may accept the affidavit of a corporate officer or other designated representative, identifying the stockholders or owners by sex and race, and providing such other information as the office may require.

AMENDATORY SECTION (Amending Order 85-6, filed 7/2/85)

WAC 326-20-120 SUBMITTAL OF FORMS. Application forms shall be submitted by mail or in person to the office at the following address:

STATE OF WASHINGTON  
OFFICE OF MINORITY AND WOMEN'S BUSINESS  
ENTERPRISES  
(~~406 South Water~~  
~~MS-FK-11~~)  
PO BOX 41160  
Olympia, WA 98504-1160

The minority or woman owner shall be responsible for ensuring that the form is complete and accurate and is properly delivered to the office. The applicant should keep a copy of the completed form and all documents submitted with the form for its own reference.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-130 PROCESSING APPLICATIONS—TIME. The office will process all applications as promptly as its resources permit. The office (~~cannot~~) does not guarantee that any application will be processed within any certain time period and the inability to process an application by a certain time shall not subject the office or the state to liability.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-20-140 DUTY TO COOPERATE. The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. This duty shall continue after the business is certified. In addition to any other penalties provided by law, the submission of false information to the office in connection with an application for certification or renewal of certification shall be grounds for denial of certification, or decertification.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-150 ON-SITE INVESTIGATIONS. The office may, whenever it deems necessary, conduct (~~an~~) unannounced on-site investigations (~~of an applicant's~~) into the operations of a business. By submitting the (~~OMWBE~~) certification application form (~~the~~), an applicant agrees that the office may conduct such investigations at any time.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-160 BURDEN OF PROOF. The applicant (~~business~~) shall have the burden of proving to the satisfaction of the office that it is eligible for certification.

AMENDATORY SECTION (Amending Order 85-2, filed 3/8/85)

WAC 326-20-170 DECISION. The office shall notify the applicant business by mail of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the (~~women or minority owners~~) business did not meet (~~the ownership~~) one or more of the eligibility criteria, this shall not preclude the office from later denying the application on additional bases (~~following resubmittal~~) after further review.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-171 DENIAL OF CERTIFICATION—SHOW CAUSE REVIEW. (1) If the office has

reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing (~~(by certified mail)~~) of its denial of certification. Within ~~((thirty))~~ twenty days of receipt of this notification, the applicant must either:

(a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or

(b) Submit a written request for ~~((a contested case hearing))~~ an adjudicative proceeding, pursuant to WAC 326-08-015.

(2) A request for show cause review must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a show cause review, the finality of the denial for appeal purposes is stayed until the show cause review is complete.

(4) Upon receipt of a timely request for a show cause review the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant ~~((by certified mail))~~ in writing of its decision either to affirm the denial or to grant certification. This notification is considered final for purposes of WAC 326-08-015.

~~((6) If a change in business circumstances occurs after the reconsideration period, then the applicant must submit a new application pursuant to WAC 326-20-220, and is not entitled to appeal the denial of the application in question on the basis of the change in business circumstances.~~

~~(7) "Reconsideration period," for purposes of this section, shall mean the thirty days after receipt of the denial letter, described in subsection (1) of this section plus any additional time authorized by the director in writing.)~~

#### AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-172 DECERTIFICATION OF FIRMS. (1) A business may be decertified at any time the office determines that the business does not meet the current criteria for eligibility. A certified business shall notify the office, in writing, within thirty calendar days of any changes in its size, ownership, control, or operations. Failure to provide such notice in a timely manner may lead to decertification.

(2) When the office has determined that a certified ~~((MWBE))~~ business (a) no longer meets the certification criteria or ~~((the certified MWBE fails))~~ (b) failed to supply additional information requested by the office in a timely manner, or (c) failed to give timely notice of changes, the office will notify the ~~((firm))~~ business in writing of its intent to decertify the ~~((firm))~~ business.

~~((2))~~ (3) When a certified ~~((MWBE))~~ business notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified ~~((MWBE))~~ business fails or refuses to return the renewal of certification form, the office will

notify the ~~((firm))~~ business in writing of its decertification. This notification is final for purposes of appeal ~~((;))~~ pursuant to WAC 326-08-015.

~~((3))~~ (4) Upon receipt of an "intent to decertify" letter, the ~~((MWBE))~~ business must either:

(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or

(b) Submit a written request for ~~((a contested case hearing))~~ an adjudicative proceeding pursuant to WAC ~~((326-08-018))~~ 326-08-015.

(c) The request for show cause review must be received by the office within ~~((thirty))~~ twenty calendar days of receipt of the notice of intent to decertify the firm. The ~~((MWBE-s))~~ request for a show cause review must set forth the reasons the ~~((MWBE))~~ business believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

~~((4))~~ (5) If the office has not received a request for a show cause review nor any additional written documentation within ~~((thirty))~~ twenty days of receipt of the "intent to decertify" letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

~~((5))~~ (6) Upon receipt of the request for a show cause review, the office will review the request and any additional information provided and may conduct further investigation and/or request that the ~~((MWBE))~~ owner(s) attend a show cause meeting ~~((with the director))~~. The office will thereafter notify the ~~((MWBE by certified mail))~~ business in writing of its decision to either affirm or reverse its intent to decertify the ~~((firm))~~ business. This decertification decision is considered final for purposes of WAC 326-08-015.

~~((6))~~ (7) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request ~~((a contested case hearing))~~ an adjudicative proceeding pursuant to WAC 326-08-015. The request must be made in writing and must be made within ~~((thirty))~~ twenty days of receipt of the office's decision affirming the decertification decision.

~~((7))~~ (8) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC 326-08-015 for appeal of the decision to decertify has expired without action by the ~~((MWBE))~~ business; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

(9) Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.

#### AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-20-173 EXPIRATION OF CERTIFICATION UPON DEATH OR DISABILITY OF OWNER OF CERTIFIED BUSINESS. (1) Upon death or commencement of long-term disability of the minority or woman owner of a certified business ~~((certified by the office))~~, the guardian of the disabled owner, the executor of the owner's estate, or other person shall

notify (~~OMWBE~~) the office in writing within thirty days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

(2) "Long-term disability," for purposes of this section, shall mean the permanent inability to work, or inability to control the day-to-day operations of the business for a period of three consecutive months (ninety days or more), including both mental or physical incompetence.

(3) The certification of a (~~firm~~) business shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of (~~a certified firm. State agencies may continue to count the firm towards goal attainment only for those contracts awarded prior to the date of death or onset of disability~~) the business. Upon expiration of certification, the office shall notify the firm, in writing, that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

~~((4) The office shall be notified of any transfer of ownership or substantial ownership interest which occurs within the six months following the death or onset of disability. The office may require the new owners to provide additional information, including requiring submission of a new application form. If transfer of ownership or substantial ownership interest occurring within six months of the date of death or date of documented disability results in majority ownership or control by nonfemales or nonminorities, where applicable, the firm shall be decertified by the office.))~~

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-180 EFFECT OF CERTIFICATION. Certification as a MWBE shall have the following effects:

(1) Certification (~~as a MWBE~~) shall entitle state agencies, educational institutions, and local government jurisdictions to (~~utilize the MWBE~~) count the business toward meeting their ((MWBE)) goals under this chapter ((or)), local legislation((- Certification as a MWBE for a federal program shall entitle state agencies, educational institutions, and local government jurisdictions to utilize the MWBE toward meeting the MWBE goals under those programs)), and that require the participation of disadvantaged business enterprises. Certification shall be effective as of the date the decision is made in writing((-

~~(2) A firm may be decertified at any time the office determines that the MWBE does not meet the current criteria for eligibility for certification. The MWBE shall notify the office in writing within thirty calendar days of any changes in its size, ownership, control, or operations which may affect its continued eligibility as a MWBE. The duty of a business to cooperate with OMWBE investigation and the consent of a business to on-site investigation by OMWBE created in WAC 326-20-140 and 326-20-150 shall continue after a business is certified by OMWBE)) and will remain in effect for three years, except that the certification of DBEs shall be renewed annually.~~

(2) Certification does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any business of its obligations under other laws or regulations. Certification does not constitute any determination by the office that the firm is responsible or capable of performing any work.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88).

WAC 326-20-185 RECERTIFICATION. (~~((+ Certification is effective for two years.))~~) The office (~~((will))~~) may require (~~((of all certified firms and/or of selected certified firms))~~) any certified business to submit annual notarized statements regarding changes in the information provided during the initial certification process. The office will generally renew the certification as long as the ((firm)) business continues to meet the eligibility criteria((;)); the business provides evidence of some level of activity e.g., gross receipts or evidence of continuing efforts to promote the business; and there have been no determinations that the ((firm)) business has violated chapter 39.19 RCW or ((this chapter)) its implementing rules in Title 326 WAC. Debarment of a ((firm from contracting with)) business by the state or one or more ((state or)) federal agencies or local government jurisdictions may be grounds for nonrenewal of ((certification)) decertification.

~~((2))~~ Each certified (~~firm~~) business must submit a statement of present status prior to expiration of its ~~((two-year))~~ three-year certification. The statement form will be provided to the certified business sixty days before expiration of its certification. Failure to return the completed form within thirty days may lead to decertification by expiration.

~~((3) Certification as a MWBE does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any firm of its obligations under other laws or regulations. Certification as a MWBE does not constitute any determination by the office that the firm is responsible or capable of performing any work.))~~

AMENDATORY SECTION (Amending Order 85-2, filed 3/8/85)

WAC 326-20-190 ~~((STATE MWBE))~~ DIRECTORY OF CERTIFIED BUSINESSES. The office will maintain a directory of certified ~~((MWBEs))~~ businesses as follows:

(1) The office will maintain a ~~((complete))~~ directory of ~~((all MWBEs))~~ businesses certified by the office for state projects and for federally-funded projects.

(2) The office will update and compile the directory into a form suitable for distribution annually and may issue supplements on a more frequent basis. ~~((The office will include in the supplements a list of those MWBEs removed from the list of certified firms at the conclusion of the administrative hearing process.))~~

(3) The ~~((state MWBE))~~ directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and

educational institution at no charge. Copies will be provided to the state library.

~~(4) ((Bidders and others proposing to enter into contracts with state agencies and educational institutions shall have the responsibility of ensuring that firms proposed to be used by them toward MWBE goals are certified. State agencies and educational institutions contracting directly with a purported MWBE shall have the responsibility of ensuring that the firm is certified.~~

~~(5)) Information concerning the status of a ((firm as a MWBE)) business may be obtained by contacting the office during designated working hours.~~

**AMENDATORY SECTION** (Amending Order 86-2, filed 8/11/86)

WAC 326-20-220 RESUBMISSION OF APPLICATIONS. (1) ~~((An applicant which has withdrawn its application or whose application has been denied may file a new application))~~ A business which withdraws its application, is denied certification, or has been decertified, may be required to submit a new application or to submit additional documentation if there has been a substantial change in ownership, control, or organization of the business. However, no business may file more than two applications in any calendar year.

(2) ~~((An applicant which has experienced a substantial))~~ A business which makes a change in ownership, control, or organization of the business after ((the reconsideration period shall not be entitled to certification based on such changed circumstances, and must file a new application)) denial or decertification is not entitled to appeal the denial or decertification on the basis of that change.

~~(((3) "Reconsideration period," for purposes of this section, shall mean the 30 days after receipt of the denial letter, described in WAC 326-20-175(1), or the date of the show cause meeting if requested pursuant to WAC 326-20-175(1), plus any additional time authorized in writing by the director.))~~

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 326-20-020 **FEDERALLY FUNDED PROJECTS.**
- WAC 326-20-091 **SIZE STANDARDS—PURPOSE.**
- WAC 326-20-093 **DEFINITIONS.**
- WAC 326-20-097 **CHANGE IN FIRM SIZE.**
- WAC 326-20-200 **COMPLAINTS.**

**WSR 92-07-103**  
**PROPOSED RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**

[Filed March 18, 1992, 11:52 a.m.]

Original Notice.  
 Title of Rule: Chapters 326-02 and 326-20 WAC.

Purpose: To implement RCW 39.19.030.  
 Statutory Authority for Adoption: RCW 39.19.030(7).

Statute Being Implemented: RCW 39.19.030.  
 Summary: Changes to these chapters will result in more efficient administration of the state's program.

Reasons Supporting Proposal: These rules are updated to more effectively implement the provisions of chapter 39.19 RCW and to comply with the provisions of chapter 34.05 RCW.

Name of Agency Personnel Responsible for Drafting: Kent M. Nakamura, Assistant Attorney General, 900 4th Avenue, #2000, Seattle, WA, 464-6390; Implementation and Enforcement: James A. Medina, 406 South Water, 753-9679.

Name of Proponent: Office of Minority and Women's Business Enterprises, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules set forth the requirements of the state's certification program. Their purpose is to ensure that only businesses owned and controlled by minorities and/or women participate in the program as intended by the legislature.

Proposal Changes the Following Existing Rules: Changes terminology and procedures relative to handling appeals of agency actions to comply with chapter 34.05 RCW; updates definitions and provides additional guidance for determining compliance; expands lists of prohibited activities and possible penalties; adds new criteria for determining eligibility; and deletes repetitive or obsolete provisions.

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

Hearing Location: Office of Minority and Women's Business Enterprises, 406 South Water, Olympia, WA 98504, on April 21, 1992, at 1:30 p.m.

Submit Written Comments to: Office of Minority and Women's Business Enterprises, 406 South Water, Olympia, WA 98504, by April 17, 1992.

Date of Intended Adoption: May 6, 1992.

March 18, 1992  
 James A. Medina  
 Director

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-02-010 PURPOSE. The purpose and intent of chapter 120, Laws of 1983, and of ~~((these rules))~~ Title 326 WAC is to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses ~~((in participating))~~ in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. This purpose will be accomplished by encouraging the full use of existing minority and women-owned and controlled businesses and the entry of new and diversified minority and women-owned and controlled businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-02-020 APPLICABILITY. ~~((This chapter))~~ Title 326 WAC applies to all applications for certification ~~((as a minority or women's business enterprise by the state of Washington))~~ and to all public works and procurement by state agencies and educational institutions: PROVIDED, That this ~~((chapter))~~ title does not apply where



it is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state. In such a case, the conflicting portions of this chapter are inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

**AMENDATORY SECTION** (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-02-030 DEFINITIONS. Words and terms used in ~~((these rules))~~ this title shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in ~~((these rules))~~ this title, or the context in which they are used clearly indicates that they should be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Certified business" or "certified" means a business or the status of a business that has been examined by the Washington state office of minority and women's business enterprises and deemed to be a minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), or a combination business enterprise (CBE).

(3) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

~~((3))~~ (4) "Combination ~~((minority and women's))~~ business enterprise" or "CBE" means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by ~~((this))~~ the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by ~~((this))~~ the office. The owners must be United States citizens or lawful permanent residents.

~~((4))~~ (5) "Commercially useful function" means the performance of real and actual services which are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

~~((a))~~ For purposes of certification, factors which may be considered in determining whether a business is or will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible; and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section; and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition to those in (a) of this subsection which indicate that a supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials; or

(ii) Is the manufacturer of those goods or materials; or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser; and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm is not performing a commercially useful function include, but are not limited to, the following:

(A) A minimum amount of inventory is not maintained;

(B) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(C) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(D) The supplier does not take ownership of the product.

(5) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish

goods or services, including construction, and the buyer to pay for them:

(6) "Contract by contract basis" means a single contract within a specific class of contracts:

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party:

(8) "Director" means the director of the office of minority and women's business enterprises:

(9) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges:

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented:

(11) "Goods and/or services" means all goods and services, including professional services:

(12) "Joint venture" means a single enterprise partnership of two or more persons or businesses created to carry out a single business enterprise for profit for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise:

(13) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America:

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office:

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents:

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise, and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington:

(16) "Office" means the office of minority and women's business enterprises of the state of Washington:

(17) "Procurement" means the purchase, lease, or rental of any goods or services:

(18) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake:

(19) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency:

(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents:

~~((2+))~~ (6) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

~~((22))~~ (7) "Conduit" means a ~~((WBE, MBE, or combination MWBE))~~ certified business which agrees to be named as a subcontractor on a contract in which such ~~((WBE, MBE, or combination MWBE))~~ certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other ~~((non-MWBE))~~ noncertified business.

~~((23))~~ (8) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(9) "Contract by contract basis" means a single contract within a specific class of contracts.

(10) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(11) "Corporate-sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.

(12) "Director" means the director of the office of minority and women's business enterprises.

(13) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(14) "Front" means a business which purports to be ~~((a) A WBE))~~ eligible for certification but is not in fact legitimately owned ~~((or))~~ and controlled by ~~((a man or men; (b) a MBE but is owned or controlled by a nonminority person or persons; or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3)))~~ minorities, women, or a combination thereof.

~~((24))~~ "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

~~((25))~~ (15) "Goods and/or services" means all goods and services, including professional services.

(16) "Joint venture" means a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(17) "Legitimately owned and controlled" means that minorities, women, or a combination thereof, own at least fifty-one percent interest in the business (unless the business qualifies as a corporate sponsored dealership under the provisions of subsection (11) of this section and WAC 326-20-050(4)); and the minorities, women, or combination thereof, possess and exercise sufficient expertise specifically in the firm's field of operation to make decisions governing the long-term direction and the day-to-day operations of the firm.

(18) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

~~((26))~~ "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.

~~((27))~~ (19) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

(20) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for

profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.

(21) "Minority women's business enterprise" or "MWBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority women and is certified by the office. The owners must be United States citizens or lawful permanent residents.

(22) "Office" means the office of minority and women's business enterprises of the state of Washington.

(23) "Pass-through" means a certified business which buys goods from a noncertified business and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(24) "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(25) "Procurement" means the purchase, lease, or rental of any goods or services.

(26) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(27) "Regular dealer" means a certified business that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

(28) "Services," in the context of "goods and/or services," means all services including, but not limited to, client services, personal services, and purchased services as defined in RCW 39.29.006.

(29) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(30) "Supplier" means a manufacturer, regular dealer, broker, or packager that (a) provides or furnishes goods or materials; (b) performs a commercially useful function; and (c) is not considered a conduit, front, or pass-through.

(31) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

~~((28))~~ "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080:

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation:

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation:

(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation:

(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete:

(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsor's interest within the buy-out time limit established with the corporation:

~~(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.~~

~~(e) The minority or women owner(s) must have operational control; and as such have day-to-day management control of the dealership; with responsibility for sales, service volume, and profits.~~

~~(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as: Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.~~

~~(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.~~

~~(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.~~

~~(i) The minority or women owner(s) must be president of any corporation formed by the business.~~

~~(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:~~

~~(a) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements; and~~

~~(b) Control over management, interest in capital, interest in profit or loss and contributions to capital, equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The business must be independent and the minority and/or women owner(s) must possess and exercise the legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28-)).~~ (32) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.

#### AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-040 PROHIBITED ACTIVITIES WITH REGARD TO CHAPTER 39.19 RCW. (1) RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

~~((1))~~ (a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

~~((2))~~ (b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

~~((3))~~ (c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

~~((4))~~ (d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

~~((5))~~ (e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

~~((6))~~ (f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter;

~~((7))~~ (g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter;

~~((8))~~ (h) To fail or refuse to comply with any provision of chapter 39.19 RCW or with a contract requirement established under this chapter.

(2) A certified business engages in prohibited activity when it fails to perform a commercially useful function on any public-sector contract or procurement. Failure to perform a commercially useful function occurs when a business:

(a) Functions as a conduit; or

(b) Functions as a pass-through; except brokers and firms operating in industries where such activity is common industry practice, e.g., insurance or real estate.

(3) A business that is deemed to be a switch business is also deemed to have engaged in prohibited activity.

#### NEW SECTION

WAC 326-02-045 FACTORS CONSIDERED IN DETERMINING PERFORMANCE OF COMMERCIALY USEFUL FUNCTION. (1) In determining the performance of a commercially useful function, factors which may be considered include, but are not limited to, the following:

(a) Whether the work to be performed by the business is within the scope of work included in the Standard Industrial Classification code(s) under which the business is listed in the directory of certified businesses published by the office or in the records of the office.

(b) Whether the business could be considered a conduit, front, or pass-through;

(c) Whether the minority and/or woman owner(s) has the skill and expertise to perform the work for which the business is being or has been certified;

(d) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and the principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible;

(2) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and execute material changes in the configuration of those goods or materials; or

(b) Prior to submitting an application for certification, secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(3) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained.

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners.

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user.

(d) The firm does not take ownership of the product.

#### AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-050 PENALTIES WHICH MAY BE IMPOSED.

(1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this ~~(chapter)~~ title prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

(2) Penalties which may be imposed include one or more of the following:

(a) Withhold payment until the violation is remedied;

(b) Debarment from contracting with the state for up to one year; debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;

- (c) Suspension of the contract;
- (d) Termination of the contract;
- (e) Immediate suspension of the certification of a certified firm;
- (f) Payment of civil penalties of up to five thousand dollars for each violation or up to ten percent of the amount of the contract; or

(g) Decertification.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either served personally (~~(served upon)~~) or (~~(transmitted)~~) by certified mail, return receipt requested, to the person or (~~(entity)~~) business incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is (~~(received)~~) served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, (~~(a contested case hearing)~~) the office shall conduct a show cause review as outlined in WAC 326-20-171 or an adjudicative proceeding shall be conducted on behalf of the office by the office of administrative hearings (~~(The administrative law judge shall issue a proposed decision, with findings of fact and conclusions of law, and a recommendation on the size and nature of the penalty to be imposed, if any. The director may adopt the recommendations of the administrative law judge, or affirm, or reduce the penalty, and shall issue a final order setting forth the civil penalty assessed, if any. The director's order may be appealed to the superior court within thirty days of service of the order. Any penalty imposed under this section is due and payable upon the issuance of the final order by the office, whether or not an appeal to superior court is pursued)~~) in accordance with the provisions in chapter 326-08 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-060 FACTORS CONSIDERED IN DETERMINING PENALTIES. In determining the nature of the penalty and monetary amount, if any, of a penalty to be imposed, the factors which may be considered include, but are not limited to:

- (1) The potential harm to the (~~(MWBE or non-MWBE firm)~~) certified or noncertified business;
- (2) Potential harm to the state, due to delay or other problems;
- (3) The potential for harm to the public;
- (4) Whether the violation occurs in the context of particular contract;
- (5) The stage or percent of completion of a contract at which the violation occurs;
- (6) The timing of the discovery of the violation;
- (7) The contracting history of the alleged violator;
- (8) The extent to which the alleged violator has cooperated with the investigation;
- (9) Whether there have been previous violations by the person.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-070 SUSPENSION OF CONTRACT. (1) The performance of a contract may be immediately suspended upon receipt of adequate evidence received by the office that the person has engaged in any of the prohibited activities described in WAC 326-02-040 and RCW 39.19.080.

(2) The decision of the office to suspend a contract is discretionary and will not be based on an unsupported allegation. Decisions to suspend shall be in the public interest, including the government's interest in doing business with firms that are responsible and (~~(the interest)~~) in preserving competition.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-080 SUSPENSION OF CERTIFICATION. The certification of a business (~~(certified under chapter 39.19 RCW and these regulations)~~) may be suspended for engaging in any of the activities prohibited by RCW 39.19.080 and WAC 326-02-040, upon a showing that immediate action is necessary to prevent harm to the public welfare.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-02-090 PROCEDURES FOR SUSPENSION, HEARING PROVIDED. (1) If the director determines that suspension of the certification of a (~~(firm)~~) business is necessary to prevent immediate harm to the public welfare, the (~~(suspended person or firm)~~) business will be notified by personal service or certified mail, return receipt requested, of the suspension and the reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended (~~(person or firm)~~) business will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the administrative law judge may recommend that:

- (a) Suspension of certification remain in effect for up to one year;
- (b) The suspension be removed; or
- (c) That the (~~(firm)~~) business be decertified.

AMENDATORY SECTION (Amending Order 87-6, filed 8/27/87)

WAC 326-20-010 IN GENERAL. (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, or a combination minority and women's business enterprise or corporate-sponsored dealership as set forth in this title, is eligible to be certified by the state of Washington (~~(as a minority business enterprise, a women's business enterprise or a combination minority and women's business enterprise. A business owned and controlled by one or more minority females may be certified as both a MBE and a WBE).~~)

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities and/or women who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race or sex.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-030 PROOF OF MINORITY STATUS. Each minority owner of a business applying for (~~(MBE or combination minority and women's business enterprise)~~) certification who is visibly identifiable as a minority shall submit with the MWBE application form a photograph or copy of documentation containing the owner's photograph. Each minority owner who is not visibly identifiable as a minority shall submit a copy of his or her birth certificate, tribal enrollment papers, or other document which shows that the owner meets the definition of "minority" as set forth in these rules. The final determination will be in the sole discretion of the office.

AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-040 PROOF OF WOMAN'S STATUS. Each woman owner of a business applying for certification (~~(as a WBE or as a combination minority and women's business enterprise must)~~) shall submit with the (~~(MWBE)~~) application form a copy of her birth certificate, valid driver's license, or other document which shows that the owner is a woman. The final determination will be in the sole discretion of the office.

AMENDATORY SECTION (Amending Order 87-6, filed 8/27/87)

WAC 326-20-050 PROOF OF OWNERSHIP OF BUSINESS. (1) All minority or women owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, cancelled check used to purchase ownership, or other recognized proof of ownership. The ownership shall be real, substantial, and continuing, shall go beyond the pro forma ownership of the business reflected in the ownership documents, and shall be based on the owner's capital contribution. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements.

(2) In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority or women owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority or women owners' interest in the business was acquired.

(3) The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the following standards (~~set out in WAC 326-02-030(28)~~):

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell, or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(c) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(d) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest shall be complete.

(e) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program which includes such features as capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(f) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

#### AMENDATORY SECTION (Amending Order 84-5, filed 4/5/84)

WAC 326-20-060 COMMUNITY OWNERSHIP. An ownership interest arising in a nonapplicant spouse solely because of the operation of community property laws will not disqualify the applicant spouse from certification. Both spouses (~~must~~) shall certify that:

(a) Only one spouse participates in the management of the business.

(b) The nonparticipating spouse relinquishes control over his/her community interest in the subject business.

#### AMENDATORY SECTION (Amending Order 83-3, filed 10/28/83)

WAC 326-20-070 COUNTING OWNERSHIP HELD IN TRUST. In determining whether the fifty-one percent ownership requirement is met, no stock or ownership held in trust shall be counted, except in the following cases:

(1) Where both the trustee and the beneficiary are minorities, or both are women, and the trustee meets the (~~fifty-one percent~~) control requirement; or

(2) Where the stock or ownership is held in an irrevocable trust for the benefit of a minority or a woman and the minority or woman beneficiary meets the (~~fifty-one percent~~) control requirement.

#### AMENDATORY SECTION (Amending Order 88-5, filed 5/31/88)

WAC 326-20-080 FACTORS CONSIDERED IN DETERMINING CONTROL. (1) The minority or woman owner(s) must possess and exercise managerial and operational control over the day-to-day affairs of the business.

(a) Managerial control. The minority or woman owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and direction of the firm.

(b) Operational control. The minority or woman owner(s) has the demonstrable ability to independently make basic decisions pertaining to the daily operations of the business.

(2) Whether a minority or woman owner meets the control requirement (~~as defined in WAC 326-02-030(29)~~) is determined on an application-by-application basis. Office management, clerical, or other experience unrelated to the firm's field of operations, is insufficient to establish that the business is legitimately owned and controlled.

(3) Factors which may be considered in determining whether the minority or woman owner meets the control requirement include, but are not limited to, the following:

~~((+))~~ (a) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;

~~((+))~~ (b) The financial interest and/or participation in any other business by any owner or key personnel;

~~((+))~~ (c) Past and current employment history of minority and women owners involved in the business;

~~((+))~~ (d) Members of the board of directors and corporate officers;

~~((+))~~ (e) Experience, training, and expertise of any owners and key personnel;

~~((+))~~ (f) Recent changes in ownership and/or control of the business;

~~((+))~~ (g) Financial obligation to and capital contributions from owners and nonowners of the business; and

~~((+))~~ (h) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business.

~~((+))~~ Control of a corporate-sponsored dealership will be evaluated using the standards set out in WAC 326-02-030(28);)

(4) If persons who are not minorities or women are disproportionately responsible for the operation of the business, then the business is not eligible for certification.

(5) The requirements of this section shall not apply, if the business qualifies as a corporate-sponsored dealership under the provisions of WAC 326-20-050(4). Control of a corporate-sponsored dealership will be evaluated using the following standards:

(a) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(b) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(c) The minority or women owner(s) must have and exercise managerial and operational control over the day-to-day management of the dealership, with responsibility for sales, service volume, and profits.

(d) The minority or women owner(s) must have prior business or management experience relating to the business being entered into as an owner.

(e) The minority or women owner(s) must be president of any corporation formed by the business.

#### AMENDATORY SECTION (Amending WSR 89-24-047, filed 12/1/89, effective 1/1/90)

WAC 326-20-081 INTERTWINEMENT. To be eligible for certification, a (~~firm~~) business must be independent. (~~Significant~~) Intertwinement with a noncertified (~~firm~~) business may be grounds for denial or decertification of a (~~firm~~) business. The office will determine whether a (~~firm~~) business is (~~significantly~~) intertwined with a noncertified (~~firm~~) business by looking for factors which include, but are not limited to, the following:

(1) Shared ownership(;;);

(2) Common directors or partners(;;);

(3) Shared equipment, facilities, resources, or employees(;;);

(4) Beneficial financial arrangements which indicate less than arms length transactions with a noncertified (~~firm~~;)) business;

(5) Overdependency on a noncertified (~~firm~~) business to obtain and perform work(;;);

(6) Such an identity of interest exists between the (~~firm~~) business seeking certification and a noncertified (~~firm~~) business that an affiliation may be presumed(;;); and

(7) The degree to which financial, equipment, leasing, business and other relationships with noncertified (~~firm~~s)) businesses vary from normal industry practice.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-092 SMALL BUSINESS CONCERN REQUIREMENT. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW and these regulations, ~~(in order to be entitled to certification under chapter 39.19 RCW, a firm)~~ a business must qualify as a small business concern ~~(as defined in WAC 326-20-093)~~ to be eligible for certification or recertification.

(a) ~~Except as otherwise provided in WAC 326-20-096 (for certain federal projects), a small business concern is a business which is independently owned and operated, is not dominant in its field of operations, and which does not exceed the size limitations as set forth in the current table of Standard Industrial Classification (SIC) codes and corresponding industry size standards as adopted by the United States Small Business Administration in Title 13 Code of Federal Regulations, Part 121, on file in the office.~~

(b) ~~The number of employees or amount of annual receipts listed as the size standard for each SIC code indicates the maximum allowed for a business (including its affiliates) to qualify as a small business concern.~~

(c) ~~The office's determination of whether a business qualifies as a small business concern shall be, whenever possible, based on criteria that is consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations.~~

(2) ~~A ((firm)) business which exceeds the small business size limits after certification by the office shall be subject to decertification.~~

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-094 ~~((APPLICATION OF SIZE STANDARD))~~ ASSIGNMENT OF STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE. (1) The office will determine which SIC code an applicant ~~((firm))~~ falls under based on information submitted by the ~~((firm))~~ business. The office will prepare conversion tables showing the department of general administration's commodity code designations ~~((listed in the MWBE directory and the corresponding SIC codes, and)),~~ the codes developed by the Construction Specifications Institute ~~((with)),~~ and the corresponding SIC codes listed in the directory of certified businesses as described in WAC 326-20-190.

(2) ~~((If an applicant's business activities encompass two or more SIC codes, the particular size standard to be applied will be based on the primary industry classification of the applicant concern. In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.~~

(3) ~~In the event ((a firm)) the business plans to expand the areas in which it ((does business)) operates, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.~~

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-095 DETERMINATION OF FIRM SIZE. (1) At the time of application for certification, ~~((and again at each renewal, a firm))~~ a business must demonstrate to the office that it is a small business concern. The office ~~((in turn, will))~~ may verify that ~~((each firm qualifies as))~~ the business continues to be a small business concern, once certified, at any time. In verifying the applicant's size, the office will review the annual financial statements and other relevant information.

(2) ~~((The size of the firm, including its affiliates, will be determined as of the time of application for certification, and at the time of each renewal of certification.))~~ Affiliates. Except as otherwise provided in this chapter, businesses are affiliates of each other when either directly or indirectly:

(a) One controls or has power to control the other; or

(b) A third party or parties controls or has the power to control both; or

(c) Such an "identity of interest" exists between or among them that affiliation may be presumed.

(3) Annual receipts. Where the maximum size standard is set by reference to "annual receipts," a business that exceeds the annual receipts in that standard is not eligible for certification. Annual receipts

includes all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(4) Period of measurement.

(a) The size of a business that has completed three or more fiscal years will be determined by averaging the annual receipts of the business for each of the most recent three years.

(b) The size of a business that has completed less than three fiscal years will be determined by computing the average of the annual receipts from the time the business was formed as follows: Total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by fifty-two.

(d) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the firm has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(4) Number of employees. Where the size standard is "number of employees" size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-096 ~~((STURAA PROJECT))~~ SIZE STANDARD. (1) No business, regardless of its primary SIC code, is eligible for certification if it exceeds the largest annual revenue limit contained in 13 Code of Federal Regulations, Part 121, on file in the office.

(2) In determining what is the primary industry in which an applicant (including its affiliates) is engaged, primary consideration shall be given to the distribution of receipts, employees and costs in the differing industry areas in which the business operated during its most recently completed fiscal year. Other factors (e.g., patents, contract awards, assets) may be considered.

(3) If the activities of the business encompass two or more SIC codes, the first SIC code listed in the directory is the primary industry classification of the business.

(4) A firm which exceeds the small business size limits after certification by the office shall be subject to decertification.

(5) For purposes of utilization on projects funded by the Federal Highway Administration or under The Surface Transportation and ~~((Urban))~~ Uniform Relocation Assistance Act of 1987, (P.L. 100-17, or STURAA) the maximum dollar size standard set out in STURAA and 49 CFR Part 23 ~~((of \$14 million average annual gross receipts over the preceding three fiscal years))~~ as adjusted for inflation, shall apply, even if the size standard would otherwise be set by reference to number of employees. ~~((The \$14 million figure))~~ This standard is a ceiling ~~((and firms))~~. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-098 APPLICABILITY OF FEDERAL REGULATIONS. Whenever issues arise regarding whether a ~~((firm))~~ business qualifies as a small business concern which cannot be resolved by reference to these regulations, federal regulations adopted by the

United States Small Business Administration at 13 CFR 121 shall provide guidance to resolve such issues.

**AMENDATORY SECTION** (Amending Order 86-2, filed 8/11/86)

WAC 326-20-110 APPLICATION PROCESS. (1) The office will develop and make available an application form for certification under chapter 39.19 RCW, and WAC 326-20-010 (~~and 326-20-020~~). The application form may be modified at any time. The form will solicit enough information to determine whether the applicant is eligible for ((~~MWBE~~)) certification for state-funded projects and may include supplemental questions necessary to determine whether the applicant is eligible for certification for a specific federally-funded project. As part of its investigation, the office may require minority and women owners to provide information in addition to that requested on the application forms.

(2) Where additional information is required from the applicant business to complete the investigation, the office may request the information ((~~by certified letter~~)) in writing and may impose a time limit of not ((~~less than 30~~)) more than twenty days in which the applicant must respond. The letter shall include notice to the applicant that, if the applicant fails to provide the information within the time requested, the file will be closed administratively. If all the requested information is not received by the office within the ((~~30~~)) twenty days, the office may administratively close the file. The applicant will be notified in writing that the file has been administratively closed.

(3) Upon timely receipt of a written request for extension of the time to respond to the request for additional information, ((~~received by OMWBE prior to expiration of the 30-day time period~~)) an extension of time to respond may be granted by the director. A showing of extenuating circumstances may be required, and granting of such request for extension is in the sole discretion of the director.

(4) Administrative closure means that the file is placed in inactive status, and further processing of the application is suspended. An applicant may petition the ((~~agency~~)) office for reopening or reactivation of the application file, by written request to the director. Requests to reopen will be granted in the sole discretion of the ((~~agency~~)) director. The applicant will be notified in writing of the director's decision to grant or deny the request to reactivate the file. If the request is denied, the applicant may ((~~resubmit an~~)) submit a new application ((~~pursuant to WAC 326-20-220~~)); PROVIDED, That an applicant may not file more than one additional application within a year from the date of the closure. If the file is administratively reopened and processing resumed, the application will be processed as if it had been received on the date the request to reopen the file is granted by the director.

**AMENDATORY SECTION** (Amending Order 85-9, filed 9/26/85)

WAC 326-20-115 SIGNATURES OF APPLICANT BUSINESS OWNERS. An application for certification must be signed under oath by all individuals claiming an ownership interest in the business regardless of the structure of the applicant business. Upon written request, ((~~OMWBE~~)) the office may accept the affidavit of a corporate officer or other designated representative, identifying the stockholders or owners by sex and race, and providing such other information as the office may require.

**AMENDATORY SECTION** (Amending Order 85-6, filed 7/2/85)

WAC 326-20-120 SUBMITTAL OF FORMS. Application forms shall be submitted by mail or in person to the office at the following address:

STATE OF WASHINGTON  
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES  
((406 South Water  
MS-FK-11))  
PO BOX 41160  
Olympia, WA 98504-1160

The minority or woman owner shall be responsible for ensuring that the form is complete and accurate and is properly delivered to the office. The applicant should keep a copy of the completed form and all documents submitted with the form for its own reference.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-130 PROCESSING APPLICATIONS—TIME. The office will process all applications as promptly as its resources permit. The office ((~~cannot~~)) does not guarantee that any application will

be processed within any certain time period and the inability to process an application by a certain time shall not subject the office or the state to liability.

**AMENDATORY SECTION** (Amending Order 88-9, filed 10/24/88)

WAC 326-20-140 DUTY TO COOPERATE. The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. This duty shall continue after the business is certified. In addition to any other penalties provided by law, the submission of false information to the office in connection with an application for certification or renewal of certification shall be grounds for denial of certification, or decertification.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-150 ON-SITE INVESTIGATIONS. The office may, whenever it deems necessary, conduct ((~~an~~)) unannounced on-site investigations ((~~of an applicant's~~)) into the operations of a business. By submitting the ((~~MWBE~~)) certification application form ((~~the~~)), an applicant agrees that the office may conduct such investigations at any time.

**AMENDATORY SECTION** (Amending Order 83-3, filed 10/28/83)

WAC 326-20-160 BURDEN OF PROOF. The applicant ((~~business~~)) shall have the burden of proving to the satisfaction of the office that it is eligible for certification.

**AMENDATORY SECTION** (Amending Order 85-2, filed 3/8/85)

WAC 326-20-170 DECISION. The office shall notify the applicant business by mail of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the ((~~women or minority owners~~)) business did not meet ((~~the ownership~~)) one or more of the eligibility criteria, this shall not preclude the office from later denying the application on additional bases ((~~following resubmittal~~)) after further review.

**AMENDATORY SECTION** (Amending Order 88-5, filed 4/18/88)

WAC 326-20-171 DENIAL OF CERTIFICATION—SHOW CAUSE REVIEW. (1) If the office has reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing ((~~by certified mail~~)) of its denial of certification. Within ((~~thirty~~)) twenty days of receipt of this notification, the applicant must either:

(a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or

(b) Submit a written request for ((~~a contested case hearing~~)) an adjudicative proceeding, pursuant to WAC 326-08-015.

(2) A request for show cause review must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a show cause review, the finality of the denial for appeal purposes is stayed until the show cause review is complete.

(4) Upon receipt of a timely request for a show cause review the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant ((~~by certified mail~~)) in writing of its decision either to affirm the denial or to grant certification. This notification is considered final for purposes of WAC 326-08-015.

((~~(6) If a change in business circumstances occurs after the reconsideration period, then the applicant must submit a new application pursuant to WAC 326-20-220, and is not entitled to appeal the denial of the application in question on the basis of the change in business circumstances.~~))

((~~(7) "Reconsideration period," for purposes of this section, shall mean the thirty days after receipt of the denial letter, described in subsection (1) of this section plus any additional time authorized by the director in writing.~~))

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-172 DECERTIFICATION OF FIRMS. (1) A business may be decertified at any time the office determines that the business does not meet the current criteria for eligibility. A certified business shall notify the office, in writing, within thirty calendar days of any changes in its size, ownership, control, or operations. Failure to provide such notice in a timely manner may lead to decertification.

(2) When the office has determined that a certified ((MWBE)) business (a) no longer meets the certification criteria or ((the certified MWBE fails)) (b) failed to supply additional information requested by the office in a timely manner, or (c) failed to give timely notice of changes, the office will notify the ((firm)) business in writing of its intent to decertify the ((firm)) business.

((2)) (3) When a certified ((MWBE)) business notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified ((MWBE)) business fails or refuses to return the renewal of certification form, the office will notify the ((firm)) business in writing of its decertification. This notification is final for purposes of appeal(;) pursuant to WAC 326-08-015.

((3)) (4) Upon receipt of an "intent to decertify" letter, the ((MWBE)) business must either:

(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or

(b) Submit a written request for ((a contested case hearing)) an adjudicative proceeding pursuant to WAC ((326-08-018)) 326-08-015.

(c) The request for show cause review must be received by the office within ((thirty)) twenty calendar days of receipt of the notice of intent to decertify the firm. The ((MWBE's)) request for a show cause review must set forth the reasons the ((MWBE)) business believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

((4)) (5) If the office has not received a request for a show cause review nor any additional written documentation within ((thirty)) twenty days of receipt of the "intent to decertify" letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

((5)) (6) Upon receipt of the request for a show cause review, the office will review the request and any additional information provided and may conduct further investigation and/or request that the ((MWBE)) owner(s) attend a show cause meeting ((with the director)). The office will thereafter notify the ((MWBE by certified mail)) business in writing of its decision to either affirm or reverse its intent to decertify the ((firm)) business. This decertification decision is considered final for purposes of WAC 326-08-015.

((6)) (7) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request ((a contested case hearing)) an adjudicative proceeding pursuant to WAC 326-08-015. The request must be made in writing and must be made within ((thirty)) twenty days of receipt of the office's decision affirming the decertification decision.

((7)) (8) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC 326-08-015 for appeal of the decision to decertify has expired without action by the ((MWBE)) business; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

(9) Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.

AMENDATORY SECTION (Amending Order 88-9, filed 10/24/88)

WAC 326-20-173 EXPIRATION OF CERTIFICATION UPON DEATH OR DISABILITY OF OWNER OF CERTIFIED BUSINESS. (1) Upon death or commencement of long-term disability of the minority or woman owner of a certified business ((certified by the office)), the guardian of the disabled owner, the executor of the owner's estate, or other person shall notify ((OMWBE)) the office in writing within thirty days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

(2) "Long-term disability," for purposes of this section, shall mean the permanent inability to work, or inability to control the day-to-day operations of the business for a period of three consecutive months

(ninety days or more), including both mental or physical incompetence.

(3) The certification of a ((firm)) business shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of ((a certified firm. State agencies may continue to count the firm towards goal attainment only for those contracts awarded prior to the date of death or onset of disability)) the business. Upon expiration of certification, the office shall notify the firm, in writing, that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

((4) The office shall be notified of any transfer of ownership or substantial ownership interest which occurs within the six months following the death or onset of disability. The office may require the new owners to provide additional information, including requiring submission of a new application form. If transfer of ownership or substantial ownership interest occurring within six months of the date of death or date of documented disability results in majority ownership or control by nonfemales or nonminorities, where applicable, the firm shall be decertified by the office.)

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-180 EFFECT OF CERTIFICATION. Certification as a MWBE shall have the following effects:

(1) Certification ((as a MWBE)) shall entitle state agencies, educational institutions, and local government jurisdictions to ((utilize the MWBE)) count the business toward meeting their ((MWBE)) goals under this chapter ((or), local legislation((-Certification as a MWBE for a federal program shall entitle state agencies, educational institutions, and local government jurisdictions to utilize the MWBE toward meeting the MWBE goals under those programs)), and that require the participation of disadvantaged business enterprises. Certification shall be effective as of the date the decision is made in writing(:

(2) A firm may be decertified at any time the office determines that the MWBE does not meet the current criteria for eligibility for certification. The MWBE shall notify the office in writing within thirty calendar days of any changes in its size, ownership, control, or operations which may affect its continued eligibility as a MWBE. The duty of a business to cooperate with OMWBE investigation and the consent of a business to on-site investigation by OMWBE created in WAC 326-20-140 and 326-20-150 shall continue after a business is certified by OMWBE) and will remain in effect for three years; except that the certification of DBEs shall be renewed annually.

(2) Certification does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any business of its obligations under other laws or regulations. Certification does not constitute any determination by the office that the firm is responsible or capable of performing any work.

AMENDATORY SECTION (Amending Order 88-5, filed 4/18/88)

WAC 326-20-185 RECERTIFICATION. ((1) Certification is effective for two years.) The office ((with)) may require ((of all certified firms and/or of selected certified firms)) any certified business to submit annual notarized statements regarding changes in the information provided during the initial certification process. The office will generally renew the certification as long as the ((firm)) business continues to meet the eligibility criteria(;) the business provides evidence of some level of activity e.g., gross receipts or evidence of continuing efforts to promote the business; and there have been no determinations that the ((firm)) business has violated chapter 39.19 RCW or ((this chapter)) its implementing rules in Title 326 WAC. Debarment of a ((firm from contracting with)) business by the state or one or more ((state or)) federal agencies or local government jurisdictions may be grounds for nonrenewal of ((certification)) decertification.

((2)) Each certified ((firm)) business must submit a statement of present status prior to expiration of its ((two-year)) three-year certification. The statement form will be provided to the certified business sixty days before expiration of its certification. Failure to return the completed form within thirty days may lead to decertification by expiration.

((3) Certification as a MWBE does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any firm of its obligations under other laws or regulations. Certification as a MWBE does not constitute any determination by the office that the firm is responsible or capable of performing any work.)



**AMENDATORY SECTION** (Amending Order 85-2, filed 3/8/85)

WAC 326-20-190 ((~~STATE MWBE~~)) **DIRECTORY OF CERTIFIED BUSINESSES.** The office will maintain a directory of certified ((~~MWBE's~~)) businesses as follows:

(1) The office will maintain a ((~~complete~~)) directory of ((~~all MWBE's~~)) businesses certified by the office for state projects and for federally-funded projects.

(2) The office will update and compile the directory into a form suitable for distribution annually and may issue supplements on a more frequent basis. ((~~The office will include in the supplements a list of those MWBEs removed from the list of certified firms at the conclusion of the administrative hearing process.~~))

(3) The ((~~state MWBE~~)) directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and educational institution at no charge. Copies will be provided to the state library.

(4) ((~~Bidders and others proposing to enter into contracts with state agencies and educational institutions shall have the responsibility of ensuring that firms proposed to be used by them toward MWBE goals are certified. State agencies and educational institutions contracting directly with a purported MWBE shall have the responsibility of ensuring that the firm is certified.~~))

(5) Information concerning the status of a ((~~firm as a MWBE~~)) business may be obtained by contacting the office during designated working hours.

**AMENDATORY SECTION** (Amending Order 86-2, filed 8/11/86)

WAC 326-20-220 **RESUBMISSION OF APPLICATIONS.** (1) ((~~An applicant which has withdrawn its application or whose application has been denied may file a new application~~)) A business which withdraws its application, is denied certification, or has been decertified, may be required to submit a new application or to submit additional documentation if there has been a substantial change in ownership, control, or organization of the business. However, no business may file more than two applications in any calendar year.

(2) ((~~An applicant which has experienced a substantial~~)) A business which makes a change in ownership, control, or organization of the business after ((~~the reconsideration period shall not be entitled to certification based on such changed circumstances, and must file a new application~~)) denial or decertification is not entitled to appeal the denial or decertification on the basis of that change.

((~~(3) "Reconsideration period," for purposes of this section, shall mean the 30 days after receipt of the denial letter, described in WAC 326-20-175(1), or the date of the show cause meeting if requested pursuant to WAC 326-20-175(1), plus any additional time authorized in writing by the director.~~))

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 326-20-020 FEDERALLY FUNDED PROJECTS.
- WAC 326-20-091 SIZE STANDARDS—PURPOSE.
- WAC 326-20-093 DEFINITIONS.
- WAC 326-20-097 CHANGE IN FIRM SIZE.
- WAC 326-20-200 COMPLAINTS.

**WSR 92-07-104****PROPOSED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed March 18, 1992, 12:00 noon]

**Original Notice.**

Title of Rule: Unemployment insurance tax rules.

Purpose: To amend rules based upon the 1991 legislation.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapters 117, 129 and 324, Laws of 1991.

Summary: To clarify predecessor/successor relationships, to provide interpretation for noncharging of benefits for part-time workers, and to repeal rule made unnecessary by statute.

Name of Agency Personnel Responsible for Drafting: Robert Wagner, 212 Maple Park, Olympia, 586-8271; Implementation and Enforcement: Marie Brillante, Assistant Commissioner Unemployment Insurance, 212 Maple Park, Olympia, 753-5120.

Name of Proponent: Employment Security Department, governmental.

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

Proposal Changes the Following Existing Rules: Amending WAC 192-12-072 to further define predecessor/successor relationships for collection purposes as authorized in chapter 117, Laws of 1991. This rule is patterned on similar rules of the Department of Revenue; repealing WAC 192-12-019 and replacing with new sections WAC 192-12-400 to provide procedural requirements and WAC 192-12-405 for policy related requirements; and repealing WAC 192-12-017 obsolete because of statutory change, chapter 324, Laws of 1991.

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

These rules will have a minor or negligible effect on small business.

Hearing Location: Commissioner's Conference Room, 2nd Floor, Employment Security Department, 212 Maple Park, Olympia, WA, on April 28, 1992, at 10:00 a.m.

Submit Written Comments to: Wm. Eric Jordan, Rules Coordinator, Employment Security Department, Mailstop 6000, Olympia, Washington 98504, by April 30, 1992.

Date of Intended Adoption: May 28, 1992.

March 18, 1992  
Vernon E. Stoner  
Commissioner

**AMENDATORY SECTION** (Amending 192-12-072, filed 5/15/85)

WAC 192-12-072 **PREDECESSOR-SUCCESSOR RELATIONSHIP DEFINED.** For the purposes of Title 50 RCW, a predecessor employer is any individual or type of organization defined as an employer under RCW 50.04.080 that transfers, during any calendar year, either ((~~substantially~~)) all of its operating assets, or a portion of its operating assets ((of) or a separate unit or branch of its trade or business, to another ((employer)) individual or type of organization, whether by sale, lease, gift, or any legal process unless specifically exempted below.

A successor ((~~employer~~)) is any individual or type of organization ((~~defined as an employer under RCW 50.04.080~~)) that acquires, during any calendar year, either ((~~substantially~~)) all of the operating assets of ((~~another~~)) an employer, or a portion of the operating assets, ((of) or a separate unit or branch of ((another)) an employer's trade or business, whether by purchase, lease, gift, or any legal process unless specifically exempted below.

Operating assets, as used above, are defined as those properties of a business usually used in the normal course of business operations to generate the operating income of that business. They may include properties that are real or personal, tangible or intangible, such as land, buildings, machinery, equipment, stock of goods, wares, merchandise, fixtures or goodwill.

For purposes of RCW 50.24, a predecessor-successor relationship will not exist when the property is acquired through court proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement unless otherwise specified by the court.

For the purposes of RCW 50.29, ((In no case will)) a predecessor-successor relationship will not exist where any four consecutive calendar quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

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

#### REPEALER

WAC 192-12-017 and WAC 192-12-019 are repealed.

#### NEW SECTION

WAC 192-12-400 EMPLOYER REQUEST FOR BENEFIT CHARGE RELIEF. For purposes of RCW 50.29.020(2), a contribution-paying base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual. The following procedures are to be followed to request such relief:

(1) The employer request for benefit charge relief must be in writing.

(2)(a) The employer request for benefit charge relief must be received or postmarked within 30 days of mailing of the notification of the initial determination ("Notice to Base Year Employer", EMS 166).

(b) In the case of an employer added to a monetary determination as a result of a redetermination, the employer request for benefit charge relief must be received or postmarked within 30 days of mailing the notification of redetermination ("Notice to Base Year Employer", EMS 166).

(c) The commissioner may consider a request for benefit charge relief not received or postmarked within the 30 day period if the employer establishes good cause for not requesting relief in a timely manner.

(3) If, upon receipt of the employer's written request, the department requires additional information, the employer shall provide the requested information within 30 days from the date of mailing of the request by the department. Failure to respond within 30 days will result in a denial of benefit charge relief for the employer unless the employer establishes good cause for the untimely response.

(4) It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to make a determination of noncharging relief or good cause for failure to respond in a timely manner.

(5) Any denial of a request for noncharging relief shall be in writing and will be the basis of appeal pursuant to RCW 50.32.050.

#### NEW SECTION

WAC 192-12-405 CONDITIONS FOR RELIEF OF BENEFIT CHARGES. For purposes of RCW 50.29.020(2), a contribution-paying base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual. An employer who requests relief of benefit charges in accordance with WAC 192-12-400 may be granted relief if:

(1) The benefit charges result from payment to an individual who last left the employee of such employer voluntarily for reasons not attributable to the employer.

(a) Reasons not attributable to the employer for voluntarily leaving shall be personal reasons, not work connected. These reasons may include, but are not limited to:

- (i) Employee illness or disability;
- (ii) Illness or death of member(s) of the employee's immediate family;
- (iii) Employee's leaving to accept work with another employer;
- (iv) Incarceration of employee;
- (v) Marital or domestic responsibilities of the employee;
- (vi) Employee's pursuit of additional education; or
- (vii) Personal dissatisfaction with wages or hours known at the time of hire.

(b) Reasons considered to be attributable to the employer are those work related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. Such work related factors may include, but are not limited to:

- (i) Unreasonable hardship on health or morals;

(ii) Change in work location (increased distance and/or difficulty of travel);

(iii) Deterioration of work site safety;

(iv) Employee skills no longer required for the job; or

(v) Such other work related factors as the commissioner may deem pertinent.

(2) The benefit charges result from payment to an individual who was discharged for misconduct connected with the work (not to include inability to meet the minimum job requirements).

(3) A claimant is regularly scheduled and continuously employed on a permanent part-time basis. Relief of benefit charges shall cease when the employment relationship with the claimant ends. Such relief shall not apply to shared work employers covered under RCW 50.60.

(4) The benefit charges were a direct result of a closure or severe curtailment of operations at the employer's plant, building, work site, or facility due to a fire, flood, or other natural disaster.

## Table of WAC Sections Affected

### KEY TO TABLE

**Symbols:**

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule

**Suffixes:**

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- S = Supplemental notice
- W = Withdrawal of proposed action
- No suffix means permanent action

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

WAC # shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # shows the issue of the Washington State Register where the document may be found; the last three digits show the sequence of the document within the issue.

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(See AGRICULTURE, DEPARTMENT OF)

**WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD**

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