Washington State Register

AUGUST 16, 1995

OLYMPIA, WASHINGTON

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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

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 August 1995 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.

WASHINGTON STATE REGISTER

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WASHINGTON STATE REGISTER
Code Reviser's Office
Legislative Building
Olympia, WA 98504-0552

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.

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following six sections:

(a) **PREPROPOSAL**-includes the Preproposal Statement of Intent that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.

(b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.

(c) **PERMANENT**-includes the full text of permanently adopted rules.

(d) **EMERGENCY**-includes the full text of emergency rules and rescissions.

(e) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.

(f) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.

(g) **INDEX**-includes a combined subject matter and agency index.

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

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

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

(a) In amendatory sections—

(i) underlined material is new material;

(ii) deleted material is ((~~lined out between double parentheses~~));

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

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

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

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

4. EFFECTIVE DATE OF RULES

(a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.

(b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.

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

5. 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].

1994 - 1995
DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates[1]			Distribution Date	First Agency Hearing Date[3]
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS[2] or 10 p. max. Non-OTS		
For Inclusion in--	*File no later than--*			*Count 20 days from--*	*For hearing on or after*
94-16	Jul 6	Jul 20	Aug 3	Aug 17	Sep 6
94-17	Jul 27	Aug 10	Aug 24	Sep 7	Sep 27
94-18	Aug 10	Aug 24	Sep 7	Sep 21	Oct 11
94-19	Aug 24	Sep 7	Sep 21	Oct 5	Oct 25
94-20	Sep 7	Sep 21	Oct 5	Oct 19	Nov 8
94-21	Sep 21	Oct 5	Oct 19	Nov 2	Nov 22
94-22	Oct 5	Oct 19	Nov 2	Nov 16	Dec 6
94-23	Oct 26	Nov 9	Nov 23	Dec 7	Dec 27
94-24	Nov 9	Nov 23	Dec 7	Dec 21	Jan 10, 1995
95-01	Nov 23	Dec 7	Dec 21, 1994	Jan 4, 1995	Jan 24
95-02	Dec 7	Dec 21, 1994	Jan 4, 1995	Jan 18	Feb 7
95-03	Dec 21, 1994	Jan 4, 1995	Jan 18	Feb 1	Feb 21
95-04	Jan 4	Jan 18	Feb 1	Feb 15	Mar 7
95-05	Jan 18	Feb 1	Feb 15	Mar 1	Mar 21
95-06	Feb 1	Feb 15	Mar 1	Mar 15	Apr 4
95-07	Feb 22	Mar 8	Mar 22	Apr 5	Apr 25
95-08	Mar 8	Mar 22	Apr 5	Apr 19	May 9
95-09	Mar 22	Apr 5	Apr 19	May 3	May 23
95-10	Apr 5	Apr 19	May 3	May 17	Jun 6
95-11	Apr 26	May 10	May 24	Jun 7	Jun 27
95-12	May 10	May 24	Jun 7	Jun 21	Jul 11
95-13	May 24	Jun 7	Jun 21	Jul 5	Jul 25
95-14	Jun 7	Jun 21	Jul 5	Jul 19	Aug 8
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95-21	Sep 20	Oct 4	Oct 18	Nov 1	Nov 21
95-22	Oct 4	Oct 18	Nov 1	Nov 15	Dec 5
95-23	Oct 25	Nov 8	Nov 22	Dec 6	Dec 26
95-24	Nov 8	Nov 22	Dec 6	Dec 20	Jan 9, 1996

[1]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.

[2]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.

[3]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.

REGULATORY FAIRNESS ACT

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

Small Business Economic Impact Statements (SBEIS)

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

Mitigation

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

When is an SBEIS Required?

When:

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

When is an SBEIS Not Required?

When:

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

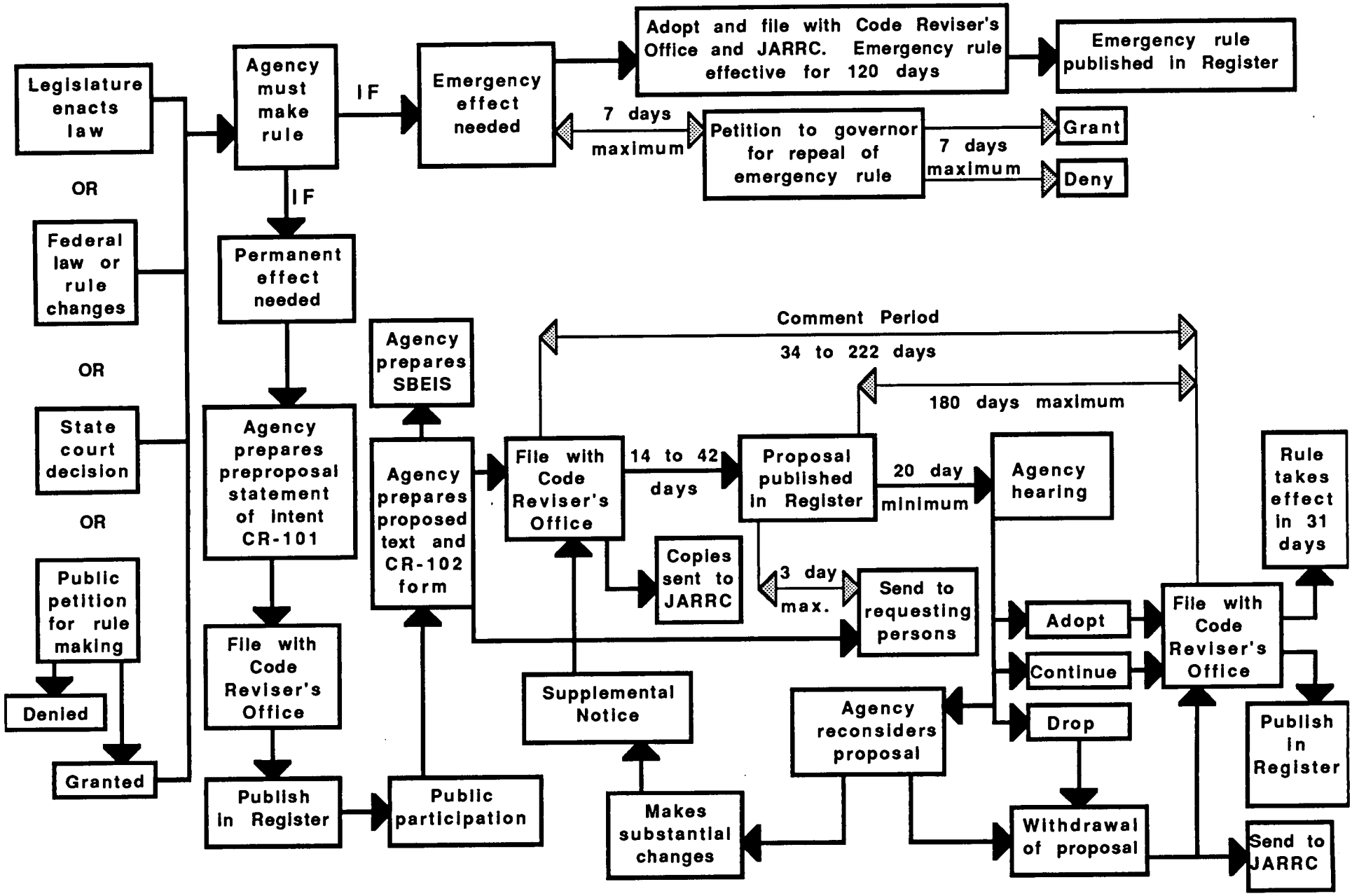
There is less than minor economic impact on business;

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

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

The rule is pure restatement of state statute.

RULE-MAKING PROCESS



WSR 95-16-010
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 20, 1995, 4:50 p.m.]

Subject of Possible Rule Making: Chapters 388-11 and 388-14 WAC.

Specific Statutory Authority for New Rule: Amendments related to eligibility for Division of Child Support (DCS) services will be adopted under RCW 26.23.045(2). Amendments to WAC 388-14-030 will be adopted under RCW 26.23.120(2). All other amendments will be adopted under RCW 74.08.090, the department's general rule-making authority for programs administered under Title 74 RCW and RCW 74.20A.310.

Reasons Why the New Rule is Needed: The 1994 legislative session enacted many minor changes to DCS programs and collection remedies. DCS WAC is inconsistent with those legislative changes. The following statutes affected DCS programs, and generated the need for amendment: Chapter 146, Laws of 1994, SB 6221: Authorized genetic paternity testing in addition to traditional blood test methods. Chapter 230, Laws of 1994, SHB 2488: Required responsible parents to prove that health insurance is not available; changed the requirements of child support and mandatory wage assignment orders; changed the duration of DCS income withholding notices; and authorized disclosure to federally recognized Indian tribes.

Goals of New Rule: DCS is developing this rule to implement the changes enacted by the 1994 legislative session. DCS made editorial changes and reorganized and shortened some sections for clarity and ease of use by the public and staff.

Process for Developing New Rule: Agency study; and DCS invites interested parties to participate in the review and approval for issuance process. Please see below to learn how to participate in this process. This process will generate two published proposals, one to adopt necessary amendments to chapter 388-11 WAC and the other to amend chapter 388-14 WAC.

How Interested Parties can Participate in Formulation of the New Rule: Contact Bill Kellington at DCS headquarters to be included in the review process. The address and phone number are: Bill Kellington, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 586-3162, FAX (360) 586-3274. This material will go out for review no later than August 23, 1994 [1995]. You must contact Mr. Kellington prior to this date to be included in the initial review process. This is a reissuance and extension of a former preproposal statement of intent that had given an August 23, 1994 [1995] deadline.

July 20, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-011
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)
(Public Assistance)
[Filed July 20, 1995, 4:52 p.m.]

Subject of Possible Rule Making: Minimum licensing requirements for secure group care facilities for children as defined in E2SSB 5439.

Specific Statutory Authority for New Rule: E2SSB 5439, section 60.

Reasons Why the New Rule is Needed: E2SSB 5439 directs the Department of Social and Health Services to promulgate rules under which secure, as defined in section 3(12), crisis residential group care facilities shall be licensed. Currently, no minimum licensing requirement for this type of facility exists.

Goals of New Rule: To comply with legislative directive under E2SSB 5439.

Process for Developing New Rule: Agency study. The department conducts internal and external review and approval processes before filing forms CR-101 and/or CR-102 and considers all comments during these processes.

How Interested Parties can Participate in Formulation of the New Rule: Through July 31, 1995: Tammi Erickson, Department of Social and Health Services, DCFS, P.O. Box 45710, Olympia, WA 98504-5710, phone (360) 753-0244, FAX (360) 586-1040. Beginning August 1, 1995: Tammi Erickson, Child Welfare Planning Team, P.O. Box 45745, Olympia, WA 98504-5745, phone (360) 586-8868, FAX (360) 664-0788.

July 20, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-012
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF LICENSING
[Filed July 21, 1995, 10:26 a.m.]

Subject of Possible Rule Making: Establish rules for the regulating of sellers of travel.

Specific Statutory Authority for New Rule: Chapter 19.138 RCW.

Reasons Why the New Rule is Needed: New laws regulating sellers of travel passed by the legislature. Rules needed to establish the program.

Goals of New Rule: Establish rules and regulations to implement the laws promulgated under chapter 19.138 RCW.

Process for Developing New Rule: Agency study; and work with industry.

How Interested Parties can Participate in Formulation of the New Rule: Pat Brown, Administrator, Business and Professions Division, P.O. Box 9045, Olympia, WA 98507-9045, phone (360) 664-2356, FAX (360) 735-3747, TDD (360) 586-2788.

July 21, 1995
Pat Brown
Licensing Administrator

PREPROPOSAL

WSR 95-16-015
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 11:25 a.m.]

Subject of Possible Rule Making: Revise WAC 388-250-1700 Standard of assistance—Supplemental security income.

Specific Statutory Authority for New Rule: In the budget bill, the 1995 legislature approved conversion to the "total expenditure method" to compute the amount of the SSI state supplement.

Reasons Why the New Rule is Needed: Under the "minimum payment method," the total amount expended for the SSI state supplement has increased each year, due to the rise in caseload. To fairly and equitably distribute limited state resources, with minimum negative impact on needy individuals, the legislature chose to "cap" the state supplement at the calendar 1994 expenditure level.

Goals of New Rule: Adjust state costs for the SSI state supplement in 1995 to meet the 1994 cap by reducing the payment to each individual by 15% beginning in November 1995.

Process for Developing New Rule: Legislative decision in the 1995 budget bill.

How Interested Parties can Participate in Formulation of the New Rule: Please contact Barbara Hargrave, Division of Income Assistance, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 438-8317.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-020
PREPROPOSAL STATEMENT OF INTENT
LOTTERY COMMISSION
[Filed July 21, 1995, 11:40 a.m.]

Subject of Possible Rule Making: Instant game rules.

Specific Statutory Authority for New Rule: RCW 67.70.040(1).

Reasons Why the New Rule is Needed: The lottery is considering proposing rules for Instant Game Nos. 149, 150, 151, and 152 at the September 8, 1995 [meeting].

Goals of New Rule: The new rules will explain how the games function to retailers and players. Rigid validation requirements will prevent prize payment on invalid tickets.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Contact Jeffrey Burkhardt, Rules Coordinator, at (360) 586-6583, FAX (360) 586-6586, P.O. Box 43000, Olympia, WA 98504, with any comments or questions regarding this statement of intent.

July 21, 1995
Evelyn P. Yenson
Director

WSR 95-16-022
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF LICENSING
[Filed July 21, 1995, 11:50 a.m.]

Subject of Possible Rule Making: Landscape architect fees.

Specific Statutory Authority for New Rule: RCW 18.96.080, 43.24.086.

Reasons Why the New Rule is Needed: To increase the examination fee to meet the examination vendor price.

Goals of New Rule: To establish the registration examination cost charged to examination candidates at a sufficient level to meet the cost of purchasing the examinations for the candidates.

Process for Developing New Rule: Examination fees are set in accordance with the examination vendor price.

How Interested Parties can Participate in Formulation of the New Rule: James D. Hanson, Administrator, Board of Landscape Architect Registration, P.O. Box 9045, Olympia, WA 98507-9045, (360) 753-1153, FAX (360) 664-2550, TDD (360) 753-1966. Deadline for comments: August 25, 1995.

July 13, 1995
James D. Hanson
Program Administrator

AMENDATORY SECTION (Amending WSR 94-23-031, filed 11/8/94, effective 12/9/94)

WAC 308-13-150 Landscape architect fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Application fee	$150.00
Examination (entire) fee	((~~450.00~~)) 515.00
Reexamination administration fee	50.00
Examination Sections:	
Section 1: Legal and administrative aspects of practice	((~~25.00~~)) 30.00
Section 2: Programming and environmental analysis	35.00
Section 3: Conceptualization and communication	((~~85.00~~)) 100.00
Section 4: Design synthesis	((~~80.00~~)) 100.00
Section 5: Integration of technical and design requirements	((~~95.00~~)) 100.00
Section 6: Grading and drainage	((~~85.00~~)) 100.00
Section 7: Implementation of design through construction process	((~~45.00~~)) 50.00
Exam proctor	100.00
Renewal (3 years)	450.00
Late renewal penalty	150.00
Duplicate license	25.00
Initial registration (3 years)	450.00
Reciprocity application fee	200.00
Certification	45.00
Replacement certificate	20.00

WSR 95-16-025
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF FINANCIAL INSTITUTIONS
[Filed July 21, 1995, 1:28 p.m.]

Subject of Possible Rule Making: Chapter 50-30 WAC, Check cashers and sellers—Regulation of.

Specific Statutory Authority for New Rule: RCW 31.45.200.

Reasons Why the New Rule is Needed: SSB 5279 allows licensed check cashers and sellers to obtain a small loan endorsement, and requires rules be promulgated to administer the activity. In addition, chapter 50-30 WAC, requires revisions for clarification.

Goals of New Rule: Compliance with SSB 5279, Clarification of chapter 50-30 WAC, and establish fees allowed by RCW 31.45.030(4), 31.45.050 (1)(2), and 31.45.100.

Process for Developing New Rule: Meetings with stakeholders and other interested parties.

How Interested Parties can Participate in Formulation of the New Rule: Contact Ed Burgert, Program Manager, P.O. Box 41202, Olympia, WA 98504-1202, (360) 902-8727, FAX (360) 664-2258.

July 17, 1995
John L. Bley
Director

WSR 95-16-028
PREPROPOSAL STATEMENT OF INTENT
WASHINGTON STATE PATROL
[Filed July 21, 1995, 2:05 p.m.]

Subject of Possible Rule Making: Agency description for public information disclosure.

Specific Statutory Authority for New Rule: RCW 42.17.250.

Reasons Why the New Rule is Needed: Several state patrol field offices have changed locations. This amendment will update the description of central and field organization of the [state] patrol for obtaining public information.

Goals of New Rule: Notify the public of the new addresses for the field organization of the state patrol. Allow more access for obtaining public information at the field level.

Process for Developing New Rule: Updating addresses for field locations of the Washington State Patrol.

How Interested Parties can Participate in Formulation of the New Rule: Submit comments to Lieutenant Robert Lopez, Washington State Patrol, Office of Professional Services, P.O. Box 42611, Olympia, WA 98504-2611, (360) 438-5833, FAX (360) 407-0172.

July 18, 1995
Annette M. Sandberg
Chief

AMENDATORY SECTION (Amending Order 79-2, filed 3/23/79)

WAC 446-10-030 Description of central and field organizations of the Washington state patrol. The Washington state patrol is a law enforcement agency and service. The administrative offices of the department and its staff are located in the General Administration Building, Olympia, Washington 98504. The department has eight district headquarters with working addresses as follows:

District	I -	((~~3737 South Puget Sound Avenue, Tacoma 98409~~)) 2502 112th Street East, Tacoma 98445-5104
District	II -	2803 - 156th Avenue S. E., Bellevue 98007
District	III -	2715 Rudkin Road, Union Gap 98903
District	IV -	((~~East 7421 First Avenue, Spokane 99206~~)) West 6403 Rowand Road, Spokane 99204-5300
District	V -	605 East Evergreen Boulevard, Vancouver 98661-3812
District	VI -	((~~1517 North Wenatchee Avenue, Wenatchee 98801~~)) 2822 Euclid Avenue, Wenatchee 98801-5916
District	VII -	((~~20th and Chestnut, Everett 98201~~)) 2700 116th Street NE, Marysville 98271-9425
District	VIII -	((~~4846 Auto Center Way, Bremerton 98310~~)) 4811 Werner Road, Bremerton 98312-3333

WSR 95-16-037
WITHDRAWAL OF PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 21, 1995, 4:44 p.m.]

The Department of Fish and Wildlife withdraws the filing of a Preproposal Statement of Intent, filed at WSR 95-15-024.

Evan S. Jacoby
Rules Coordinator

WSR 95-16-038
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 21, 1995, 4:45 p.m.]

Subject of Possible Rule Making: Recreational shellfish harvest.

Specific Statutory Authority for New Rule: RCW 75.08.080.

Reasons Why the New Rule is Needed: The harvestable amount of clams and oysters on certain beaches has been taken, and closure of these beaches to harvest to allow for populations to reestablish is needed.

Goals of New Rule: To conserve the shellfish resource.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Agency contact is Bruce Crawford, Assistant Director, Fish Management Program, 600 Capitol Way North, Olympia, WA 98501, (360) 902-2325, before August 15, 1995.

July 21, 1995
Evan Jacoby
Rules Coordinator

WSR 95-16-039
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 21, 1995, 4:50 p.m.]

Subject of Possible Rule Making: Commercial baitfish harvest; commercial and recreational shrimp harvest; commercial food fish other than salmon and shellfish harvest at marine preserves and parks.

Specific Statutory Authority for New Rule: RCW 75.08.080.

Reasons Why the New Rule is Needed: Conservation of baitfish stocks, protection of juvenile salmonids; conservation of shrimp stocks and protection of marine preserves.

Goals of New Rule: Conservation of food fish and shellfish resources.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Agency contact is Bruce Crawford, Assistant Director, Fish Management Program, 600 Capitol Way North, Olympia, WA 98501, (360) 902-2325, before August 15, 1995.

July 21, 1995
Evan Jacoby
Rules Coordinator

WSR 95-16-041
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 4:58 p.m.]

Subject of Possible Rule Making: Aid to families with dependent children—Categorical eligibility—Living in the home of a relative of specified degree: Notification to parent of AFDC authorization, WAC 388-215-1130; request for address disclosure by child's parent, WAC 388-215-1140; requirements for submitting a request for disclosure of a child's address, WAC 388-215-1150; notifying the caretaker relative of a request for disclosure of a child's address, WAC 388-215-1160; and responding to a request for disclosure of a child's address, WAC 388-215-1170.

Specific Statutory Authority for New Rule: ESSB 5244.

Reasons Why the New Rule is Needed: The new rules affect the aid to families with dependent children (AFDC) program and are intended to implement the requirements of ESSB 5244 which adds a new section to chapter 74.12 RCW. This law establishes the following requirements: When AFDC is approved on behalf of a child who is living with nonparental relative, the Department of Social and Health Services must make reasonable efforts to inform the parent with whom the child most recently lived of the AFDC authorization and advise them of the provisions of the Family Reconciliation Act (chapter 13.34A RCW) and how they may request the address and location of the child. The law also establishes safeguards to prevent release of the child's address when there is a danger that the child or caretaker relative could be harmed.

Goals of New Rule: To provide the Department of Social and Health Services staff, clients and other interested parties with rules on when the parent with whom the child most recently resided is to be informed that a child who is living with a nonparental relative is receiving AFDC, what other information must be provided to the child's parent, when the child's address may be provided to the parent, and how a caretaker relative can prevent address disclosure if there is a likelihood of harm to the relative or child.

Process for Developing New Rule: Agency study; and internal (management) and external (field staff) review process whereby draft material is distributed for review and comment. All comments are taken into consideration before the final rule is issued.

How Interested Parties can Participate in Formulation of the New Rule: Contact Tom Everett, Program, Division of Income Assistance, AFDC/RCA Section, P.O. Box 45400, Olympia, WA 98504-5400, phone (360) 438-8264, FAX (360) 438-8258.

July 22, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-050
PREPROPOSAL STATEMENT OF INQUIRY
SKAGIT VALLEY COLLEGE
[Filed July 25, 1995, 9:17 a.m.]

Subject of Possible Rule Making: Repealing chapter 132D-300 WAC, Grievance procedure—Sexual harassment, sex discrimination, and handicapped; and adopting WAC 132D-300-005 Sexual harassment policy, 132D-300-015 Antidiscrimination policy, and 132D-300-025 Handicapped policy.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.50.140.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To add more information and make a strong stand against sexual harassment and discrimination; to add and clarify handicapped services on campus.

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

Process for Developing New Rule: Agency study: Handicapped policy; and by college committee for sexual harassment and antidiscrimination policies.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Judi Knutzen, Skagit Valley College, 2405 College Way, Mt. Vernon, WA 98273, call (360) 428-1183, FAX (360) 428-1202. A public hearing will be held; date to be set later.

July 27 [25], 1995
Judi Knutzen
WAC Rules Coordinator

WSR 95-16-057
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 26, 1995, 8:45 a.m.]

Subject of Possible Rule Making: Implementation of SHB 1906 related to licensing child care programs and in particular, civil monetary penalties, probationary licenses, etc., chapters 388-150, 388-155, 388-151, 388-330, 338-73, and 388-160 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.15.030, SHB 1906 (1995).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are needed to assure equity and due process in implementing various elements of SHB 1906 (1995), especially civil penalties and probationary license.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies regulate child care programs.

Process for Developing New Rule: Agency study; and rules will be drafted by a group representing various stakeholders and will be subject to an internal and external review process whereby draft material is distributed for review and comment. Comments will be taken into consideration before final rules are issued.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Karen Tvedt, Chief, Department of Social and Health Services, Office of Child Care Policy, P.O. Box 45700, Olympia, WA 98504-5700, (360) 586-6066, FAX (360) 586-1040.

July 26, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-059
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION
[Filed July 26, 1995, 11:12 a.m.]

Subject of Possible Rule Making: Amendment of WAC 180-20-035(2), the definition of a Type 2 school activities driver.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.160.210.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To respond to school district and legislative concerns about the current definition.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: To reexamine the current definition and amend as may be appropriate.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, TDD (360) 664-3631. For telephone assistance contact Larry Davis, (360) 753-6715.

July 26, 1995
Larry Davis
Executive Director

WSR 95-16-070
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION
[Filed July 28, 1995, 3:35 p.m.]

Subject of Possible Rule Making: Permanent bicycle pass for the Washington state ferries.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 47.56.030 and 47.60.326.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To enable a pilot program to become permanent.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Not applicable.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Michael T. McCarthy, Seattle Ferry Terminal, 108 Alaskan Way, Seattle, WA 98104.

July 28, 1995
S. A. Moon
Deputy Director

WSR 95-16-073
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 3:46 p.m.]

Subject of Possible Rule Making: WAC 180-79-340 Early childhood education, regular—Subject area endorsement.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.410.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The amendment to this rule is needed to ensure the endorsement more specifically addresses the field of early childhood.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal or state agency regulates this subject.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, TDD (360) 664-3631. For telephone assistance contact Theodore Andrews, (360) 753-3222.

July 28, 1995
Larry Davis
Executive Director

WSR 95-16-074
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 3:47 p.m.]

Subject of Possible Rule Making: WAC 180-79-350 English—Subject area endorsement.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.410.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The amendment to this rule is needed to ensure that the preparation of English teachers includes literature from diverse cultures.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal or state agency regulates this subject.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, TDD (360) 664-3631. For telephone assistance contact Theodore Andrews, (360) 753-3222.

July 28, 1995
Larry Davis
Executive Director

WSR 95-16-075
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 3:48 p.m.]

Subject of Possible Rule Making: WAC 180-79-334 Computer science—Subject area endorsement.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.410.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The amendment to this rule is needed because the current rule is outdated. Wording is needed which will allow for adaptation to this rapidly changing field.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal or state agency regulates this subject.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, TDD (360) 664-3631. For telephone assistance contact Theodore Andrews, (360) 753-3222.

July 28, 1995
Larry Davis
Executive Director

WSR 95-16-083
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION
[Filed July 31, 1995, 9:26 a.m.]

Subject of Possible Rule Making: Fees for motorist information signs (M.I.S.).

Statutes Authorizing the Agency to Adopt Rules on this Subject: E2SHB 2080, section 220, Laws of 1995.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Legislative mandate requires this rule be adopted by December 31, 1995.

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

Process for Developing New Rule: Rule is required as a result of law. The Department of Transportation will notify business owners of impending changes to motorist information sign fees.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. They will be given the opportunity to respond in writing. A list of addressees is available through the

Department of Transportation finance and administration service center.

July 28, 1995
S. A. Moon
Deputy Secretary
for Operations

WSR 95-16-084
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION
[Filed July 31, 1995, 9:28 a.m.]

Subject of Possible Rule Making: Public advisory votes on selected transportation facilities under the public private initiatives in transportation program.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 34.05 RCW, RCW 47.46.030 (E3SHB 1317, section 2).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To establish a legal basis for the Washington State Department of Transportation to implement a new law and to establish administrative procedures for implementation.

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested persons can participate in the development of the rule by commenting in writing or attending public hearings to be scheduled. Rhonda Brooks, Program Manager, Transportation Economic Partnerships, Washington State Department of Transportation, P.O. Box 47395, Olympia, WA 98504-7395, (360) 664-2910, FAX (360) 664-2770.

July 28, 1995
S. A. Moon
Deputy Secretary
for Operations

WSR 95-16-090
PREPROPOSAL STATEMENT OF INQUIRY
CENTRAL WASHINGTON UNIVERSITY
[Filed July 31, 1995, 2:46 p.m.]

Subject of Possible Rule Making: Commercial advertising in university facilities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.35.120(12) and 28B.10.528.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: So that rule is consistent with current practice. Allowing exceptions for commercial advertising.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Not applicable.

Process for Developing New Rule: Administrative review.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by writing Jill M. Orcutt, Rules Coordinator, President's Office, Central Washington University, 400 East 8th Avenue, Ellensburg, WA 98926-7502.

July 27, 1995
Ivory V. Nelson
President

WSR 95-16-104
PREPROPOSAL STATEMENT OF INQUIRY
LIQUOR CONTROL BOARD
[Filed August 1, 1995, 8:53 a.m.]

Subject of Possible Rule Making: The board intends to revise existing rules to bring them into compliance with chapter 232, Laws of 995, as they pertain to the subject of the transfer of a liquor license from one party to another.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 66.08.030 and chapter 232, Laws of 1995.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Since the language was changed by the 1995 legislative session, the rules need to be changed accordingly to reflect those statutory changes. The changes will help applicants seeking liquor licenses better understand the duration of the license and what is required. Specific changes will be made to WAC 314-12-020, 314-12-025, 314-12-035, 314-12-070, 314-12-080, 314-70-010, and 314-70-030.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The statutory changes were made to bring liquor licenses in concert with all other licenses the business must have as issued by the Department of Licensing and to give liquor licenses the same expiration date as any other license a business may hold which has been issued by the state.

Process for Developing New Rule: Changes made entirely upon changes made in statutes (chapter 232, Laws of 1995).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Carter Mitchell, Washington State Liquor Control Board, P.O. Box 43080, Olympia, WA 98504-3080, FAX (360) 664-9689. Comments due by September 5, 1995.

August 1, 1995
Joe McGavick
Chair

WSR 95-16-105
PREPROPOSAL STATEMENT OF INQUIRY
LIQUOR CONTROL BOARD
[Filed August 1, 1995, 8:55 a.m.]

Subject of Possible Rule Making: Certification of providers of service of server training programs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 66.08.030 and chapter 51, Laws of 1995.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In order to certify the

providers of service for mandatory server training, specific rules are needed so everyone knows who is qualified to provide the training, what training is required within a certified program and what the trainer is expected to do in order to conform to chapter 51, Laws of 1995.

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

Process for Developing New Rule: Agency study; and discussions with service providers, industry associations and others.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Gary Gilbert, Assistant Director, Enforcement, Washington State Liquor Control Board, P.O. Box 43094, Olympia, WA 9854-3094, FAX (360) 664-0501. Comments due by September 5, 1995.

August 1, 1995
Joe McGavick
Chair

WSR 95-16-110
PREPROPOSAL STATEMENT OF INQUIRY
PARKS AND RECREATION COMMISSION
[Filed August 1, 1995, 3:20 p.m.]

Subject of Possible Rule Making: SEPA procedures.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.21C.120.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Washington legislature has changed portions of chapter 43.21C RCW which required Washington Department of Ecology to adopt/alter/repeal various sections of chapter 197-11 WAC. This requires state parks to revise its agency SEPA procedures, chapter 352-11 WAC. These SEPA procedures are designed to require documentation of effects of agency decision making and to require mitigation of significant adverse impacts to the environment.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting David W. Heiser, Environmental Programs Manager, 7150 Cleanwater Lane, P.O. Box 42668, Olympia, WA 98504-2668, (360) 902-8636, FAX (360) 664-0278.

August 1, 1995
Sharon Howdeshell
Office Manager

WSR 95-16-111
PREPROPOSAL STATEMENT OF INQUIRY
PARKS AND RECREATION COMMISSION
[Filed August 1, 1995, 3:21 p.m.]

Subject of Possible Rule Making: Standard fees charged.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 43.51 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: State parks anticipates increasing services to the public that are fee based and market guided. Establishing and modifying fees for a greater variety of services that are market guided requires greater flexibility for efficient and effective administration. This rule change will provide greater flexibility, efficiency and effectiveness in fee setting.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: U.S. Army Corps of Engineers, lease negotiations.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rex Derr/Robyn Malmberg, 7150 Cleanwater Lane, P.O. Box 42664, Olympia, WA 98504-2664, (360) 902-8606/(360) 902-8609, FAX (360) 586-5875.

August 1, 1995
Sharon Howdeshell
Office Manager

WSR 95-16-116
PREPROPOSAL STATEMENT OF INQUIRY
LOTTERY COMMISSION
[Filed August 2, 1995, 8:58 a.m.]

Subject of Possible Rule Making: Instant game rules and definition of term.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The lottery is considering proposing rules for Instant Game Nos. 153, 154, 155, and 156 at the November 3, 1995, commission meeting. These rules will explain how the games function to retailers and players. Rigid validation requirements will prevent prize payment on invalid tickets. The lottery will also propose a rule defining the term "redeem."

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jeffrey Burkhardt, Rules Coordinator, at (360) 586-6583, FAX (360) 586-6586, P.O. Box 43000, Olympia, WA 98504, with any comments or questions regarding this statement of intent.

August 1, 1995
James S. Hattori
Chair

WSR 95-16-126
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION
[Filed August 2, 1995, 11:02 a.m.]

Subject of Possible Rule Making: Manual on uniform traffic control devices (MUTCD).

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 47.36.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The new MUTCD part VI requires certain traffic control techniques not yet implemented by the Department of Transportation. The rule will modify the new part VI to reflect the department's operational practices.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Federal Highway Administration (FHWA) publishes the MUTCD, however they are not involved in the rule-making process. There are no other state agencies that regulate traffic control devices.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Department of Transportation is currently underway with local agencies in developing modifications to the new MUTCD part VI. Contact person is Lloyd Ensley, Traffic Specialist, Washington State Department of Transportation, Republic Building, 505 East Union, Olympia, WA 98504-7344, phone (360) 705-7288, FAX (360) 705-6826.

August 1, 1995
S. A. Moon
Deputy Secretary
for Operations

WSR 95-16-128
PREPROPOSAL STATEMENT OF INQUIRY
INSURANCE COMMISSIONER'S OFFICE
[Matter No. R 95-9—Filed August 2, 1995, 11:34 a.m.]

Subject of Possible Rule Making: Section 25 of the recently enacted Health Care Reform Improvement Act recognizes that the right of conscientious objection to participating in specific health services must be reconciled with the right of enrollees to receive the full range of services covered under their health benefit plans.

Statutes Authorizing the Agency to Adopt Rules on this Subject: ESHB 1046, section 25, chapter 256, Laws of 1995, RCW 48.02.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To establish procedures to be filed for approval by the Insurance Commissioner that will permit individuals, organizations, religiously-sponsored carriers, health providers, and health facilities to conscientiously object to participating in a specific service while ensuring that enrollees receive the full range of services covered under their health benefit plans.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington State Human Rights Commission also regulates this subject. Coordination will be achieved by consultation.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Brandeberry, Office of the Insurance Commissioner, P.O. Box 40255, Olympia, WA 98504-0255, (360) 664-3790, FAX (360) 586-3535, Internet address: gtaylor@win.com, TDD (360) 586-0691.

July 28, 1995
Krishna Fells
Chief Deputy

WSR 95-16-129
PREPROPOSAL STATEMENT OF INQUIRY
INSURANCE COMMISSIONER'S OFFICE
[Matter No. R 95-10—Filed August 2, 1995, 11:36 a.m.]

Subject of Possible Rule Making: Implementation and enforcement of SSB 5854, chapter 389, Laws of 1995, requiring all health carriers and health care benefit programs administered by the health care authority to permit women direct access to women's health care providers for women's health care service.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060 (3)(a), 48.18.120, 48.20.450, 48.20.460, 48.44.020, 48.44.050, 48.44.070, 48.46.060, 48.46.200, and 48.46.243.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Health care plans subject to SSB 5854, chapter 389, Laws of 1995, must permit enrollees direct access to women's health care practitioners for women's health care services. The statute mandating this requirement has generated numerous inquiries from health carriers, providers, and consumers as to how the carriers should structure their plans and health care networks to comply with the new law. This rule will answer these questions, will allow for a uniform interpretation of the law by all carriers and will disclose the agency's approach to enforcement of the law.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Brandeberry, Insurance Commissioner's Office, P.O. Box 40255, Olympia, WA 98504-0255, FAX 586-3535, phone (360) 956-1377, Internet mail 73303.700@compuserve.com.

August 2, 1995
Melodie Bankers
Senior Assistant
Deputy Commissioner
Rules Coordinator

WSR 95-14-120
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed June 30, 1995, 4:51 p.m.]

Original Notice.

Title of Rule: Repealing WAC 388-96-216 Deadline for completion of audits, 388-96-753 Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-776, and 388-96-777, and 388-96-902 Recoupment of undisputed overpayments; and amending chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Purpose: WAC 388-96-010, to amend definitions of terms to conform to the new legislation ("resident day," "client day," "recipient day," "rebased rate," and "cost rebased rate"); to remove obsolete language; and clarify.

WAC 388-96-032, to implement the new legislation regarding security for all debts to the department upon termination of a Medicaid nursing provider contract; to authorize obtaining security from a contractor for debts to the department reaching fifty thousand dollars and additional security for each increase of twenty-five thousand dollars; to authorize withholding payments for services in the absence of acceptable security.

WAC 388-96-108, to extend time for repayment of debt to the department relating to failure to submit a final cost report from thirty to sixty days to be consistent with the new legislation.

WAC 388-96-204, to substitute requirement of periodic department audits for requirement of audits every three years of a nursing facility's cost reports, accounts and resident trust funds, in accordance with the new legislation; to provide for a ten working day advance notice for such audits consistent with the new legislation.

WAC 388-96-210, to reflect in language addressing scope of nursing facility audits the one-time, three-year rate setting cycle provided in the new legislation.

WAC 388-96-216, repealed to eliminate deadline for completion of audits after submission of a nursing facility's cost report, consistent with broad authority of department to perform audits periodically as deemed necessary under the new legislation.

WAC 388-96-220, to provide that field audit findings shall be evaluated and that a final Medicaid settlement for a nursing facility shall be issued upon completing of the audit if performed, including any administrative review, but not including any judicial review, consistent with the new legislation

WAC 388-96-221, to allow twenty-eight days to request review of a preliminary settlement (replacing thirty days) and limit such reviews to settlement issues, prohibiting consideration of rate setting or audit issues, consistent with the new legislation.

WAC 388-96-224, to repeat requirement that a final settlement be issued upon completion of an audit and any administrative review, but not including any judicial review; to eliminate procedure for issuing partial settlements when an audit appeal is pending; to repeat prohibition of pursuing audit and rate issues in an administrative review of a settlement, to amend appeal period from thirty to twenty-eight days, consistent with the new legislation.

WAC 388-96-229, to require the department to make preliminary or final settlement payments owed to a contractor within sixty days; to require the department to pay interest at one percent per month on any balance existing after sixty days; to require a contractor to pay preliminary or final settlement amounts owed to the department within sixty days after receipt of the settlement; to provide that an administrative or judicial review shall not delay recovery; to allow the department to recover amounts owed from security held and to recoup from service payments in the event of nonpayment; to require the department to adjust interest owed if a contractor is successful on final administrative or judicial review, consistent with the new legislation.

WAC 388-96-384, to require nursing facilities to send the personal funds of deceased residents held in trust to the department's office of financial recovery in the event they were recipients of Medicaid; requires funds to be sent by cashier's check, consistent with the new legislation.

WAC 388-96-501, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-585, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-704, to clarify that Medicaid nursing facility rates shall be set or adjusted consistent with the amendments to chapter 74.46 RCW contained in the new legislation.

WAC 388-96-709, to remove reference to old biennial rate system being replaced; to provide how rates will be adjusted to reflect a reduction in licensed beds at a nursing facility to reflect the new minimum occupancy requirements of ninety percent or eighty-five percent, as applicable, consistent with the new legislation.

WAC 388-96-710, to remove reference to old biennial rate system being replaced; to clarify how new contractor rates will be set under the new payment system; to provide that minimum occupancy of eighty-five percent will be used for July 1, 1995, rates for a new contractor whose facility occupancy increased by at least five percent during 1994; to provide procedure for setting a new contractor's rate for facilities receiving certificate of need approval before June 30, 1988, and commencing operations on or after January 1, 1995, consistent with new legislation.

WAC 388-96-713, to update language and remove reference to old biennial system being replaced, consistent with new legislation.

WAC 388-96-716, to reflect new minimum occupancy rates of ninety percent or eighty-five percent, as applicable, in calculating rates, consistent with the new legislation.

WAC 388-96-719, to establish rate setting and adjustment principles for Medicaid nursing facility rates for July 1, 1995, July 1, 1996, and July 1, 1997; to provide that July 1, 1995, rates will be cost rebased but July 1, 1996, and July 1, 1997, rates will not be cost rebased; to establish sources and time periods for determining rate adjustments for economic trends and conditions for these rates; to establish procedures for obtaining measures of increase or decrease to be applied to rates; to establish a minimum occupancy level

of ninety percent for rate setting effective July 1, 1995, and following, consistent with the new legislation.

WAC 388-96-722, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in nursing services will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, component rates in nursing services will not be cost rebased but will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-727, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in food will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, component rates in food will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-735, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, administrative component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, administrative component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-737, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, operational component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, operational component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-745, to remove obsolete references to old biennial system being replaced; to provide for minimum resident occupancy levels of ninety percent and eighty-five percent for nursing facilities, as applicable, for calculating property component rates;

WAC 388-96-753, repealed to delete provisions conflicting with new legislation; subsection not conflicting moved to another section.

WAC 388-96-754, to reflect new minimum nursing facility occupancy levels of ninety percent and eighty-five percent, as applicable, in calculating return on investment rate component; to clarify how current previously-granted current funding in other rate components will be treated in calculating return on investment rate component, consistent with the new legislation.

WAC 388-96-763, to remove obsolete references to the old biennial rate system being replaced, consistent with the new legislation.

WAC 388-96-765, to conform language to clarifying legislative enactment, consistent with new legislation.

WAC 388-96-769, to provide that filing an administrative or judicial review will not delay recovery of payments made to a contractor in error; to provide that the department must pay a contractor amounts owed under errors and omissions within sixty days, consistent with the new legislation.

WAC 388-96-776, to provide that rates for the initial period following new construction requiring state or federal certificate of need approval or costing in excess of $1.2 million shall utilize a minimum occupancy of eighty-five percent, consistent with the new legislation.

WAC 388-96-813, to grant the department authority to recoup amounts owed from service payments to a contractor if debts to the department from any source reach or exceed fifty thousand dollars and adequate security is not provided by the contractor; to provide that neither commencement of administrative or judicial review will delay suspension of payment, consistent with the new legislation.

WAC 388-96-901, to prohibit the administrative review process made available to Medicaid nursing facilities from being used to challenge the validity of rules, statutes or contract provisions relating to the Medicaid payment system; to prohibit the process from being used to bring a case under federal law (whether to obtain a ruling on the merits or to make a record for subsequent judicial review); to avoid unnecessary use of state staff resources to require contractors to bring such cases de novo in a court of proper jurisdiction, consistent with the new legislation.

WAC 388-96-902, repealed to eliminate provisions limiting recoupment to undisputed preliminary or final settlement amounts owed the department, consistent with the new legislation which authorizes recoupment of both disputed and undisputed amounts.

WAC 388-96-904, to establish an administrative review procedure, including time frames for each stage, that allows Medicaid nursing facility providers an opportunity to submit evidence and obtain prompt administrative review conducted by the department relating to payment issues, consistent with federal requirements for nursing facility providers in the Medicaid program (42 CFR 447.253(e)); to speed up the process of obtaining final agency and court decisions on Medicaid payment issues affecting nursing facilities; to remove one layer from the current review process (judges employed by the department's office of appeals will conduct the adjudicative proceedings in place of judges of the Office of Administrative Hearings (a separate state agency) and the department judges will render the final agency decision — this will have the effect of eliminating the administrative petition and review decision function currently conducted by the department's office of appeals); to avoid unnecessary use of state staff resources; to allow direct review in state court of payment issues on a stipulated record, consistent with authority granted under the new legislation.

Statutory Authority for Adoption: RCW 74.46.800. WAC 388-96-010 is E2SHB 1908, section 90; WAC 388-96-032 is E2SHB 1908, section 113; WAC 388-96-108 is E2SHB 1908, section 95; WAC 388-96-204 is E2SHB 1908, section 91; WAC 388-96-210 is E2SHB 1908, sections 98, 99; WAC 388-96-216 is E2SHB 1908, section 91; WAC 388-96-220 is E2SHB 1908, section 93; WAC 388-96-221 is E2SHB 1908, section 94; WAC 388-96-224 is E2SHB 1908, section 94; WAC 388-96-229 is E2SHB 1908, section 95; WAC 388-96-384 is E2SHB 1908, sections 66, 69; WAC 388-96-501 is E2SHB 1908, Section 96; WAC 388-

96-585 is E2SHB 1908, section 97; WAC 388-96-704 is E2SHB 1908, sections 98, 99; WAC 388-96-709 is E2SHB 1908, sections 100, 101, 102; WAC 388-96-710 is E2SHB 1908, sections 70, 101; WAC 388-96-713 is E2SHB 1908, sections 98, 99; WAC 388-96-716 is E2SHB 1908, section 100; WAC 388-96-719 is E2SHB 1908, sections 90, 99, 100; WAC 388-96-722 is E2SHB 1908, section 104; WAC 388-96-727 is E2SHB 1908, section 105; WAC 388-96-735 is E2SHB 1908, section 106; WAC 388-96-737 is E2SHB 1908, section 107; WAC 388-96-745 is E2SHB 1908, sections 102, 108; WAC 388-96-753 is E2SHB 1908, section 99; WAC 388-96-754 is E2SHB 1908, section 109; WAC 388-96-763 is E2SHB 1908, section 99; WAC 388-96-765 is E2SHB 1908, section 96; WAC 388-96-769 is E2SHB 1908, section 111; WAC 388-96-776 is E2SHB 1908, section 102; WAC 388-96-813 is E2SHB 1908, section 112; WAC 388-96-901 is E2SHB 1908, section 114; WAC 388-96-902 is E2SHB 1908, section 95; and WAC 388-96-904 is E2SHB 1908, section 115.

Statute Being Implemented: RCW 74.46.800.

Summary: Implement in state regulations provisions of E2SHB 1908 relating to changes in state's nursing facility Medicaid payment rate system for the combined period July 1, 1995, to June 30, 1998. Growth of Medicaid payments will be slowed for this period. Implement changes to security and refund procedures and resident trust fund procedures for nursing facilities, as well, as required by E2SHB 1908. Establish administrative appeal process for payment issues.

Reasons Supporting Proposal: Statutory chapter (chapter 74.76 RCW) corresponding to chapter 388-96 WAC has been amended by the state legislature (1995 1st sp. sess.) (E2SHB 1908) changes effective July 1, 1995. The department finds that this state law requires immediate adoption of the following rules effective July 1, 1995.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul Montgomery, Aging and Adult Services/ORM, 493-2587.

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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Although Medicaid revenues of nursing facility providers will continue to increase, the changes to the payment system will slow revenue growth by an estimated $61.9 million over the next three fiscal years. However, new costs imposed by the changes for active compliance (i.e., reporting, recordkeeping, professional services, equipment, supplies, etc.) will be negligible and will not impact nursing facilities, large or small.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by August 22, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 12, 1995.

June 30, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

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AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-010 Terms. Unless the context clearly requires otherwise, the following terms shall have the meaning set forth in this section when used in this chapter.

(1) "Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

(a) Decision-making;

(b) Planning;

(c) Evaluating performance;

(d) Controlling resources and operations; and

(e) External financial reporting to investors, creditors, regulatory authorities, and the public.

(2) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when earned, regardless of when collected, and expenses are reported in the period in which incurred, regardless of when paid.

(3) "Administration and management" means activities employed to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

(4) "Allowable costs" - See WAC 388-96-501.

(5) "Ancillary care" means services required by the individual, comprehensive plan of care provided by qualified therapists or by support personnel under their supervision.

(6) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who have adverse bargaining positions in the marketplace.

(a) Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter.

(b) Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(7) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. "Assets" also include certain deferred charges that are not resources but are recognized and measured in accordance with generally accepted accounting principles.

(8) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

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(9) "Beds" means, unless otherwise specified, the number of set-up beds in the nursing home, not to exceed the number of licensed beds.

(10) "Beneficial owner" means any person who:

(a) Directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(b) Directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest, or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter.

(c) Subject to subsection (4) of this section, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

Except that, any person who acquires an ownership interest or power specified in subsection (10)(c)(i), (ii), or (iii) of this section with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power.

(d) In the ordinary course of business, is a pledgee of ownership interest under a written pledge agreement and shall not be deemed the beneficial owner of such pledged ownership interest until the pledgee takes:

(i) Formal steps necessary required to declare a default; and

(ii) Determines the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised provided the pledge agreement:

(A) Is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subsection (10)(b) of this section; and

(B) Prior to default, does not grant the pledgee the power to:

(I) Vote or direct the vote of the pledged ownership interest; or

(II) Dispose or direct the disposition of the pledged ownership interest, other than the grant of such power or powers pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(11) "Capitalization" means the recording of an expenditure as an asset.

(12) "Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

(13) "Cash method of accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

(14) "Change of ownership" means a substitution of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility; or a substitution of control of such operating entity.

(a) Events which constitute a change of ownership include but are not limited to the following:

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

(ii) Ownership of the nursing home business enterprise is transferred by the contractor to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(iii) If the contractor is a partnership, any event occurs which dissolves the partnership;

(iv) If the contractor is a corporation, and the corporation is dissolved, merges with another corporation which is the survivor, or consolidates with one or more other corporations to form a new corporation;

(v) If the operator is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock is transferred to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having held less than five percent of the stock before the initial transaction; or

(vi) Any other event or combination of events which results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services.

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

(i) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(ii) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

(15) "Charity allowances" means reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

(16) "Contract" means a contract between the department and a contractor for the delivery of ((~~SNF or ICF~~)) nursing facility services to medical care recipients.

(17) "Contractor" means an entity which contracts with the department to deliver ((~~care~~)) nursing facility services to medical care recipients in a facility. The entity is responsible for operational decisions.

(18) "Courtesy allowances" means reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

(19) "CSO" means the local community services office of the department.

(20) "Department" means the department of social and health services (DSHS) and employees.

(21) "Depreciation" means the systematic distribution of the cost or other base of tangible assets, less salvage, over the estimated useful life of the assets.

(22) "Donated asset" means an asset the contractor acquired without making any payment for the asset in the form of cash, property, or services.

(a) An asset is not a donated asset if the contractor made even a nominal payment in acquiring the asset.

(b) An asset purchased using donated funds is not a donated asset.

(23) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(24) "Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

(25) "Exceptional care recipient" means a medical care recipient determined by the department to require exceptionally heavy care.

(26) "Facility" means a nursing home or facility licensed in accordance with chapter 18.51 RCW, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(27) "Fair market value" means:

(a) Prior to January 1, 1985, the price for which an asset would have been purchased on the date of acquisition in an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell; or

(b) Beginning January 1, 1985, the replacement cost of an asset, less observed physical depreciation, on the date the fair market value is determined.

(28) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles and the provisions of chapter 74.46 RCW and this chapter including, but not limited to:

(a) Balance sheet;

(b) Statement of operations;

(c) Statement of changes in financial position; and

(d) Related notes.

(29) "Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

(30) "Gain on sale" means the actual total sales price of all tangible and intangible nursing home assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

(31) "Generally accepted accounting principles (GAAP)" means accounting principles approved by the financial accounting standards Board (FASB).

(32) "Generally accepted auditing standards (GAAS)" means auditing standards approved by the american institute of certified public accountants (AICPA).

(33) "Goodwill" means the excess of the price paid for:

(a) A business over the fair market value of all other identifiable, tangible, and intangible assets acquired; and

(b) An asset over the fair market value of the asset.

(34) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

(35) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(36) "Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

(37) "Joint facility costs" means any costs representing expenses incurred which benefit more than one facility, or one facility and any other entity.

(38) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee shall not be considered modification of a lease term.

(39) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(40) "Medical care recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(41) "Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

(42) "Net book value" means the historical cost of an asset less accumulated depreciation.

(43) "Net invested funds" means the net book value of tangible fixed assets, excluding assets associated with central or home offices or otherwise not on the nursing facility premises, employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles and not in excess of any lids or reimbursement limits set forth in this chapter,

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plus an allowance for working capital as provided in this chapter.

(44) "Nonadministrative wages and benefits" means wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

(45) "Nonallowable costs" means the same as "unallowable costs."

(46) "Nonrestricted funds" means funds which are not restricted to a specific use by the donor, e.g., general operating funds.

(47) "Nursing facility" means a home, place, or institution, licensed under chapter 18.51 or 70.41 RCW, where ((~~skilled~~)) nursing ((~~and/or intermediate~~)) care services are delivered.

(48) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(49) "Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of five percent or more of a corporation's outstanding stock.

(50) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form the beneficial ownership takes.

(51) "Patient day" or "resident day" means a calendar day of ((~~patient~~)) care provided to a nursing facility resident. In computing calendar days of care, the day of admission is always counted. The day of discharge is counted only when the patient was admitted on the same day. A patient is admitted for purposes of this definition when the patient is assigned a bed and a patient medical record is opened. A "client day" or "recipient day" means a calendar day of care provided to a medical care recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(52) "Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

(53) "Professionally designated real estate appraiser" means an individual:

(a) Regularly engaged in the business of providing real estate valuation services for a fee;

(b) Qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the:

(i) Writing of real estate valuation reports;

(ii) Passing of written examination on valuation practice and theory; and

(iii) Requirement to subscribe and adhere to certain standards of professional practice as the organization prescribes.

(54) "Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients. The rate is used to compute the maximum participation of the department in the contractor's costs.

(55) "Qualified therapist":

(a) An activities specialist having specialized education, training, or at least one year's experience in organizing and conducting structured or group activities;

(b) An audiologist eligible for a certificate of clinical competence in audiology or having the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional, either a qualified therapist or a therapist, approved by the department having specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker graduated from a school of social work;

(f) A speech pathologist eligible for a certificate of clinical competence in speech pathology or having the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW;

(h) An occupational therapist graduated from a program in occupational therapy, or having the equivalent of education or training, and meeting all requirements of state law; or

(i) A respiratory care practitioner certified under chapter 18.89 RCW.

(56) "Rebased rate" or "cost rebased rate" means a facility-specific rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year.

(57) "Recipient" means a medical care recipient.

((~~(57)~~)) (58) "Records" means data supporting all financial statements and cost reports including, but not limited to:

(a) All general and subsidiary ledgers;

(b) Books of original entry;

(c) Invoices;

(d) Schedules;

(e) Summaries; and

(f) Transaction documentation, however maintained.

((~~(58)~~)) (59) "Regression analysis" means a statistical technique through which one can analyze the relationship between a dependent or criterion variable and a set of independent or predictor variables.

((~~(59)~~)) (60) "Related care" includes:

(a) The director of nursing services;

(b) Activities and social services programs;

(c) Medical and medical records specialists; and

(d) Consultation provided by:

(i) Medical directors;

(ii) Pharmacists;

(iii) Occupational therapists;

(iv) Physical therapists;

(v) Speech therapists; and

(vi) Other therapists; and

(vii) Mental health professionals as defined in law and regulation.

((~~(60)~~)) (61) "Related organization" means an entity under common ownership and/or control, or which has control of or is controlled by, the contractor. Common ownership exists if an entity has a five percent or greater beneficial ownership interest in the contractor and any other entity. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or

policies of an organization or institution, whether or not the power is legally enforceable and however exercisable or exercised.

(((~~(61)~~))) (62) "Relative" includes:

(a) Spouse;

(b) Natural parent, child, or sibling;

(c) Adopted child or adoptive parent;

(d) Stepparent, stepchild, stepbrother, stepsister;

(e) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(f) Grandparent or grandchild; and

(g) Uncle, aunt, nephew, niece, or cousin.

(((~~(62)~~))) (63) "Restricted fund" means a fund for which the use of the principal and/or income is restricted by agreement with or direction of the donor to a specific purpose, in contrast to a fund over which the contractor has complete control. Restricted funds generally fall into three categories:

(a) Funds restricted by the donor to specific operating purposes;

(b) Funds restricted by the donor for additions to property, plant, and equipment; and

(c) Endowment funds.

(((~~(63)~~))) (64) "Secretary" means the secretary of the department of social and health services (DSHS).

(((~~(64)~~))) (65) "Start-up costs" means the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start-up costs include:

(a) Administrative and nursing salaries;

(b) Utility costs;

(c) Taxes;

(d) Insurance;

(e) Repairs and maintenance; and

(f) Training costs.

Start-up costs do not include expenditures for capital assets.

(((~~(65)~~))) (66) "Title XIX" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

(((~~(66)~~))) (67) "Unallowable costs" means costs which do not meet every test of an allowable cost.

(((~~(67)~~))) (68) "Uniform chart of accounts" means a list of account titles identified by code numbers established by the department for contractors to use in reporting costs.

(((~~(68)~~))) (69) "Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

(((~~(69)~~))) (70) "Working capital" means total current assets necessary, ordinary, and related to patient care from the most recent cost report minus total current liabilities necessary, ordinary, and related to patient care from the most recent cost report.

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

AMENDATORY SECTION (Amending Order 2270, filed 8/19/85)

WAC 388-96-032 Termination of contract. (1) When a contract is terminated for any reason, the old contractor shall submit final reports in accordance with WAC 388-96-104.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts owed to the department, as authorized by chapter 74.46 RCW, regardless of source, including but not limited to, civil fines, third-party liabilities and interest owed the department.

(3) The old contractor shall provide security, in a form deemed adequate by the department, ((~~in~~)) equal to the total amount of determined and estimated overpayments and all other debts owed to the department from any source, whether or not the overpayments or debts are the subject of good-faith dispute. Security shall consist of:

(a) Withheld payments for one or more months of service due the contractor; or

(b) A surety bond issued by a bonding company acceptable to the department; or

(c) An assignment of funds to the department; or

(d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment; or

(f) A promissory note secured by a deed of trust; or

(g) Any combination of (a), (b), (c), (d), ((~~or~~)) (e), or (f) of this subsection.

(4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to the total of determined or estimated overpayments and all other debts owed to the department from any source, including interest, whether or not the subject of good-faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: *Provided,* That the bond or assignment shall initially be for a term of five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment ((~~in dispute~~)) and debt liability as determined by the department.

(d) Provide the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor ((~~at~~)) from settlement or from any other source of debt owed to the

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department, including interest, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund and debt within sixty days following receipt of written demand ((~~or the conclusion of administrative or judicial proceedings to contest settlement issues~~)) for payment from the contractor to the department.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments and other debt, including interest.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after all overpayments, erroneous payments and debts determined in connection with final settlement, or otherwise, including accumulated interest owed the department, have been paid by the contractor. ((~~If the contractor contests the settlement determination in accordance with WAC 388-96-224, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.~~))

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) The department may accept an assignment of funds if the assignment meets the requirements of subsections (3) and (4) of this section.

(11) ((~~If a contract is terminated solely in order for the same owner to contract with the department to deliver SNF or ICF services to a different class of medical care recipients at the same nursing home, the contractor is not required to submit final reports, and security shall not be required~~)) Regardless of whether a contractor intends to terminate its Medicaid contract or contracts, if a contractor's net Medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars.

(12) Security authorized by subsection (11) of this section shall meet the criteria set forth in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department is authorized to withhold and shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not received. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(13) Subsections (11) and (12) of this section shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover, and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995.

(14) When a contract is terminated, any accumulated liabilities which are assumed by a new owner shall be reversed against the appropriate accounts by the old contractor.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-108 Failure to submit final reports. (1) If a contract is terminated, the old contractor shall submit a final report as required by WAC 388-96-032(1) and 388-96-104(2). Such final reports must be received by the department within one hundred twenty days after the contract is terminated or prior to the expiration of any department-approved extension granted pursuant to WAC 388-96-107. If a final report is not submitted, all payments made to the contractor relating to the period for which a report has not been received shall be returned to the department within ((~~thirty~~)) sixty days after receiving written demand from the department.

(2) Effective ((~~thirty~~)) sixty days after written demand for payment is received by the contractor, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

AMENDATORY SECTION (Amending Order 2970, filed 4/17/90, effective 5/18/90)

WAC 388-96-204 Field audits. (1) The department shall conduct a field audit of all cost reports for calendar year 1982.

(2) The department may have auditors employed by the department or under contract field audit cost reports for years subsequent to 1982.

(3) Beginning with field audits for calendar year 1983, the department shall audit up to one hundred percent of submitted contractor cost reports and patient care trust fund accounts.

(4) The department may audit any or all schedules of a facility's cost report. The department shall audit the cost ((~~report at least once every three years~~)) reports, receivables and resident trust fund accounts of each nursing facility

participating in the Medicaid payment rate system periodically as determined necessary by the department.

(5) Beginning with audits of cost reports, receivables and resident trust fund accounts for calendar year ((~~1983~~)) 1993, facilities selected for audit shall be notified ((~~within one hundred twenty days after submission of a complete and correct cost report~~)) of the department's intent to audit((~~. Such audits shall be completed within one year after notification of the department's intent to audit unless the contractor fails to allow access to records and documentation or otherwise prevents the audit from being completed in a timely manner~~)) at least ten working days before commencement of an audit of a facility's cost report or resident trust fund accounts.

(6) To assure the accuracy of cost reports, the department or an auditor under contract with the department may require a contractor to submit for departmental review any underlying financial statements or other records including income tax returns relating to the cost report directly or indirectly.

(7) The department shall audit all submitted contractor cost reports of such facilities as follows:

(a) The department shall audit facilities terminating their Medicaid service contracts with the department when the audits are conducted for the calendar year in which the contract is terminated. Schedule preference will be given to conduct closing audits as soon as possible;

(b) The department shall audit facilities contracting in any given calendar year for that partial or full year, and facilities contracting for the first time for the first full calendar year;

(c) The department shall audit facilities under investigation by the Internal Revenue Service, Securities Exchange Commission, Department of Health and Human Services, Medicaid fraud control unit, or any other federal, state, or municipal agency for alleged fiscal and/or patient account impropriety for:

(i) The year such investigation is commenced;

(ii) Each year the investigation is continued;

(iii) The year the investigation is concluded; and

(iv) Two full calendar years following the year the investigation is terminated.

(d) The department shall audit facilities that the manager, residential rate program, aging and adult services, requests be audited.

(8) If a facility has a home or central office and such central office or any associated facility meets any of the criteria set forth in subsection (7) of this section, the department shall audit such facility as provided in subsection (7) of this section.

(9) When an audit discloses material discrepancies, undocumented costs, or mishandling of patient trust funds, the department auditors may re-open a maximum of two prior unaudited cost reporting or trust fund periods and/or select future periods for audit in order to discover similar problems, if any, and take appropriate action.

(10) The department may select for audit on a random or other basis reported costs and trust fund accounts of facilities.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-210 Scope of field audits. (1) Auditors will review the contractor's recordkeeping and accounting practices and, where appropriate, make written recommendations for improvements.

(2) The audit will result in a schedule summarizing adjustments to the contractor's cost report whether such adjustments eliminate costs reported or include costs not reported. These adjustments shall include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Auditors will examine the contractor's financial and statistical records to verify that:

(a) Supporting records are in agreement with reported data;

(b) Only those assets, liabilities, and revenue and expense items the department has specified as allowable have been included by the contractor in computing the costs of services provided under its contract;

(c) Allowable costs have been accurately determined and are necessary, ordinary, and related to ((~~patient~~)) resident care;

(d) Related organizations and beneficial ownerships or interests have been correctly disclosed;

(e) Recipient trust funds have been properly maintained; and

(f) The contractor is otherwise in compliance with provisions of this chapter and chapter 74.46 RCW.

(3) In determining allowable costs for each ((~~contractor~~)) nursing facility for each cost report year selected for field audit, auditors shall consider and include in their adjustments, as appropriate, all peer group cost center limit adjustments as provided in subsections (4) and (5) of this section and other desk review adjustments previously made to the reported costs being audited((~~, that is, made to such costs for the purpose of establishing a contractor's July 1 Medicaid rate following the cost report period under audit~~)).

(4) ((~~Beginning with~~)) For audits of 1992 ((~~audits, in auditing cost reports for all calendar years ending six months before the start of each new biennium~~)) and 1994 cost reports, auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center without inflating or deflating such limits ((~~by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium~~)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1993 and July 1, 1995 prospective rates.

(5) ((~~Beginning with~~)) For audits of 1993 ((~~audits, in auditing cost reports for all calendar years ending six months after the start of each new biennium~~)), 1995, and 1996 cost reports auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center, calculated on adjusted cost report data for the ((~~preceding~~)) report year ((~~ending six months prior to the start of the new biennium~~)) last used to cost-rebase the following July 1 rates but inflated or deflated ((~~by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium~~)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1994, July 1, 1996, and July 1, 1997 prospective rates.

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(6) Auditors will prepare draft audit narratives and summaries and provide them to the contractor before final narratives and summaries are prepared.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-220 Principles of settlement. (1) For each cost center, a settlement shall be calculated at the lower of prospective reimbursement rate or audited allowable costs, except as otherwise provided in this chapter.

(2) Each contractor shall complete a proposed preliminary settlement by cost center as part of the annual cost report and submit it by the due date of the annual cost report. After review of the proposed preliminary settlement, the department shall issue by cost center a preliminary settlement report to the contractor.

(3) If a field audit is conducted, the audit findings shall be evaluated by the department after completion of the audit ((~~and~~)), including exhaustion or termination of any administrative review requested by the contractor, but not judicial review as may be available to and commenced by the contractor. A final settlement by cost center, including any allowable shifting or cost savings, shall then be issued which takes account of such findings and evaluations.

(4) Pursuant to preliminary or final settlement and the procedures set forth in this chapter, the contractor shall refund overpayments to the department and the department shall pay underpayments to the contractor.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-221 Preliminary settlement. (1) In the proposed preliminary settlement submitted under WAC 388-96-220(2), a contractor shall compare the prospective rates at which the contractor was paid during the report period, weighted by the number of patient days reported for the period each rate was in effect, to the contractor's allowable costs for the reporting period. The contractor shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis.

(2) Within one hundred twenty days after a proposed preliminary settlement is received, the department shall:

(a) Review proposed preliminary settlement for accuracy, and

(b) Either accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement shall become the preliminary settlement report. If rejected, the department shall issue, by cost center, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(3) A contractor shall have ((~~thirty~~)) twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the ((~~thirty~~)) twenty-eight-day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

(4) If no audit is scheduled by the department or if a scheduled audit is not performed within two years of the scheduled date, the department shall perform the preliminary settlement review described in this section with the following exceptions:

(a) For cost centers, the department shall:

(i) Use desk-reviewed costs as the contractor's allowable costs for the reporting period;

(ii) Disallow all costs in excess of the nursing facility's peer group median cost limit as described under WAC 388-96-210; and

(iii) For 1992 and 1993 settlements only, nursing facilities qualifying for the nursing services exception described in WAC 388-96-722(9) will have their 1992 and 1993 nursing services costs limited by the product of their 1992 or 1993 total days, respectively, times their June 30, 1993 nursing services rate.

(b) The department shall calculate the variable portion of return on investment as calculated in the prospective rate;

(c) The department shall base the financing allowance portion of return on investment on audited costs in compliance with provisions contained in this chapter. If audited costs are not available, the department shall use the financing allowance used for rate setting. If an audited financing allowance is later determined, the department shall revise the final settlement to reflect audited financing allowance if payment is changed by $1,000 or more; and

(d) When a complete audit was not performed and audited information is needed for purposes of calculating return on investment, the department may do a partial audit of current or prior year cost report.

(5) Beginning with preliminary settlements for report year 1988, if the department intends to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon reported costs. If the department does not intend to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon desk-reviewed costs utilizing the procedure under subsection (4) of this section.

(6) If the facility prevents, hinders, or otherwise delays completion of a full field audit, that facility's preliminary settlement issued on reported costs may be reopened to substitute desk-reviewed costs.

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-224 Final settlement. (1) If an audit is conducted, the department shall issue a final settlement report to the contractor after completion of the audit process, including exhaustion or ((~~mutual~~)) termination of any administrative review((~~s~~)) and appeal((~~s~~)) of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor. The department shall prepare the final settlement by cost center and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. For the final settlement report, the department shall compare:

(a) The prospective rate the contractor was paid for the facility in question during the report period, weighted by the

number of ((~~patient~~)) resident days reported for the period each rate was in effect as verified by audit, to

(b) The contractor's audited allowable costs for the reporting period.

The department shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis. ((~~If the contractor is pursuing in good faith an administrative or judicial review or appeal of audit findings or determinations, the department may issue a partial final settlement report in order to recover overpayments based on audit findings or determinations not in dispute on review or appeal.~~

~~(2) For the 1981 cost report period, the department shall issue one settlement for the year composed of two parts:~~

~~(a) One relating to January 1, 1981, through June 30, 1981; and~~

~~(b) One relating to July 1, 1981, through December 31, 1981.~~

~~(3) For the first six months of 1981, the department shall compute the settlement in accordance with the court order and agreement between the department and Medicaid contractors for the UNH II and III period (January 1, 1978, through June 30, 1981).~~

~~(4) For the second six months of 1981, the department shall compute the settlement in accordance with principles and instructions contained in regulations applicable to 1981 settlements, except for the requirement that a settlement cover an entire cost report year.~~

~~(5)~~)) (2) A contractor shall have ((~~thirty~~)) twenty-eight days after receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the ((~~thirty~~)) twenty-eight-day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

((~~(6)~~)) (3) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from an audit performed pursuant to RCW 74.46.105. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medical care recipients, pursuant to RCW 74.46.180(5).

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-229 Procedures for overpayments and underpayments. (1) Within sixty days after the preliminary or final settlement is received by the contractor, the department shall make payment of underpayments to which a contractor is entitled as determined by ((~~preliminary or final settlement within thirty days after the preliminary or final settlement report is submitted to the contractor~~)) the department under the provisions of chapter 74.46 RCW and this chapter.

(2) The department shall pay interest to a contractor at the rate of one percent per month on any preliminary or final settlement balance still due the contractor sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to a contractor prior to this date. Any increase in a preliminary or final settlement amount due a contractor resulting from a final administrative or judicial decision shall also bear interest until paid at the rate of one percent per month, accruing from sixty days after the preliminary or final settlement was received by the contractor. The department shall pay no interest on amounts due a contractor other than amounts determined by preliminary or final settlement as authorized by this subsection.

(3) A contractor found, under a preliminary or final settlement issued by the department, to have received overpayments or payments in error, as determined by ((~~preliminary or final settlement~~)) the department pursuant to the provisions of chapter 74.46 RCW and this chapter, shall refund such payments to the department within ((~~thirty~~)) sixty days after receipt of the preliminary or final settlement report as applicable. Contractors shall refund to the department funds reimbursed in the enhancement cost center, but not spent in the legislatively authorized manner. For all preliminary or final settlements issued on and after July 1, 1995, regardless of what period a settlement covers, neither a timely-filed request to pursue administrative review as provided in this chapter nor commencement of judicial review, as may be available to a contractor in law, contesting the settlement, erroneous payments or underpayments shall delay recovery of amounts due the department by any authorized means, including recoupment from current payments due a contractor.

((~~(3)~~)) (4) If a contractor fails to ((~~comply with subsection (2) of this section~~)) make repayment of amounts due the department as determined by preliminary or final settlement, the department shall:

(a) Deduct from current monthly amounts due the contractor the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month; or

(b) If the contract has been terminated:

(i) Deduct from any amounts due the old contractor the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month; ((~~or~~))

(ii) Recover the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month from security posted by the old contractor or otherwise obtained by the department; and/or

(iii) Pursue, as authorized by law and regulation, recovery of the refund due and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month.

((~~(4) A facility pursuing a timely filed administrative or judicial remedy in good faith regarding a proposed settlement report need not refund overpayments.~~))

(5) A contractor shall pay interest to the department at the rate of one percent per month on any preliminary or final settlement balance still due the department at the expiration of sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to the department prior to this date. The department shall adjust interest owed by a contractor or refund all or a portion

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of interest collected from the contractor, as applicable, in the event a final administrative or judicial decision reduces or eliminates a preliminary or final settlement amount owed by the contractor.

(6) For all erroneous payments and overpayments determined by preliminary or final settlements issued before July 1, 1995:

(a) The department shall not withhold from current amounts due the facility any refund or interest the department claims to be due from the facility, provided the refund is specifically disputed by the contractor on review or appeal((~~,~~));

(b) Portions of refunds due the department, not specifically disputed by the contractor on review or appeal, are subject to recovery thirty days after the preliminary or final settlement is received by the contractor and assessment of interest ((~~as provided in subsection (3) of this section.~~)) at the rate of one percent per month on any unpaid balance accruing thirty days after the preliminary or final settlement report is received by the contractor until paid in full; and

(c) If the administrative or judicial remedy sought by the facility is not granted or is granted only in part after exhaustion or mutual termination of all appeals, the facility shall refund all amounts due the department within sixty days after the date of decision or termination plus interest as payable on judgments from the date the review was requested pursuant to WAC 388-96-901 and 388-96-904 to the date the repayment is made.

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall promptly convey the resident's personal funds held by the facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate.

(a) If the deceased resident was a recipient of long-term care services paid for in whole or in part by the state of Washington then the personal funds held by the facility and the final accounting shall be sent to the state of washington, department of social and health services, office of financial recovery (or successor office).

(b) The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the forty-fifth day after the date of the resident's death.

(i) When the personal funds of the deceased resident are to be paid to the state of Washington, those funds shall be paid by the facility with a certified check or cashiers check made payable to the secretary, department of social and health services, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(ii) The certified check or cashier's check shall contain the name and social security number of the deceased individual from whose personal funds account the monies are being paid.

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

(i) Friends,

(ii) Relatives,

(iii) Police,

(iv) The guardian, and

(v) The community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;

(b) Provide the new operator with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

AMENDATORY SECTION (Amending Order 1613, filed 2/25/81)

WAC 388-96-501 Allowable costs. (1) Allowable costs are documented costs which are necessary, ordinary and related to the care of medical care recipients, and are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

(2) Beginning with the July 1, 1995 rate period, allowable costs shall not include costs reported by a nursing facility for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the prospective rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-585 Unallowable costs. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items covered by the Medicaid program but not included in the Medicaid nursing facility daily payment rate. Items and services covered by the

Medicaid nursing facility daily payment rate are listed in chapters 388-86 and 388-88 WAC;

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space);

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or violating principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

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

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care;

(r) Fund-raising expenses, except expenses directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of any employee benefit not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs, e.g., key-man insurance, other insurance, or retirement plans;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses for membership in professional organizations and all expenses of maintaining professional licenses, e.g., nursing home administrator's license;

(bb) Costs related to agreements not to compete;

(cc) Goodwill and amortization of goodwill;

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions;

(gg) Lease acquisition costs and other intangibles not related to patient care;

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(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds;

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs;

(jj) Beginning January 1, 1985, interest costs;

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care;

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year;

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

(nn) For rates effective after June 30, 1993, depreciation expense in excess of four thousand dollars per year for each passenger car or other vehicles primarily used for the administrator, facility staff, or central office staff;

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of health at the time of such pool personnel use;

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel;

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year;

(rr) For all partial or whole rate periods after July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA;

(ss) Effective for July 1, 1991, and all following rates, compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensations which would have been paid for such hours of nursing care services had they been paid at the combined regular and overtime average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification of registered nurse, licensed practical nurse, or nursing assistant at the same nursing facility, as reported on the facility's filed cost report for the most recent cost report period;

(tt) Outside consultation expenses required pursuant to WAC 388-88-135;

(uu) Fees associated with filing a bankruptcy petition under chapters VII, XI, and XIII, pursuant to the Bankruptcy Reform Act of 1978, Public Law 95-598;

(vv) All advertising or promotional costs of any kind, except reasonable costs of classified advertising in trade journals, local newspapers, or similar publications for employment of necessary staff;

(ww) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-704 Prospective reimbursement rates. (1) The department ((~~will~~)), as provided in chapter 74.46 RCW and this chapter, shall determine or adjust prospective ((~~reimbursement~~)) Medicaid payment rates for nursing facility services provided to medical care recipients. Each rate represents ((~~the contractor's~~)) a nursing facility's maximum compensation for one ((~~patient~~)) resident day of care ((~~of~~)) provided a medical care recipient determined by the department to both require and be eligible to receive nursing facility care.

(2) A contractor may also be assigned an individual prospective rate for a specific medical care recipient determined by the department to require exceptional care.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds. (1) The department will revise a contractor's prospective rate when the contractor reduces the number of its licensed beds and:

(a) Notifies the department in writing thirty days before the licensed bed reduction; and

(b) Supplies a copy of the new bed license and documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any; and

(c) Requests a rate revision.

(2) The revised prospective rate shall comply with all the provisions of rate setting contained in this chapter including all lids and maximums unless otherwise specified in this section and shall remain in effect until ((~~a prospective rate can be set according to WAC 388-96-713~~)) an adjustment can be made for economic trends and conditions as authorized by chapter 74.46 RCW and this chapter.

(3) The revised prospective rate shall be effective the first of a month determined by where in the month the effective date of the licensed bed reduction occurs or the date the contractor complied with subsections 1(a), (b), and (c) of this section as follows:

(a) If the contractor complied with subsection (1)(a), (b), and (c) of this section and the effective date of the reduction falls:

(i) Between the first and the fifteenth of the month, then the revised prospective rate is effective the first of the month in which the reduction occurs; or

(ii) Between the sixteenth and the end of the month, then the revised prospective rate is effective the first of the month following the month in which the reduction occurs; or

(b) When the contractor fails to comply with subsection 1(a) of this section, then the date the department receives from the contractor the documentation that is required by subsection (1)(b) and (c) of this section shall become the effective date of the reduction for the purpose of applying subsection (3)(a)(i) and (ii) of this section.

(4) For ((~~the first fiscal year of a state biennium, if a contractor's prospective rate is based on either WAC 388-96-710(4) or WAC 388-96-719(2)~~)) all prospective Medicaid payment rates from July 1, 1995 through June 30, 1998, the department shall revise ((~~the contractor's~~)) a nursing facility's prospective rate to reflect a reduction in licensed beds as follows:

(a) ((~~For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

~~(b) For property, administrative, and operational cost centers; and return on investment rate, the department will use the reduced total of licensed beds to determine occupancy level under WAC 388-96-719(10). If the department computed the contractor's occupancy level of licensed beds on the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs and the occupancy level:~~

~~(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:~~

~~(A) Not change the administrative and operational rate;~~

~~(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

~~(ii) Was below eighty-five percent and changes to at or above eighty-five percent after the reduction, then the department will recompute rates for:~~

~~(A) Administrative and operational cost centers using actual patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs; and~~

~~(B) Property and return on investment cost centers using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will recompute rates for:~~

~~(A) Administrative and operational cost centers using the change in patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level; and~~

~~(B) Property and return on investment cost centers using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(5) For the second fiscal year of a state biennium, the department shall revise the contractor's prospective rate, as identified under subsection (4) of this section, as follows:~~

~~(a) For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

~~(b) For property and return on investment rates and to determine a new occupancy level under WAC 388-96-719(10), the department will use the reduced total of licensed beds and the cost report from the prior calendar year;~~

~~(c) If the occupancy level prior to the bed reduction:~~

~~(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

~~(ii) Was below eighty-five percent and changes to eighty-five percent or above after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Revise property and return on investment using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise administrative or operational rates; and~~

~~(B) Revise the property and return on investment rates using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(6) If a contractor's prospective rate is based on either a sample or budget per WAC 388-96-710, the department shall revise the contractor's prospective rate by applying subsection (4)(a) and (b) or (5)(a) and (b) of this section as applicable and:~~

~~(a) Using the days from the timely received budget per WAC 388-96-026(2) and using occupancy as "selected" by the department when the initial rate was set; or~~

~~(b) If the budget was not received timely in accordance with WAC 388-96-026(2), using the product of the statewide average occupancy as reported on all nursing facilities' prior calendar year Medicaid cost reports multiplied by the number of calendar days in the calendar year following the decrease licensed bed capacity multiplied by the number of licensed beds on the new license~~)) The department shall use the reduced total number of licensed beds to determine occupancy used to calculate the nursing services, food, administrative and operational rate components per WAC 388-96-719. If actual occupancy from the 1994 cost report was:

(i) At or over ninety percent before the reduction and remains at or above ninety percent, there will be no change to the components;

(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute the components using actual 1994 resident days;

(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute the components using the change in resident days from the 1994 cost

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report resulting from the reduced number of licensed beds used to calculate the ninety percent.

(b) The department shall use the reduced number of licensed beds to determine occupancy used to calculate the property and return on investment (ROI) components per WAC 388-96-719. If actual occupancy from the cost report from the calendar year immediately prior to the bed reduction was:

(i) At or over ninety percent before the reduction and remains at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;

(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;

(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute property and ROI to reflect the new asset basis using the change in resident days from the cost report for the prior calendar year resulting from the reduced number of licensed beds used to calculate the ninety percent.

(c) Reported occupancy must represent at least six months of data.

(d) The department will utilize a minimum of eighty-five percent occupancy in subsections (a), (b), and (c) of this section for those facilities authorized in chapter 74.46 RCW and this chapter.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-710 Prospective reimbursement rate for new contractors. (1) The department shall establish an initial prospective ((~~reimbursement~~)) Medicaid payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) within sixty days following receipt by the department of a properly completed projected budget (see WAC 388-96-026). The rate shall take effect as of the effective date of the contract and shall comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth ((~~in this chapter~~)). The rate shall remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate shall be cost rebased as provided in this subsection only once during the period July 1, 1995 through June 30, 1998.

(2) To set the initial prospective ((~~reimbursement~~)) Medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department shall:

(a) Determine whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency;

(b) Select all nursing facilities from the department's records of all the current Medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained;

(c) Based on the information for the nursing facilities selected under subsection (2)(b) of this section and available to the department on the day the new contractor began participating in the ((~~program~~)) Medicaid payment rate system at the facility, rank from the highest to the lowest the component rates in nursing services, food, administrative, and operational cost centers and based on this ranking:

(i) Determine the ((~~rate in the~~)) middle of the ranking((~~, above and below which lie an equal number of rates (median)~~)) and then identify the rate immediately above the median for each cost center identified in subsection (2)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center; and

(ii) Set the new contractor's nursing facility component rates for each cost center identified in subsection (2)(c) at the lower of the "selected rate" or the budget rate; and

(iii) Set the property rate in accordance with the provisions of this chapter; and

(iv) Set the return on investment rate in accordance with the provisions of this chapter. In computing the financing allowance, the department shall use for the nursing services, food, administrative, and operational cost centers the rates set pursuant to subsection (2)(c)(i) and (ii) of this section.

(d) Any subsequent revisions to the rate components of the sample members will not impact a "selected rate" component of the initial prospective rate established for the new contractor under this subsection; *unless*, a "selected rate" identified in subsection (2)(c) is at the median cost limit established for July 1, then the median cost limit established after October 31 for that "selected rate" component becomes the component rate for the new contractor.

(3) ((~~If the department has not received a properly completed projected budget from the new contractor as defined under WAC 388-96-026 (1)(a) or (b) at least sixty days prior to the effective date of the new contract,~~)) The department shall establish rates for:

(a) Nursing services, food, administrative and operational cost centers based on the "selected rates" as determined under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(b) Property in accordance with the provisions of this chapter using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received.

(c) Return on investment rate in accordance with the provisions of this chapter using the "selected rates" established under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in

the program, to compute the working capital provision and variable return for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component will remain zero until the information is received.

(4) The initial prospective reimbursement rate for a new contractor as defined under WAC 388-96-026 (1)(c)((,)) shall be the last prospective reimbursement rate paid by the department to the Medicaid contractor operating the nursing facility immediately prior to the effective date of the new contract. If the WAC 388-96-026 (1)(c) contractor's initial rate:

(a) Was set before January 1, 1995, its July 1, 1995 rate will be set by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the 1994 cost report year and its July 1, 1996 and July 1, 1997 rates will not be cost rebased;

(b) Was set between January 1, 1995 and June 30, 1995, its July 1, 1995 rate will be set by using the old contractor's 1994 twelve months' cost report data and its July 1, 1996 and July 1, 1997 rates will not be cost rebased; or

(c) Is set on or after July 1, 1995, its July 1, 1996 and July 1, 1997 rates will not be cost rebased.

(5) ((~~If the new contractor as defined under WAC 388-96-026 (1)(a), (b), or (c) began participating in the program beginning in the first year of a state fiscal biennium or had its first year of a state fiscal biennium rate set under WAC 388-96-710(6), its July 1 prospective reimbursement rate for the second year of that state fiscal biennium shall:~~

~~(a) Be the initial prospective rate set in accordance with WAC 388-96-710 inflated in accordance with WAC 388-96-719; and~~

~~(b) Remain in effect until a prospective rate can be set under WAC 388-96-713~~)) A prospective rate set for a new contractor shall be subject to adjustments for economic tends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

(6) ((~~If the new contractor began participating in the program beginning in the second year of a state fiscal biennium, its July 1 prospective reimbursement rate for the first year of the next state fiscal biennium will be set for the new contractor defined under:~~

~~(a) WAC 388-96-026 (1)(a) and (b), by applying WAC 388-96-710 (2) and (3) using the July 1 rate components established for the first year of the state's fiscal biennium following the second year of the state's fiscal biennium in which the new contractor began participating in the program; or~~

~~(b) WAC 388-96-026 (1)(c), by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the cost report year prior to the first year of the state fiscal biennium for which the rate is being set and applying WAC 388-96-719 through 388-96-754 to set the component rates~~)) A new contractor whose Medicaid contract was effective in calendar year 1994 and whose nursing facility occupancy during calendar year 1994 increased by at least five percent over that of the prior operator, shall have its July 1, 1995 component rates for the nursing services, food, administrative, operational and property cost centers, and its the return on investment (ROI) component rate, based upon a minimum occupancy of eighty-five percent.

(7) ((~~For July 1, 1993 rate setting only, if a new contractor as defined under WAC 388-96-026(1) is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such contractor shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same contractor's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719~~)) Notwithstanding any other provision in this chapter, for rates effective July 1, 1995 and following, for nursing facilities receiving original certificate of need approval prior to June 30, 1988, and commencing operations on or after January 1, 1995, the department shall base initial nursing services, food, administrative,and operational rate components on such component rates immediately above the median for facilities in the same county. Property and return on investment rate components shall be established as provided in chapter 74.46 RCW and this chapter.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-713 Rate determination. (1) Each ((~~contractor's reimbursement~~)) nursing facility's Medicaid payment rate for services provided to medical care recipients will be determined prospectively ((~~once each state biennium~~)) as provided in this chapter and in chapter 74.46 RCW to be effective July 1 of ((~~the first fiscal year of each biennium. Rates shall be adjusted as provided in this chapter to be effective July 1 of the second year of each biennium~~)) 1995, 1996, and 1997 and may be adjusted more frequently to take into account program changes.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Beginning with rates effective July 1, 1984, contractors submitting correct and complete cost reports by March 31st, shall be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-716 Cost areas or cost centers. (1) A ((~~contractor's overall reimbursement~~)) nursing facility's total per resident day Medicaid payment rate for services provided to medical care recipients shall consist of ((~~the total of~~)) six component rates, ((~~each covering one~~)) five relating to cost areas or cost centers and a return on investment (ROI) component rate. The ((~~six~~)) five cost areas or cost centers are:

((~~(1)~~)) (a) Nursing services;
((~~(2)~~)) (b) Food;
((~~(3)~~)) (c) Administrative;
((~~(4)~~)) (d) Operational;

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(((~~5~~))) (e) Property((~~; and~~
~~(6) Return on investment~~))

(2) For prospective rates from July 1, 1995 through June 30, 1998, the maximum component rates for the nursing services, food, administrative, operational and property cost centers and the return on investment (ROI) component rate for each nursing facility shall be calculated utilizing a minimum licensed bed occupancy of ninety percent, unless a minimum occupancy of eighty-five percent is specifically authorized under certain circumstances by chapter 74.46 RCW and this chapter.

(3) The minimum ninety percent facility occupancy shall be used to calculate individual nursing facility component rates in all cost centers, to calculate the median cost limits (MCLs) for the metropolitan statistical area (MSA) and nonmetropolitan statistical area (non-MSA) peer groups, and to array facilities by costs in calculating the variable return portion of the return on investment (ROI) component rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-719 Method of rate determination. (1) ((~~The principles contained in this section are inherent in rate setting effective with July 1, 1993 and following nursing facility prospective rates.~~

~~(2) Reimbursement~~)) Effective July 1, 1995 through June 30, 1998, nursing facility Medicaid payment rates shall be ((~~established~~)) rebased or adjusted for economic trends and conditions annually and prospectively, on a per ((~~patient~~)) resident day basis, ((~~once each calendar year, to be effective July 1, and shall follow a two year cycle corresponding to each state fiscal biennium; provided that, a nursing facility's rate for the first fiscal year of any biennium,~~)) in accordance with the principles and methods set forth in chapter 74.46 RCW and this chapter, to take effect July 1st of each year. Unless the operator qualifies as a "new contractor" under the provisions of this chapter, a nursing facility's rate for July 1, 1995 must be established upon its own ((~~prior~~)) calendar year cost report data for 1994 covering at least six months.

(((~~3) A contractor's~~)) (2) July 1, 1995 component rates in the nursing services, food, administrative((~~,~~)) and operational cost centers ((~~for the first year of the state fiscal biennium (first fiscal year)~~))) shall be ((~~adjusted downward or upward for economic trends and conditions when set effective July 1 of the first fiscal year in accordance with subsections (4), (5) and (6) of this section, and adjusted again downward or upward for economic trends and conditions effective July 1 of the second year of the state fiscal biennium (second fiscal year) in accordance with subsections (7), (8) and (9) of this section~~)) cost-rebased utilizing desk-reviewed and adjusted costs reported for calendar year 1994, for all nursing facilities submitting at least six months of cost data. Such component rates for July 1, 1995 shall also be adjusted upward or downward for economic trends and conditions as provided in RCW 74.46.420 and in this section. Component rates in property and return on investment (ROI) shall be reset annually as provided in chapter 74.46 RCW and in this chapter.

(((~~4) The~~)) (3) July 1, 1995 ((~~cost center~~)) component rates ((~~referenced in subsection (3) of this section shall, for the first fiscal year of each biennium,~~)) in the nursing services, food, administrative and operational cost centers shall be adjusted by the change in the Implicit Price Deflator for Personal Consumption Expenditures Index ((~~published by the United States Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis~~)) ("IPD index"). (((~~5~~))) The period used to measure the ((~~change in the~~)) IPD ((~~Index~~)) increase or decease to be applied to these July 1, 1995 rate components shall be ((~~the~~)) calendar year ((~~preceding the July 1 commencement of the state fiscal biennium (first calendar year). The change in the IPD Index shall be calculated by:~~

~~(a) Consulting the latest quarterly IPD Index available to the department no later than February 28 following the first calendar year to determine, as nearly as possible, the applicable expenditure levels as of December 31 of the first calendar year;~~

~~(b) Subtracting from the expenditure levels taken from the quarterly IPD Index described in subsection (5)(a) of this section the expenditure levels taken from the IPD Index for the quarter occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section; and~~

~~(c) Dividing the difference by the level of expenditures from the quarterly IPD Index occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section.~~

~~(6)~~))) 1994.

(4) July 1, 1996 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1996, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index). The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1996 component rates for July 1, 1996 rate setting shall be calendar year 1994.

(5) July 1, 1997 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1997, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index), multiplied by a factor of 1.25. The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1997 component rates for July 1, 1997 rate setting shall be calendar year 1996.

(6) The 1994 change in the IPD index to be applied to July 1, 1995 component rates in the nursing services, food, administrative and operational costs centers, as provided in subsection (3) of this section, shall be calculated by:

(a) Consulting the latest quarterly IPD index available to the department no later than February 28, 1995 to determine, as nearly as possible, applicable expenditure levels as of December 31, 1994;

(b) Subtracting from expenditure levels taken from the quarterly IPD index described in subsection (6)(a) of this

section expenditure levels taken from the IPD index for the quarter occurring one year prior to it; and

(c) Dividing the difference by the level of expenditures from the quarterly IPD index occurring one year prior to the quarterly IPD index described in subsection (6)(a) of this section.

(7) In applying the change in the IPD index to establish ((~~first fiscal year~~)) July 1, 1995 component rates in the nursing services, food, administrative and operational cost ((~~center rates~~)) centers for a contractor having at least six months, but less than twelve months, of cost report data from ((~~the prior~~)) calendar year 1994, the department shall prorate the downward or upward adjustment by a factor obtained by dividing the contractor's actual calendar days ((~~of~~)) from 1994 cost report data by two, adding three hundred sixty-five, and dividing the resulting figure by five hundred forty-eight.

(((~~(7) For the second year of each state fiscal biennium, a contractor's July 1 cost center rates referenced in subsection (2) of this section shall be the July 1 component rates for the first year of the state fiscal biennium, adjusted downward by any decrease, or upward by one and one-half times any increase, in the Nursing Home Input Price Index without Capital Costs published by the Health Care Financing Administration of the United States Department of Health and Human Services ("HCFA Index").~~))

(8) ((~~The period used to measure the change in the HCFA Index shall, subject to subsection (9) of this section, be the calendar year preceding the July 1 commencement of the state fiscal biennium (first fiscal year).~~)) The change in the HCFA index to be applied to each nursing facility's June 30, 1996 and June 30, 1997 component rates in nursing services, food, administrative and operational cost centers, as provided in subsections (4) and (5) of this section, shall be calculated by:

(a) Consulting the latest quarterly HCFA index available to the department no later than February 28 following the ((~~first~~)) applicable calendar year to be used to measure the change to determine, as nearly as possible, the applicable price levels as of December 31 of the ((~~first~~)) applicable calendar year;

(b) Subtracting from the price levels taken from the quarterly HCFA index described in subsection (8)(a) of this section the price levels taken from the HCFA Index for the quarter occurring one year prior to ((~~the quarterly HCFA Index described in subsection (8)(a) of this section~~)) it; and

(c) Dividing the difference by the price levels from the quarterly HCFA Index occurring one year prior to the quarterly HCFA Index described in subsection (8)(a).

(9) If either the Implicit Price Deflator for Personal Consumption Expenditures (IDP) index or the Health Care Financing Administration (HCFA) index specified in this section ceases to be available, the department shall select and use in its place or their place one or more measures of change utilizing the same or comparable time periods specified in this section.

(10) The department shall compute the occupancy level for each facility ((~~in accordance with the following:~~

~~(a) For the first fiscal year of a state biennium,~~)) by dividing the actual number of ((~~patient~~)) resident days ((~~from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of that state biennium~~)) by the product of the number((~~s~~)) of licensed beds ((~~multiplied by~~)) and calendar days in the 1994 cost report period. If a facility's occupancy ((~~level~~)) is((~~:~~

~~(i) At or above eighty-five~~)) below ninety percent, the department shall compute per ((~~patient~~)) resident day ((~~prospective rates and limits for~~)) nursing services, food, administrative((~~,~~)) and operational((~~, property and return on investment components using actual patient days;~~

~~(ii) Below eighty-five percent, the department shall compute per patient day~~)) prospective component rates and limits ((~~for:~~

~~(A) Nursing and food components using actual patient days; and~~

~~(B) Administrative, operational, property and return on investment components using patient~~)) utilizing resident days at the ((~~eighty-five~~)) ninety percent occupancy level. (((~~(b) For the second fiscal year of a biennium,~~)) The department shall ((~~compute the~~)) use actual occupancy level ((~~by dividing the actual number of patient days from the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that biennium by the product of the number of licensed beds multiplied by calendar days in that report period. The department shall:~~

~~(i) Compute the per patient day return on investment rate and prospective property rate when a facility's occupancy level is:~~

~~(A)~~)) for facilities at or above ((~~eight-five~~)) ninety percent occupancy ((~~level, using actual patient days; or~~

~~(B) Below eighty-five percent using patient days at the eighty-five percent occupancy level.~~

~~(ii) Not adjust nursing, food, administrative and occupational rates for any change to actual patient days, calendar days, and/or occupancy as reported on the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that state biennium. For bed increases or decreases the department shall use WAC 388-96-709 and other applicable WACs to determine occupancy level.~~

~~(c) For new contractors as defined under WAC 388-96-026 (a) or (b), occupancy shall be based on a minimum of eighty-five percent for administrative, operations, property and return on investment~~)) for 1994. The higher of ninety percent occupancy or actual facility occupancy for 1994 shall be used in establishing these component rates for July 1, 1995, July 1, 1996, and July 1, 1997. The department shall compute per resident day property and return on investment prospective component rates utilizing resident days at the higher of ninety percent occupancy or actual facility occupancy for the prior calendar year for July 1, 1995, July 1, 1996, and July 1, 1997.

(11) If a nursing ((~~home provides residential care to individuals~~)) facility has full-time residents other than those receiving nursing facility care:

(a) The facility may request in writing, and

(b) The department may grant in writing an exception to the requirements of subsection (10) of this section by including such other full-time residents in computing occupancy. Exceptions granted shall be revocable effective ninety days after written notice of revocation is received from the department. The department shall not grant an exception unless the contractor submits with the annual cost report a certified statement of occupancy including all residents of the facility and their status or level of care.

PROPOSED

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

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-722 Nursing services cost area rate. (1) The nursing services cost center shall include for reporting and auditing purposes all costs relating to the direct provision of nursing and related care, including fringe benefits and payroll taxes for nursing and related care personnel and for the cost of nursing supplies. The cost of one-to-one care shall include care provided by qualified therapists and their employees only to the extent the costs are not covered by Medicare, part B, or any other coverage.

(2) In addition to other limits contained in this chapter, the department shall subject nursing service costs to a test for nursing staff hours according to the procedures set forth in subsection (3) of this section.

(3) The test for nursing staff hours referenced in subsection (2) of this section shall use a regression of hours reported by facilities for registered nurses, licensed practical nurses, and nurses' assistants, including:

(a) Purchased and allocated nursing and assistant staff time; and

(b) The average patient debility score for the corresponding facilities as computed by the department. The department shall compute the regression ((~~every two years which shall be effective for the entire biennium, beginning July 1, 1993,~~)) only once for determination of rates from July 1, 1995 through June 30, 1998 and shall take data for the regression from:

(i) Correctly completed 1994 cost reports; and

(ii) Patient assessments completed by nursing facilities and transmitted to the department in accordance with the minimum data set (MDS) format and instructions, as may be corrected after departmental audit or other investigation, for the corresponding calendar report year and available at the time the regression equation is computed. Effective January 1, 1988, the department shall not include the hours associated with off-site or class room training of nursing assistants and the supervision of such training for nursing assistants in the test for nursing staff hours. The department shall calculate and set for each facility a limit on nursing and nursing assistant staffing hours at predicted staffing hours plus 1.75 standard errors, utilizing the regression equation calculated by the department. The department shall reduce costs for facilities with reported hours exceeding the limit by an amount equivalent to:

(A) The hours exceeding the limit;

(B) Times the average wage rate for nurses and assistants indicated on cost reports for the year in question, including benefits and payroll taxes allocated to such staff. The department shall provide contractors' reporting hours exceeding the limit the higher of their January 1983 patient care rate or the nursing services rate computed for them according to the provisions of this subsection, plus applicable inflation adjustments.

(4) For all rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement (commonly referred to as "nursing pool" services), in excess of the amount of compensation which would have been paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(5) Staff of like classification shall mean only the nursing classifications of registered nurse, licensed practical nurse or nurse assistant. The department shall not recognize particular individuals, positions or subclassifications within each classification for whom pool staff may be substituting or augmenting. The department shall derive the facility average hourly wage for each classification by dividing the total allowable regular and overtime salaries and wages, including related taxes and benefits, paid to facility staff in each classification divided by the total allowable hours worked for each classification. All data used to calculate the average hourly wage for each classification shall be taken from the cost report on file with the department's rates management office for the most recent cost report period.

(6) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the nursing services cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be those nursing facilities:

(i) Located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Not located within such an area (non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted nursing services cost from the ((~~prior~~)) 1994 cost report year, ((~~which shall include all costs of nursing supplies and purchased and allocated medical records,~~)) regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be included in costs arrayed. Costs current-funded by rate add-ons commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 shall be excluded from costs arrayed.

(c) The median or fiftieth percentile nursing facility cost in nursing services for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted nursing services cost of the lowest cost facility in the upper half shall be used as the

median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the nursing services cost area prior to issuing new July 1 rates.

(7) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, nursing services component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day nursing services cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing services cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(8) Rate add-ons made to current fund nursing services costs, pursuant to WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on any calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1, 1995 nursing services rate higher than that provided in subsection (7) of this section.

(9) ((~~For July 1, 1993 rate setting only, if a nursing facility is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such facility shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same facility's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719.~~

~~(10) For July 1, 1993 rate setting only, nursing services rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's nursing services rate established under subsection (7) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add nursing services rate add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium,~~)) to a nursing facility's rate in nursing services, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

((~~(11)~~)) (10) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted nursing services cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 component rate ((~~for the first fiscal year~~)) in nursing services based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's nursing services component rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

((~~(12)~~)) (11) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated using October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

((~~(13)~~)) (12) Neither the per patient day peer group median plus twenty-five percent limit for nursing services cost nor the test for nursing staff hours authorized in this section shall apply to the pilot facility designated to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan. The AIDS pilot facility shall be the only facility exempt from these limits.

((~~(14) Beginning with July 1, 1994 prospective rates, a nursing facility's rate in nursing services for the second fiscal year of each biennium shall be that facility's nursing services rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(15) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 nursing services rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~))

(13) For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996, pursuant to RCW 74.46.460, WAC 388-96-774, and 388-96-777.

(14) For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997 nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1997, excluding any rate adjustments granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

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AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-727 Food cost area rate. (1) The food cost center shall include for cost reporting purposes all costs of bulk and raw food and beverages purchased for the dietary needs of the nursing facility residents.

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the food cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted food cost from the ((~~prior~~)) 1994 cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, in costs arrayed. The department shall exclude costs current-funded by rate add-ons granted under the authority of WAC 388-96-777 and commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility food cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted food cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the food cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only , food component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day food cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility food cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund food costs, pursuant to WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year of a state biennium~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on any calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1, 1995 food rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate setting only, food rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's food rate established under subsection (3) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add food rate add-ons, granted under authority of WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium~~)), to a nursing facility's rate in food, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted food cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 component rate ((~~for the first fiscal year~~)) in food based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's food rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's rate in food for the second fiscal year of each biennium shall be that facility's food rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 food rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in food shall be that facility's food component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The

July 1, 1996, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460 and WAC 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in food shall be that facility's food component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460 and WAC 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-735 Administrative cost area rate. (1) The administrative cost center shall include for cost reporting purposes all administrative, oversight, and management costs, whether incurred at the facility or allocated in accordance with a department-approved joint cost allocation methodology. ((~~Such costs shall be identical to the cost report line items categorized on the 1992 calendar year report under "general and administrative" within the administration and operations (A&O) combined cost center existing for reporting purposes prior to January 1, 1993, with the exception of nursing supplies and purchased and allocated medical records. The department shall issue cost reporting instructions identifying administrative costs for 1993 and following cost report years.~~))

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the administrative cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted administrative cost from the ((~~prior~~)) 1994 cost report year((~~, excluding the costs of nursing supplies and purchased and allocated medical records~~)), regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year((~~,~~)) in costs arrayed. The department shall exclude costs current-funded by rate add-ons granted under the authority of WAC 388-96-777 and commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility administrative cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted administrative cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the administrative cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, administrative component rates for facilities within each peer group shall be set for the ((~~first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day administrative cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility administrative cost for the facility's peer group using the 1994 calendar year report data plus ten percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund administrative costs, pursuant to WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year of a state biennium~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on the calculation or consideration of any such ((~~prior~~)) 1994 report year adjustment, a July 1, 1995 administrative rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate setting only, administrative rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's administrative rate established under subsection (3) of this section.~~)) For all rate setting beginning July 1, 1995 and following, the department shall add administrative rate add-ons, granted under authority of WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium,~~)) to a facility's administrative rate, but only up to the facility's peer group median cost plus ten percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based on the most recent adjusted administrative cost report information in departmental records as of October 31 ((~~of the first fiscal year of each~~

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~~biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 administrative component rate ((~~for the first fiscal year~~)) based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's administrative rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted administrative cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995 the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's administrative rate for the second fiscal year of each biennium shall be that facility's administrative rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 administrative rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460 and WAC 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460 and WAC 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-737 Operational cost area rate. (1) The operational cost center shall include for cost reporting purposes all allowable costs having a direct relationship to the daily operation of the nursing facility (but not including nursing services and related care, food, administrative, or property costs), whether such operating costs are incurred at the facility or are allocated in accordance with a department-approved joint cost allocation methodology.

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the operational cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a metropolitan statistical area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted operational cost from the ((~~prior~~)) 1994 cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be included in costs arrayed. The department shall exclude costs current-funded by rate add-ons commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility operational cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted operational cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the operational cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, operational component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day operational cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility operational cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund operational costs, pursuant to WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on the calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1 operational rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate-setting only, operational rate adjustments, granted under authority of WAC 388-96-774 and commencing January 1, 1993 through June 30, 1993, shall be added to a facility's operational rate established under subsection (3) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add operational rate add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium~~)) to a facility's operational rate, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted operational cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1 operational component rate ((~~for the first fiscal year~~)) based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's operational rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted ((~~administrative~~)) operational cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995 the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's operational rate for the second fiscal year of each biennium shall be that facility's operational rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 operational rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-745 Property cost area reimbursement rate. (1) The department shall determine the property cost area component rate for each facility annually, to be effective July 1, ((~~regardless of whether the July 1 rate is for the first or second year of the biennium~~)) 1995, 1996, and 1997 in accordance with this section and any other applicable provisions of this chapter. For July 1, 1995, July 1, 1996, and July 1, 1997 rates, funding granted under the authority of WAC 388-96-776 shall be annualized and subsumed in each of these July 1 prospective rates.

(2) The department shall divide the allowable prior period depreciation costs subject to the provisions of this chapter, adjusted for any capitalized addition or replacements approved by the department, plus

(a) The retained savings from the property cost center as provided in WAC 388-96-228, by

(b) The greater of:

(i) Total ((~~patient~~)) resident days for the facility in the ((~~prior~~)) calendar year cost report period ending six months prior to each July 1, property component rate commencement date; or

(ii) Resident days for the facility as calculated on ninety or eight-five percent facility occupancy, as applicable in accordance with the provisions of this chapter and chapter 74.46 RCW.

(3) Allowable depreciation costs are defined as the costs of depreciation of tangible assets meeting the criteria specified in WAC 388-96-557, regardless of whether owned or leased by the contractor. The department shall not reimburse depreciation of leased office equipment.

(4) If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the calendar year following the capitalized addition or replacement, ((~~patient~~)) resident days from the cost report for the calendar year immediately prior to the capitalized addition or replacement that were used in computing the property component rate will be adjusted to the product of the occupancy level derived from the cost report used to compute the property component rate at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license. For rate computation purposes the minimum occupancy for the initial property component rate period following the increase in licensed bed capacity shall be eighty-five percent; and for each rate period thereafter that will be rebased, commencing July 1, it shall be ninety percent. If a capitalized addition, replacement, or retirement

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results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

(5) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need, the department shall determine actual and allocated allowable land cost and building construction cost. Reimbursement for such allowable costs, determined pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection and in subsections (4), (5), and (6) of this section. The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the *Marshall and Swift Valuation Service* published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(6) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of Medicaid reimbursement;

(i) Other items included by the *Marshall and Swift Valuation Service* when deriving the calculator method costs.

(7) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from one of the three tables which follow. The department shall derive the limit from the accompanying table which corresponds to the number of total nursing home beds for the proposed new construction, remodel or expansion. The limit will be the sum of the basic construction cost limit plus the common use area limit which corresponds to the type and class of the new construction, remodel or expansion. The limits calculated using the tables shall be adjusted forward from September 1990 to the average date of construction, to reflect the change in average construction costs. The department shall base the adjustment on the change shown by relevant cost indexes published by Marshall and Swift Publication Company. The average date of construction shall be the midpoint date between award of the construction contract and completion of construction.

BASE CONSTRUCTION COST LIMITS	COMMON-USE AREA COST LIMITS
74 BEDS & UNDER	
Building Class / Base per Bed Limit	Base Limit
A-Good	$50,433	$278,847
A-Avg	$41,141	$227,469
B-Good	$48,421	$267,718
B-Avg	$40,042	$221,392
C-Good	$35,887	$198,421
C-Avg	$27,698	$153,143
C-Low	$21,750	$120,258
D-Good	$33,237	$183,765
D-Avg	$25,716	$142,182
D-Low	$20,298	$112,227

BASE CONSTRUCTION COST LIMITS		COMMON-USE AREA COST LIMITS	
75 TO 120 BEDS			
Building Class	Base Limit	Add per Bed Over 74	Base Limit	Add per Bed Over 74
A-Good	$3,732,076	$48,210	$278,847	$2,808
A-Avg	$3,044,442	$39,327	$227,469	$2,291
B-Good	$3,583,131	$46,286	$267,718	$2,696
B-Avg	$2,963,112	$38,277	$221,392	$2,230
C-Good	$2,655,654	$34,305	$198,421	$1,998
C-Avg	$2,049,668	$26,477	$153,143	$1,542
C-Low	$1,609,531	$20,792	$120,258	$1,211
D-Good	$2,459,506	$31,771	$183,765	$1,851
D-Avg	$1,902,956	$24,582	$142,182	$1,442
D-Low	$1,502,048	$19,403	$112,227	$1,130

BASE CONSTRUCTION COST LIMITS		COMMON-USE AREA COST LIMITS	
121 BEDS AND OVER			
Building Class	Base Limit	Add per Bed Over 120	Base Limit	Add per Bed Over 120
A-Good	$5,949,745	$42,359	$408,015	$2,106
A-Avg	$4,853,505	$34,555	$332,855	$1,718
B-Good	$5,712,287	$40,669	$391,734	$2,022
B-Avg	$4,723,848	$30,142	$323,972	$1,672
C-Good	$4,233,692	$23,264	$290,329	$1,499
C-Avg	$3,267,618	$18,268	$224,092	$1,157
C-Low	$2,565,943	$27,916	$175,971	$ 908
D-Good	$3,920,989	$21,599	$268,911	$1,388
D-Avg	$3,033,727	$17,048	$208,493	$1,081
D-Low	$2,394,592	$19,403	$164,220	$ 848

(8) When some or all of a nursing home's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance shown in the attached tables for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limit in the table. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes from the Marshall and Swift Publication.

(9) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

(a) Actual cost per square foot, including allocations; or

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments.

(10) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsection (3), (4), and (5) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of their financial impact with the request.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-754 A contractor's return on investment. (1) The department shall establish for each Medicaid nursing facility a return on investment (ROI) component rate composed of a financing allowance and a variable return allowance. The department shall determine a facility's ROI rate annually in accordance with this section, to be effective July 1, ((~~regardless of whether the rate is for the first or second fiscal year of a state biennium~~)) 1995, July 1, 1996, and July 1, 1997.

(2) The department shall rebase a nursing facility's financing allowance annually and shall determine the financing allowance by:

(a) Multiplying the net invested funds of each facility by ten percent and dividing by the ((~~contractor's~~)) greater of:

(i) A nursing facility's total ((~~patient~~)) resident days from the most recent cost report period, to which the provisions of WAC 388-96-719 and RCW 74.46.420 shall apply((~~, and corresponding~~)); or

(ii) Resident days calculated on ninety percent or eighty-five percent resident occupancy at the facility, as determined by the provisions of this chapter. Resident day calculations from the most recent cost report shall correspond to the following:

(A) If the nursing facility cost report covers twelve months, annual ((~~patient~~)) resident days from the contractor's most recent twelve month cost report period; or

(B) If the nursing facility cost report covers less than twelve months but more than six months, annualized ((~~patient~~)) resident days and working capital costs based upon data in the cost report; or

(C) If a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the total ((~~patient~~)) resident days from the cost report immediately prior to the capitalized addition or replacement that were used in computing the financing and variable return allowances will be adjusted to the product of the occupancy level derived from the cost report used to compute the financing and variable return allowances at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license; or

(D) If a capitalized addition or retirement of an asset results in a ((~~different~~)) decreased licensed bed capacity WAC 388-96-709 will apply((~~:~~)).

(b) For ((~~the first fiscal year of a state biennium~~)) July 1, 1995 rate setting, the working capital portion of net invested funds at a nursing facility shall be five percent of the sum of a contractor's costs from the cost report year used to establish the contractor's prospective component rates in the nursing services, food, administrative, and operational cost centers that have been adjusted for economic trends and conditions under authority of WAC 388-96-719 and RCW 74.46.420 and five percent of allowable property cost.

(c) For ((~~the second fiscal year of a state biennium~~)) July 1, 1996 rate setting, the working capital portion of net invested funds shall be five percent of the sum of the July 1, 1996 prospective component rates, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777, for ((~~the first fiscal year in~~)) the nursing services, food, administrative, and operational cost centers multiplied by ((~~the patient~~)) resident days as defined in subsection (2)(a)(((~~i),~~)) (ii)((~~, (iii), or (iv)~~)) (A), (B), (C), and (D) of this section from ((~~the~~)) calendar year ((~~immediately prior to the second fiscal year of a state biennium~~)) 1995, adjusted for economic trends and conditions granted under authority of WAC 388-96-719 plus the desk reviewed property costs from the cost report ((~~of the prior~~)) for calendar year 1995;

(((~~c~~))) (d) For July 1, 1997 rate setting, the working capital portion of net invested funds shall be five percent of the sum of the July 1, 1997 prospective component rates, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777, for the nursing services, food, administrative and operational cost centers multiplied by resident days as defined in subsection (2)(a)(ii)(A), (B), (C), and (D) of this section from calendar year 1996, adjusted for economic trends and conditions granted under authority of WAC 388-96-719 plus the desk reviewed property costs from the cost report for calendar year 1996;

(e) For ((~~either the first or second year of a state biennium~~)) July 1, 1995, July 1, 1996, and July 1, 1997 rate setting, in computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in this chapter, including owned and leased assets, shall be used, except the capitalized cost of land upon which a facility is located and other such contiguous land which is reasonable and necessary for use in the regular course of providing ((~~patient~~)) resident care shall also be included. As such, subject to provisions contained in this chapter, capitalized cost of leased land, regardless of the type of lease, shall be the lessor's historical capitalized cost. Subject to provisions contained in this chapter, for land purchases before July 18, 1984 (the enactment date of the Deficit Reduction Act of 1984 (DEFRA)), capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased on or after July 18, 1984, capitalized cost of land shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable

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or unwilling to provide necessary information to determine net invested funds, the department may determine an amount to be used for net invested funds based upon an appraisal conducted by the department of general administration per this chapter; and

((~~(d)~~)) (f) A contractor shall retain that portion of ROI rate payments at settlement representing the contractor's financing allowance only to the extent reported net invested funds, upon which the financing allowance is based, are substantiated by the department.

(3) The department shall determine the variable return allowance according to the following procedure:

(a) ((~~Once every two years at the start of each biennium, beginning with~~)) For July 1, ((~~1993~~)) 1995 rate setting only, the department shall, without utilizing the MSA and Non-MSA peer groups used to calculate other Medicaid component rates, rank all facilities in numerical order from highest to lowest based upon the combined average ((~~per diem~~)) resident day allowable costs, as adjusted by desk review and audit, for the nursing services, food, administrative, and operational cost centers taken from the ((~~prior~~)) 1994 cost report period. The department shall use adjusted costs taken from 1994 cost reports having at least six months of data, shall not include adjustments for economic trends and conditions granted under authority of WAC 388-96-719 and RCW 74.46.420, and shall include costs current-funded under authority of WAC 388-96-774 and 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year. The adjusted costs of each facility shall be calculated based upon a minimum facility occupancy of ninety percent. In the case of a new contractor, nursing services, food, administrative, and operational cost levels actually used to set the initial rate shall be used for the purpose of ranking the new contractor.

(b) The department shall compute the variable return allowance by multiplying the sum of the July 1, 1995 nursing services, food, administrative and operational rate components for each nursing facility by the appropriate percentage which shall not be less than one percent nor greater than four percent. The department shall divide the facilities ranked according to subsection (3)(a) of this section into four groups, from highest to lowest, with an equal number of facilities in each group or nearly equal as is possible. The department shall assign facilities in the highest quarter a percentage of one, in the second highest quarter a percentage of two, in the third highest quarter a percentage of three, and in the lowest quarter a percentage of four. The per patient day variable return allowance in the initial rate of a new contractor shall be the same as that in the rate of the preceding contractor, if any.

(c) The percentages so determined and assigned to each facility for July 1, 1995 rate setting ((~~for the first fiscal year of each state biennium~~)), shall continue to be assigned without modification for July 1, 1996 and July 1, 1997 rate setting ((~~for the second fiscal year of each biennium~~)). Neither the break points separating the four groups nor facility ranking shall be adjusted to reflect future rate add-ons granted to contractors for any purpose under WAC 388-96-774 and 388-96-777. These principles shall apply, as well, to new contractors as defined in WAC 388-96-026 (1)(a) and (b).

(d) For an initial rate established for a nursing facility on or after July 1, 1995 under WAC 388-96-710(1), the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return percentage breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon the consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the initial rate shall continue until the facility's return on investment component rate can be rebased from cost report data of the new contractor covering at least six months from the prior calendar year.

(e) For a new contractor's nursing facility rate rebased as of July 1, 1996 determined under WAC 388-96-710, the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon the consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the rebased rate at this time shall continue without modification for July 1, 1997 rate setting.

(f) For a new contractor's nursing facility rate rebased as of July 1, 1997 determined under WAC 388-96-710, the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the rebased rate at this time shall continue without modification until June 30, 1998.

(4) The sum of the financing allowance and the variable return allowance shall be the return on investment rate for each facility and shall be a component of the prospective rate for each facility.

(5) If a facility is leased by a contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement as defined in this chapter, and for which the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to this chapter, is more than the return on investment allowance determined according to this section, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets, as of January 1, 1982, determined by department of general administration appraisal less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. Said appraisal shall be final unless shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under this subsection and the variable return allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to this chapter. The lesser of the

two amounts shall be called the alternate return on investment allowances.

(c) The return on investment allowance determined in accordance with subsections (1), (2), (3), and (4) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be a component of the prospective rate of the facility.

(d) In the case of a facility leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease agreement existing on January 1, 1980, the treatment provided in subsection (5)(a) of this section shall be applied except that in the case of renewals or extensions made on or subsequent to April 1, 1985, per a provision of the lease agreement existing on January 1, 1980, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(6) The information from the two prior reporting periods used to set the two prospective return on investment rates in effect during the settlement year is subject to field audit. If the financing allowances which can be documented and calculated at audit of the prior periods are different than the prospective financing allowances previously determined by desk-reviewed, reported information, and other relevant information, the prospective financing allowances shall be adjusted to the audited level at final settlement of the year the rates were in effect, except the adjustments shall reflect a minimum bed occupancy level of eighty-five percent. Any adjustments to the financing allowances pursuant to this subsection shall be for settlement purposes only. However, the variable return allowances shall be the prospective allowances determined by desk-reviewed, reported information, and other relevant information and shall not be adjusted to reflect prior-period audit findings.

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

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-763 Rates for recipients requiring exceptionally heavy care. (1) A nursing facility contractor certified to provide nursing services, a discharging hospital, a recipient of Medicaid benefits or her/his authorized representative may apply for an individual prospective reimbursement rate for a Medicaid recipient whose special nursing and direct care-related service needs are such that the hours of nursing services needed are at least twice the per patient day average of nursing services hours provided in the nursing facility to which the recipient is admitted as determined by the facility's Medicaid cost report for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994.

(2) When application for an exceptional care rate is made before determining where the recipient will be placed, pre-admission qualification may be granted when the recipient's special nursing and direct care needs require hours of nursing services at least twice the statewide per patient day average derived from Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994. For reviews to determine continued qualification only for such recipients, conducted during the specified period of time determined under subsection (4) of this section, the department will continue to utilize the statewide average available to the department, assuming the care plan is unchanged. For subsequent reviews to determine continued qualification, the contractor's average, set forth under subsection (1) of this section, shall be substituted for the statewide average.

(3) The contractor or other applicant shall apply for exceptional care rate qualification for an exceptionally heavy care recipient in accordance with department instructions. The facility shall bill the department at the authorized exceptional care rate within three hundred sixty-five days from the exceptional care rate's effective date. Bills for services submitted after three hundred sixty-five days shall be denied as untimely.

(4) When the department grants an individual rate for an exceptionally heavy care recipient, it shall be for a specified period of time, which the department shall determine, subject to extension, revision, or termination depending on the recipient's care requirements at the end of such period. If within thirty days after a resident's admission to a nursing facility the application for such resident for an exceptional care rate is submitted to the department and includes the facility plan of care documenting the need for and delivery of the resident's nursing and direct care hours, the rate, if approved, shall be effective as of the date of admission. Applications submitted more than thirty days after admission to the facility, if approved, shall be effective as of the date of application.

(5) Extensions of exceptional care rates will not be approved without an updated care plan and resident medical status information submitted in accordance with departmental instruction prior to the scheduled date of the rate's termination. Failure to comply will result in automatic termination as of the scheduled date and reinstatement of an exceptional care rate, if desired, will require re-application and approval. Discharge or transfer of the recipient, permanently or temporarily, shall terminate an exceptional care rate which shall be nontransferable to a different facility. Qualification upon re-admission shall require re-application. A contractor may not transfer or discharge a Medicaid recipient based upon the status of an exceptional care rate or application for such a rate.

(6) Regardless of whether statewide average nursing hours derived from the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994 or facility average nursing hours reported on the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994 are used for qualification, the exceptional care rate for a recipient shall be calculated by:

(a) Deriving a ratio equivalent to actual or projected nursing hours per patient day needed by the recipient in excess of the facility-specific reimbursed average nursing hours per patient day divided by the facility-specific reported average nursing hours per patient day derived from the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately~~

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~~prior to the first fiscal year of the current state biennium~~)) 1994;

(b) Multiplying the ratio by the facility-specific nursing services rate in effect at the time of the initial request or in the case of continuation or revision, the facility's nursing services rate in effect at the time of the approval of the continuation or revision; and

(c) Adding the result of subsection (6)(b) of this section to the total facility-specific reimbursement rate; *provided,* that in no circumstance shall an exceptional care rate exceed one hundred sixty percent of the facility's Medicare reimbursement rate in place at the time the exceptional care rate takes effect.

(7) A pre-admission exceptional care rate shall be effective for thirty days. The contractor shall notify the department, in writing, as soon as the recipient is admitted to the contractor's facility. If resident placement in a Medicaid nursing facility has not occurred within thirty days after the department receives the exceptional care application the contractor shall submit, an updated plan of care in order to reinstate exceptional care qualification.

(8) Unless the department establishes otherwise, extensions require an updated plan of care to be completed and submitted every ninety days for each exceptional care recipient, including documentation supporting the need for services identified in the plan of care. The department shall base a decision to continue, revise, or terminate an exceptional care rate on review of the updated plan of care and supporting documentation, a current care need assessment, and other information available to the department.

In order to extend an exceptional care rate, the review must verify continued need for and delivery of nursing, direct and ancillary care services funded by the rate.

(9) An exceptional care rate shall not be revised during the period the exceptional care rate is in effect because the facility-specific nursing services or total rate is revised or reset; however, when an exceptional care rate is continued or revised as authorized in this section, the facility rate in place at the time of continuation or revision shall be used in the calculation process. An exceptional care rate shall be revised during the period the rate is in effect only when:

(a) An updated plan of care indicates a significant change in care needs; or

(b) Funded services are not fully delivered.

(10) No retroactive revision shall be made to an exceptional care rate, provided that:

(a) When application is made within thirty days after the recipient is admitted to the contractor's facility, an approved rate shall be effective the date of admission;

(b) When an exceptional care rate is revised due to a significant change, the revised rate will be effective on the date the department receives the updated plan of care and supporting documentation; and

(c) When care services funded by an exceptional care rate are not fully delivered, the exceptional care rate shall be reduced retroactively as of its effective date to the regular facility Medicaid rate and payment at the exceptional care rate shall cease immediately.

(11) Hours of nursing and direct care used to qualify a recipient and to calculate an exceptional rate must be verified by a home and community services division, aging and adult services, regional community nurse consultant.

(12) The department shall notify the contractor, in writing, of the disposition of its application as soon as possible and in no case longer than thirty days following receipt of a properly completed application and supporting documentation.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-765 Ancillary care. Beginning July 1, 1984, costs of providing ancillary care are allowable, subject to any applicable cost center limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which ((~~patients~~)) recipients may be legally entitled, such as private insurance or Medicare, were first fully utilized.

AMENDATORY SECTION (Amending Order 2372, filed 5/7/86, effective 7/1/86)

WAC 388-96-769 Adjustments required due to errors or omissions. (1) Prospective rates are subject to adjustment by the department in accordance with this section and subject to WAC 388-96-122 as a result of errors or omissions by the department or by the contractor. The department will notify the contractor in writing of each adjustment and of the effective date of the adjustment, and of any amount due to the department or to the contractor as a result of the rate adjustment. Rates adjusted in accordance with this section will be effective as of the effective date of the original rate whether the adjustment is solely for computing a preliminary or final settlement or for the purpose of modifying past or future rate payments as well.

(2) If a contractor claims an error or omission based upon incorrect cost reporting, amended cost report pages shall be prepared and submitted by the contractor. Amended pages shall be accompanied by the certification required by WAC 388-96-117 and a written justification explaining why the amendment is necessary. Such amendments shall not be accepted unless the amendments meet the requirements of WAC 388-96-122. If changes made by the amendments are determined to be material by the department according to standards established by the department, such amended pages shall be subject to field audit. If a field audit or other information available to the department determines the amendments are incorrect or otherwise unacceptable, any rate adjustment based on the amendment shall be null and void and future rate payment increases, if any, scheduled as a result of such an adjustment shall be cancelled immediately. Payments made based upon the rate adjustment shall be subject to repayment as provided in subsection (3) of this section.

(3) The contractor shall pay an amount owed the department, as determined by the department on or after July 1, 1995, resulting from an error or omission or from an improper adjustment, or commence repayment in accordance with a schedule determined and agreed to in writing by the department, within sixty days after receipt of notification of the rate adjustment or rate adjustment cancellation((~~, unless the contractor contests the department's determination in accordance with the procedures set forth in WAC 388-96-904. If the determination is contested, the contractor shall pay or commence repayment within sixty days after comple-~~

~~tion of these proceedings~~)). If a refund as determined by the department is not paid when due, the amount thereof may be deducted from current payments by the department. However, neither a timely filed request to seek administrative review under WAC 388-96-904 nor commencement of judicial review, as may be available to the contractor in law, shall delay recovery, including recoupment of the refund from current payments made by the department to the contractor for nursing facility services.

(4) If a cost report amendment is accepted for rate adjustment and was received by the department prior to the end of the period to which the rate is assigned, the department shall make any retroactive payment to which the contractor may be entitled within thirty days after the contractor is notified of the rate adjustment and shall increase future rate payments for the rate period, as appropriate.

(5) If a cost report amendment is received by the department subsequent to the rate period, notification of an adjustment or other disposition shall be made at preliminary or final settlement. Adjustments resulting from amendments received after the rate period shall be for the sole purpose of computing the preliminary or final settlement and no retroactive payment shall be made to the contractor. In accordance with WAC 388-96-229(1), any amount due a contractor as determined at preliminary or final settlement shall be paid within ((~~thirty~~)) sixty days after the preliminary or final settlement ((~~report~~)) is ((~~submitted to~~)) received by the contractor.

(6) No adjustments for any purpose will be made to a rate more than one hundred twenty days after the final audit narrative and summary for the period the rate was effective is sent to the contractor or more than one hundred twenty days after the preliminary settlement becomes the final settlement. A final settlement within this one hundred twenty-day time limit may be reopened for the limited purpose of making an adjustment to a prospective rate in accordance with this section. However, only the adjustment and related computation will be subject to review if timely contested pursuant to WAC 388-96-901 and 388-96-904. Other actions relating to a settlement reopened shall not be subject to review unless previously contested in a timely manner.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-776 Add-ons to the prospective rate—Capital improvements. (1) The department shall grant an add-on to a prospective rate for any capitalized additions or replacements made as a condition for licensure or certification; *provided*, the net rate effect is ten cents per patient day or greater.

(2) The department shall grant an add-on to a prospective rate for capitalized improvements done under RCW 74.46.465; *provided*, the legislature specifically appropriates funds for capital improvements for the biennium in which the request is made and the net rate effect is ten cents per patient day or greater. Physical plant capital improvements include, but are not limited to, capitalized additions, replacements or renovations made as a result of an approved certificate of need or capitalized additions or renovations for the removal of physical plant waivers.

(3) When physical plant improvements made under subsection (1) or (2) are completed in phases, the department shall not grant a rate add-on for any addition, replacement or improvement until each phase is completed and fully utilized for which it was intended. The department shall limit rate add-on to only the actual cost of the depreciable tangible assets meeting the criteria of WAC 388-96-557 and as applicable to that specific completed and fully utilized phase.

(4) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (8) of this section using the date the class was improved.

(5) The department shall not add on construction fees as defined in WAC 388-96-745(6) and other capitalized allowable fees and costs as related to the completion of all phases of the project to the rate until all phases of the entire project are completed and fully utilized for the purpose it was made. At that time, the department shall add on these fees and costs to the rate, effective no earlier than the earliest date a rate add-on was established specifically for any phase of this project. If the fees and costs are incurred in a later phase of the project, the add-on to the rate will be effective on the same date as the rate add-on for the actual cost of the tangible assets for that phase.

(6) The contractor requesting an adjustment under subjection (1) or (2) shall submit a written request to the office of rates management separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation (i.e., survey level "A" deficiency) requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per WAC 388-96-559(2);

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter;

(f) A written justification for granting the rate increase; and

(g) For capitalized additions or replacements requiring certificate of need approval, a copy of the approval and description of the project.

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(7) The department's criteria used to evaluate the request may include, but is not limited to:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of the renovation or remodel to the facility and whether the facility will be better able to serve the needs of its residents;

(c) Whether the improvement improves the quality of living conditions of the residents;

(d) Whether the improvement might eliminate life safety, building code, or construction standard waivers;

(e) Prior survey results; and

(f) A review of the copy of the approval and description of the project.

(8) The department shall not grant a rate add-on effective earlier than sixty days prior to the receipt of the initial written request by the office of rates management and not earlier than the date the physical plant improvements are completed and fully utilized. The department shall grant a rate add-on for an approved request as follows:

(a) If the physical plant improvements are completed and fully utilized during the period from the first day to the fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the physical plant improvements are completed and fully utilized during the period from the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits a written request for the same project, the date of receipt for the purpose of applying subsection (8) will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8); or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) results in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter.

(14) All rate components to fund the Medicaid share of nursing facility new construction or refurbishing projects costing in excess of one million two hundred thousand dollars, or projects requiring state or federal certificate of need approval, shall be based upon a minimum facility occupancy of eight-five percent for the nursing services, food, administrative, operational and property cost centers, and the return on investment (ROI) rate component, during the initial rate period in which the adjustment is granted. These same component rates shall be based upon a minimum facility occupancy of ninety percent for all rate periods after the initial rate period.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-813 Suspension of payment. (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extensions. Payments will be released as soon as a properly completed report is received.

(b) Auditors or other authorized department personnel in the course of their duties are refused access to a nursing ((~~home~~)) facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided.

(c) A refund in connection with a preliminary or final settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter and chapter 74.46 RCW.

(d) Payment for the final ((~~thirty~~)) sixty days of service under a contract will be held in the absence of adequate alternate security acceptable to the department pending final settlement when the contract is terminated.

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net Medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or other sources, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is given to the contractor, stating the reason ((~~therefor~~)) for the withholding, except that neither a request to pursue administrative review under WAC 388-96-904 nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

AMENDATORY SECTION (Amending Order 3185, filed 5/31/91, effective 7/1/91)

WAC 388-96-901 Disputes. (1) If a reimbursement rate issued to a contractor is believed to be incorrect because it is based on errors or omissions by the contractor or department, the contractor may request an adjustment pursuant to WAC 388-96-769. Pursuant to WAC 388-96-904(1) a contractor may within twenty-eight days request an administrative review after notification of an adjustment or refusal to adjust.

(2) For all nursing facility prospective Medicaid payment rates effective on or after July 1, 1995, and for all settlements and audits issued on or after July 1, 1995, regardless of what periods the settlements or audits may cover, if a contractor wishes to contest the way in which a department rule((~~, contract provision, or policy statement utilized as part of the prospective cost related reimbursement~~)) relating to the Medicaid payment rate system((~~'s rate calculation methodology~~)) was applied to the contractor by the department, e.g., in setting a ((~~reimbursement~~)) payment rate or determining a disallowance at audit, it shall ((~~first~~)) pursue the administrative review process set out in WAC 388-96-904.

(3) ((~~Subject to subsection (5) of this section the administrative review and fair hearing process set out in WAC 388-96-904 need not be exhausted~~)) If a contractor wishes to challenge the legal validity of a statute, rule((~~,~~)) or contract provision or ((~~policy statement~~)) wishes to bring a challenge based in whole or in part on federal law, including but not limited to issues of procedural or substantive compliance with the federal Medicaid minimum payment standard known as the Boren Amendment, found at 42 USC 1396a (a)(13)(A) and in federal regulation, as it applies to long-term care facility services, the administrative review procedure authorized in WAC 388-96-904 may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(4) ((~~The department's administrative review and fair hearing process, set out in WAC 388-96-904 and in RCW 74.46.780, shall not be used to challenge the adequacy of prospective or settlement reimbursement rates or rate components, whether preliminary or final, either individually or collectively, or to challenge audit actions or adjustments, under the federal Boren amendment payment standard found at 42 USC 1396a (a)(13)(A) and contained in federal regulation. Further, the administrative review and fair hearing process shall not be used to challenge the department's procedural compliance with this standard. Only in courts of proper jurisdiction shall contractors challenge the department's substantive and/or procedural compliance with the Boren amendment standard.~~

~~(5) The prohibition contained in subsection (4) against pursuit of substantive or procedural Boren amendment challenges in the administrative review and fair hearing process shall apply regardless of whether the challenge is brought for the purpose of obtaining an administrative decision or for the purpose of making a record or argument for subsequent judicial review. Further, the process shall not be used to challenge the validity of statutes or regulations, whether for the purpose of obtaining an administrative decision or making a record or argument for subsequent judicial review, based upon alleged substantive or procedural noncompliance with the Boren amendment standard~~)) If a contractor wishes to challenge the legal validity of a statute, rule or contract provision relating to the Medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1) ((~~Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, the appropriate director or the director's designee review such determination. The contractor shall send the request to the office of rates management, aging and adult services administration. If the contractor uses a facsimile to establish the request for review, the facsimile must conform to subsection (1)(a), (b) and (c) and the original including the requirements of subsection (d) of this section must be received by the office of rates management within seven days after the transmission of the facsimile. The contractor or the licensed administrator of the facility shall:~~

~~(a) Sign the request;~~

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

~~(c) State as specifically as practicable the issues and regulations involved and the grounds for contending the determination is erroneous; and~~

~~(d) Attach to the request copies of any documentation the contractor intends to rely on to support the contractor's position.~~

~~(2) After receiving a timely request meeting the criteria of subsection (1) of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. If the department and contractor cannot agree to a mutually convenient time, then department shall schedule the conference for no earlier than fourteen days after the contractor was contacted by the department to schedule the conference and no later than ninety days after a properly completed request is received, unless both parties agree, in writing, to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.~~

~~(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference and provide to the department fourteen days in advance of the conference:~~

~~(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes under WAC 388-96-113; and~~

~~(b) Any documentation the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues,~~

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~~the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree, in writing, to a specific later date.~~

~~(4) Regardless of whether agreement has been reached at the conference, the director of management services division, aging and adult services or designee shall furnish the contractor a written decision within sixty days after the conclusion of the last conference held or the receipt of all required documentation on the action or determination challenged by the contractor.~~

~~(5) A contractor has the right to an adjudicative proceeding to contest only issues raised in the administrative review conference and addressed in the director's administrative review decision.~~

~~(a) A contractor contesting the director's decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding with the office of appeals;~~

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

~~(iii) State as specifically as practicable the issues and law involved;~~

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

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

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

~~(6) Subject to subsection (7) of this section adjudicative proceedings timely requested under subsection (5) of this section shall be dismissed unless within one calendar year after the department receives the application:~~

~~(a) All issues have been resolved by a written, signed settlement agreement between the contractor and the department; or~~

~~(b) The evidentiary record, including all briefing, has been closed.~~

~~(7) If a written settlement agreement resolving all the issues has not been signed by both the contractor and the department and if the evidentiary record, including all briefing, has not been closed upon the expiration of one year after the application was received by the department, the office of administrative hearings shall, within fourteen days after the expiration date:~~

~~(a) Issue a written order dismissing the adjudicative proceeding with prejudice to the contractor; or~~

~~(b) Issue a written order for a continuance for good cause described in the order for a period not to exceed ninety days.~~

~~Good cause as stated in the order must show the hearing was prevented from being held because of circumstances that were beyond the control of the contractor. Upon expiration of any extension period and without either a signed settlement agreement resolving all issues or a closed evidentiary record including all briefing, the office of administrative hearings shall either dismiss with prejudice to the contractor or continue for good cause as provided in this subsection. Orders for dismissal or continuance shall be subject to a petition for review timely filed with the department's office of appeals if desired by either party.~~)) The provisions of this section shall apply to administrative review of all nursing facility payment rates effective on and after July 1, 1995, and to administrative review of all audits and settlements issued on or after this date, regardless of what payment period the audit or settlement may cover. Contractors seeking to appeal or take exception to an action or determination of the department relating to the contractor's payment rate, audit or settlement, or otherwise affecting the level of payment to the contractor, shall request an administrative review conference in writing within twenty-eight calendar days after receiving notice of the department's action or determination. The contractor shall be deemed to have received notice five calendar days after the date of the notification letter, unless the contractor can provide proof of later receipt. The contractor's request for administrative review shall be signed by the contractor or by a partner, officer or authorized employee of the contractor, shall state the particular issues raised and include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review meeting the criteria in subsection (1) of this section, the department shall schedule an administrative review conference to be held within ninety calendar days after receiving the contractor's request. By agreement this time may be extended up to sixty additional days, but a conference shall not be scheduled or held beyond one hundred fifty calendar days after the department receives the contractor's request for administrative review. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply the additional documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a decision any documentation or information needed to decide the issues raised and the contractor must comply with such a request within fourteen calendar days after it is received. This period may be extended up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen day period. Issues which cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period shall be dismissed.

(4) The department shall, within sixty calendar days after the conclusion of the conference, render a decision in writing addressing the issues raised, unless the department is waiting for additional documentation or information requested from the contractor pursuant to subsection (3) of this section, in which case the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The decision letter shall include a notice of dismissal of all issues which cannot be decided due to missing documentation or information requested.

(5) A contractor seeking further review of a decision issued pursuant to subsection (4) of this section:

(a) Shall request, in writing, signed by one of the individuals authorized by subsection (1) of this section,

within twenty-eight calendar days after receiving the department's decision letter, an adjudicative proceeding to be conducted by a presiding officer employed by the department's office of appeals; or

(b) Shall file, in the event the parties are able to stipulate to a record that can serve as the record for judicial review, a petition for judicial review pursuant to RCW 34.05.570(4).

The contractor shall be deemed to have received notice of the department's conference decision five calendar days after the date of the decision letter, unless the contractor can provide proof of later receipt.

(6) The scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed in the department's decision letter. The contractor shall be deemed to have waived all issues which could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and addressed in the department's decision letter.

(7) If the contractor wishes to have further review of any issue dismissed by the department for failure to supply needed or requested information or documentation, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-08 WAC and chapter 34.05 RCW. In the event of a conflict between the provisions of this chapter and chapter 388-08 WAC, the provisions of this chapter shall prevail. The presiding officer assigned by the department's office of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) The office of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5)(a), unless within two hundred seventy days after the office of appeals receives the application or request for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the office of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended thirty additional days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the office of appeals in order to comply with the time limit set forth in this subsection.

(10) Any party dissatisfied with a decision or an order of dismissal of the office of appeals may file a petition for reconsideration within ten days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(11) A contractor dissatisfied with a decision or an order of dismissal of the office of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-96-216	Deadline for completion of audits.
WAC 388-96-753	Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-776, and 388-96-777.
WAC 388-96-902	Recoupment of undisputed overpayments.

PROPOSED

WSR 95-15-001
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 5, 1995, 2:00 p.m.]

Original Notice.

Title of Rule: New chapter 388-300 WAC, Job opportunities and basic skills training (JOBS) program, and repealing chapter 388-47 WAC, Job opportunities and basic skills training (JOBS) program.

Purpose: Authorizes a mandatory JOBS program and assigns clients to the four pathways of service delivery. Renumbers and revises rules for JOBS program. Incorporates the employment partnership program as specified under chapter 74.25A RCW.

Statutory Authority for Adoption: Chapter 74.25A RCW and RCW 74.08.090.

Statute Being Implemented: Chapter 74.25A RCW and RCW 74.08.090.

Summary: Implements a mandatory JOBS program to assist in meeting the federal participation requirements and implements the pathway service delivery model to maximize resources.

Reasons Supporting Proposal: Authorizes a mandatory JOBS program and assigns clients to the four pathways of service delivery. Provides flexibility in selecting JOBS program service providers. Conforms the state law under chapter 74.25A RCW. Proposes changes in criteria for approving JOBS components, the waiting list process, funding priorities, and clarifies appeal rights.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sue Langley, Division of Economic and Social Services, 438-8281.

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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule does not require participation by businesses and employers. For those who do participate, the usual costs that employers incur as a result of hiring workers would still apply.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by August 22, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 6, 1995.

July 5, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 388-47	JOBS opportunities and basic skills training program.

NEW SECTION

WAC 388-300-0100 Job opportunities and basic skills training (JOBS) program—Authority and purpose. (1) The JOBS program is established under P.L. 100-485, as amended, 102 Stat. 2343. The short title is the Family Support Act of 1988. Federal regulations for the JOBS program are described under 45 CFR, part 250, part 251, part 255, and part 256. The state statutory authority is Title 74 RCW.

(2) The department shall be by the authority of Title 74 RCW the Title IV-A and Title IV-F agency, and shall have the authority to carry out the JOBS program.

(3) The JOBS program shall provide a recipient of aid to families with dependent children (AFDC) the opportunity to obtain appropriate education, training, skills, and supportive services, including child care, consistent with the needs of the recipient, that will help the recipient enter or reenter gainful employment, thereby avoiding long-term welfare dependence and achieving economic self-sufficiency.

(4) The department shall ensure the JOBS program is directed at increasing labor force participation and household earnings of AFDC recipients.

(5) The department shall communicate to a program participant the concepts of the importance of work and how performance and effort directly affect:

(a) Future career and educational opportunities and economic well-being; and

(b) Personal empowerment, self-motivation, and self-esteem.

(6) The department shall ensure that:

(a) Work experience is the most important component of the JOBS program; and

(b) Education is an important program element and tool for an individual to achieve full independence including:

(i) Literacy training;

(ii) Secondary education;

(iii) High school equivalency;

(iv) Vocational training; and

(v) Post-secondary education.

(7) The department shall provide as specified in 45 CFR, part 250 JOBS program services in accordance with the Washington state plan - JOBS (Title IV-F) and JOBS supportive services and child care in accordance Washington state plan - supportive services (Title IV-A/F).

(8) The department may contract specific program operation functions to other entities.

(9) The department shall contract with service providers in a manner that ensures the state continues to receive enhanced federal funding by meeting the:

(a) Expenditure rate for target group members;

(b) Federal participation rate for nonexempt AFDC-E households in the components specified in WAC 388-300-2100; and

(c) Federal participation rate for JOBS participants.

NEW SECTION

WAC 388-300-0200 Definitions. Except as otherwise specified, the terms used in this chapter, 388-300 WAC, shall have the same meaning as applied to the AFDC program, and terms defined under chapter 388-22 WAC and 45 CFR, part 250, part 251, part 255, and part 256.

(1) "Basic education" means an activity below the post-secondary level which includes:

(a) High school education or education designed to prepare a person to qualify for a general educational development (GED) certificate;

(b) Basic and remedial education providing a person with a basic literacy level; and

(c) Education in English as a second language (ESL) proficiency which enables a participant to understand, speak, read, or write the English language to allow employment commensurate with the participant's employment goal.

(2) "Basic literacy level" means a minimum literacy level allowing a person to function at a level equivalent to grade 8.9.

(3) "Component" means the JOBS program activities and services available under WAC 388-300-1100 and 388-300-2200 through 388-300-3100.

(4) "Component costs" means educational or training-related costs such as tuition, books, supplies, or fees paid to or required by an educational or training institution. "Component costs" include reimbursement paid to an employer who is providing on-the-job training.

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

(6) "Employability assessment" means the process by which the person's barriers to employment are identified and information gathered about the person's individual and family circumstances which may affect the person's ability to find and retain employment.

(7) "Employability plan" means a written plan for achieving the employability of a JOBS participant developed jointly by the participant and the service provider. The plan includes:

(a) The employment and training activities in which the person will be participating to become employable;

(b) Supportive services to be provided to the person which are necessary for the person to participate in the activity; and

(c) The person's need for child care during participation in the activities.

(8) "Employability planning" means the process, starting with the assessment, which has an employability plan as the desired outcome.

(9) "Employment partnership program (EPP)" means the work supplementation program as described under chapter 74.25A RCW.

(10) "Employment partnership council (EPC)" means the local council appointed by the county legislative authority in EPP sites as authorized under chapter 74.25A RCW.

(11) "GED" means general educational development.

(12) "JOBS Automated System" means the automated electronic data collection system used to identify the components or employment in which a JOBS participant is or has been participating.

(13) "JOBS eligible" means the person is an applicant for or recipient of AFDC.

(14) "One-time work-related expense" means payments for expenses needed by an applicant or recipient of AFDC to enter or maintain employment on a per-job-basis as provided for in the Washington state plan - supportive service plan (Title IV-A/F).

(15) "Participant" means an applicant for or recipient of AFDC engaged in JOBS program activities. Participation in JOBS begins with the assessment.

(16) "Satisfactory progress" means a participant in secondary or post-secondary education or job skills training:

(a) Has achieved and is maintaining a grade point average sufficient to graduate; and

(b) Is taking sufficient credit hours in required coursework to graduate from the course of study within the time frame established for the course by the institution unless:

(i) The education or training activity is coupled with another JOBS approved activity;

(ii) A particular required class is not available in the time frame; or

(iii) There are mitigating circumstances as determined by the department or the service provider which make fewer hours of class time reasonable for a participant.

(17) "Service provider" means either the department or another entity under contract or interagency agreement with the department to provide JOBS services.

(18) "Supportive services" means services as specified and to the limits in the Washington state plan - supportive services (Title IV-A/F) provided to JOBS participants. Supportive services do not include child care, and supportive services do include:

(a) Child care registration fee;

(b) Transportation reimbursement;

(c) Care repair;

(d) Clothing;

(e) Medical examinations or services;

(f) Licenses or fees;

(g) Meals and short-term lodging;

(h) Testing;

(i) Supportive counseling, education, and training;

(j) Haircuts;

(k) Relocation expenses;

(l) Tools and equipment;

(m) Work-related clothing and uniforms; and

(n) Union initiation fees.

(19) "Target group member" means:

(a) An AFDC applicant or recipient who received AFDC for thirty-six or more of the preceding sixty months;

(b) A custodial parent under twenty-four years of age who did not complete high school and is not enrolled in high school or a high school equivalent at the time of the family's application for AFDC;

(c) A custodial parent under twenty-four years of age having less than six months of employment in the last year; or

(d) A member of a family where the youngest child is within two years of ineligibility for AFDC because of age.

(20) "Work maturity" means an understanding of workplace expectations and the ability to conform to these expectations.

NEW SECTION

WAC 388-300-0300 Providing program information and opportunity to participate. (1) The department shall provide applicants for and recipients of AFDC with the following information at application or, as appropriate, at redetermination:

(a) Specific information about the JOBS program; and

(b) Instruction on how to enter the program.

(2) The department shall provide information orally and in writing. In all cases the department shall provide the information in a manner designed to be understood by the applicant or recipient.

(3) The department shall ensure that information provided under subsection (1) of this section includes:

(a) The department's obligation to provide services to JOBS participants;

(b) A description of who is exempt from mandatory JOBS participation;

(c) The availability of JOBS program activities, child care, and supportive services for which a person may be eligible while participating in JOBS, including:

(i) Employment, training, and education services;

(ii) Supportive services, including but not limited to transportation reimbursement;

(iii) Child care services, including but not limited to available child care programs and information about how to select, obtain, and access assistance to obtain appropriate child care;

(iv) Transitional child care benefits; and

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(v) Medical extension benefits.

(d) A clear description of how to enter the JOBS program.

(4) The department shall ensure that information provided under subsection (1) of this section includes the rights, responsibilities, and obligations of JOBS participants including, but not limited to:

(a) Consequences of refusing or failing to participate, including the effect on volunteers;

(b) The requirement of both parents in an AFDC-E household to participate in JOBS if the department guarantees child care; and

(c) The requirement that the second parent in an AFDC-E family participate in JOBS if the qualifying parent fails or refuses to participate as required without good cause.

NEW SECTION

WAC 388-300-0400 Participation exemptions. (1) The department shall determine a person's exemption status for JOBS at application, redetermination, and at any change of circumstance of the AFDC case.

(2) A recipient shall be exempt from required JOBS participation if the person is:

(a) Fifteen years of age or younger;

(b) Seventeen years of age or younger and is attending full-time an elementary, secondary, vocational, or technical school;

(c) Sixty years of age or older:

(d) Ill, when the department determines on the basis of medical evidence or other sound basis that the illness or injury is serious enough to temporarily prevent entry into employment, education, or training;

(e) Incapacitated, when verified by the department that a physical or mental impairment, determined by a physician or licensed or certified psychologist, prevents the person from engaging in employment or training under JOBS. Incapacitation may include a period of recuperation after childbirth if prescribed by a physician;

(f) Residing in a remote location requiring two hours or more round-trip travel time from a JOBS program or activity site when the person uses reasonably available public or private transportation. When normal round-trip commuting time in the area is two hours or more, the department shall not consider the person to be residing in a remote location except when the person's round-trip commuting time exceeds the accepted community standards. Travel time is exclusive of time necessary to transport a child to and from a child care facility.

(g) Needed in the home to care for another ill or incapacitated household member, as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(h) Working thirty or more hours a week;

(i) Pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(j) The parent or other caretaker relative of a child less than three years of age and personally providing care for the child. The department shall require a custodial parent nineteen years of age or younger who has not completed high school or GED to participate in basic educational activities regardless of the age of the youngest child. The department shall exempt only one parent or other caretaker relative under this provision;

(k) The parent or other caretaker relative personally providing care for a child less than six years of age, unless the department guarantees child care and that the person is not required to participate in JOBS more than twenty hours per week. The department shall exempt only one parent or other caretaker relative under this provision;

(l) A full-time volunteer serving under the Volunteers in Service to America (VISTA), under Title I of the Domestic Volunteer Service Act of 1973.

(3) The department shall:

(a) Re-evaluate the exemption status of a recipient when a condition specified in subsection (2) of this section is expected to end, but not less frequently than at the redetermination of AFDC eligibility; and

(b) Notify the recipient and appropriate service providers of a change in the recipient's exemption status within ten working days.

(4) The department shall consider an applicant or recipient of AFDC claiming exemption status from JOBS participation requirements exempt until the department determines the status of such person.

(5) A recipient of AFDC shall not be required to participate in the JOBS program until notified of the need to do so by:

(a) The department; or

(b) The tribal entity operating a tribal JOBS program.

NEW SECTION

WAC 388-300-0500 Required participation. (1) The department shall ensure that before a nonexempt AFDC recipient is required to further participate in JOBS components the service provider has:

(a) Conducted an assessment of the person's employability; and

(b) Developed an employability plan for the person.

(2) The department may require a nonexempt AFDC recipient to participate in JOBS components and activities.

(3) A nonexempt AFDC recipient who is required to participate and who fails or refuses to participate in JOBS without good cause shall be subject to a sanction under WAC 388-300-3400.

(4) The department shall not require a nonexempt AFDC recipient to participate in JOBS unless the department guarantees child care under chapter 388-51 WAC and under the limitations set forth in WAC 388-300-0400(k) for a dependent child in the household who is:

(a) Twelve years of age or younger; or

(b) Thirteen years of age or older with special needs.

(5) The department may require both parents in an AFDC-E household to participate in JOBS if the department guarantees child care.

(6) The department may only require an AFDC recipient to participate in JOBS when funding is available to provide the supportive services needed by the person to participate in the required activities.

(7) The department shall sanction a nonexempt recipient who volunteers to participate in JOBS if the person fails or refuses to participate in approved employability plan components or activities. The department shall not subject volunteers for the work supplementation program, as described under WAC 388-300-2900, to a sanction for refusing or failing to participate in that activity.

(8) The department shall not impose a sanction under subsection (7) of this section until:

(a) A good cause determination is made under WAC 388-300-3200; and

(b) When appropriate, conciliation services under WAC 388-300-3300 have been offered.

NEW SECTION

WAC 388-300-0600 Referral to pathways. (1) The department shall refer nonexempt AFDC applicants or recipients or exempt volunteers to specific service providers for JOBS program or other services at the time of AFDC eligibility determination or redetermination.

(2) The department may refer one or both nonexempt parents in a household applying for AFDC-E to the re-employment pathway described in WAC 388-300-0700 if the parent is:

(a) Twenty-four years of age or younger and has completed high school or GED; or

(b) Twenty-five years of age or older.

(3) The department shall refer nonexempt AFDC-R applicants to the re-employment pathway described in WAC 388-300-0700 if:

(a) The parent's most recent job in the last twelve months paid at least six dollars and fifty cents an hour; and

(b) The parent is:

(i) Eighteen years of age or older and has completed high school or GED; or

(ii) Twenty-four years of age or older.

(4) The department shall refer the following nonexempt AFDC applicants, recipients, or dependent children to the young person education pathway described in WAC 388-300-0800:

(a) Twenty-three years of age or younger nonexempt AFDC-R applicants or recipients who have not completed high school or GED;

(b) Twenty-four years of age or younger nonexempt AFDC-E applicants or recipients who have not completed high school or GED;

(c) Dependent children in an AFDC household who are:

(i) Over sixteen and under nineteen years of age; and

(ii) Not attending high school.

(5) The department shall refer any AFDC household member who appears to be disabled under WAC 388-511-1105 to the disability advocacy pathway as described under WAC 388-300-1000.

(6) The department shall refer nonexempt AFDC applicants or recipients not meeting the criteria in subsections (2), (3), and (4) of this section to the employment investment pathway described in WAC 388-300-0900.

(7) The department shall ensure that all referred persons have the opportunity to begin the assessment and employability plan development process at the person's first contact with the pathway service provider.

(8) The department may authorize a service provider to refer a participant to other pathway service providers when an assessment indicates an inappropriate assignment based on factors including, but not limited to, the participant's educational, physical, mental or occupational skill level, or the local labor market.

(9) The department shall inform persons of their right to complaint or grievance under WAC 388-300-3500 regarding pathway assignment at the time of such assignment.

NEW SECTION

WAC 388-300-0700 Re-employment pathway. (1) The department shall ensure the re-employment pathway provides focused employment services to recipients who:

(a) Already possess job skills; or

(b) Are most likely to be re-employed with minimal services.

(2) The service provider shall ensure that persons in the re-employment pathway are provided with:

(a) An assessment of the person's employability as described in WAC 388-300-1100 and employability plan development under WAC 388-300-1200; and

(b) Supportive services in the pathway activities before assigning the person to a component.

(3) The service provider shall immediately refer the person to the employment investment pathway as described under WAC 388-300-0900 when the service provider determines under the assessment described under WAC 388-300-1100 that the person is not competitive in the local labor market.

(4) The service provider shall, within available funds, provide the following services to persons in the re-employment pathway:

(a) Job readiness training under WAC 388-300-2300;

(b) Job search assistance under WAC 388-300-2400; and

(c) ESL in conjunction with activities specified in subsections (a) and (b) of this section.

(5) The service provider shall refer participants who need child care services to the department.

(6) The service provider shall:

(a) Monitor the participant's activity to ensure that the pathway services continue to meet the employability needs of the participant; and

(b) Refer a participant to a service provider in another pathway when:

(i) The time limits of job search under WAC 388-300-2400 have been reached before the participant has obtained employment; or

(ii) An assessment of the participant's progress in obtaining employment indicates another JOBS activity is more appropriate.

(7) The department shall sanction under WAC 388-300-3400 those nonexempt participants who fail or refuse to participate in pathway activities in accordance with the person's employability plan developed under WAC 388-300-1200.

PROPOSED

NEW SECTION

WAC 388-300-0800 Young person education pathway. (1) The young person education pathway shall provide specialized services including parenting classes, and family planning education and services, to persons referred under WAC 388-300-0600.

(2) The department shall ensure that an AFDC custodial parent in the young person education pathway is provided with an assessment of:

(a) The person's living arrangement, as described in WAC 388-265-1275, if the person is an unmarried pregnant or parenting minor seventeen years of age or younger;

(b) Family issues which may affect the person's employability, including the needs of the participant's children; and

(c) The participant's knowledge of and need for family planning, and referral to appropriate resources.

(3) The service provider shall provide JOBS participants with:

(a) An assessment under WAC 388-300-1100; and

(b) Employability plan development under WAC 388-300-1200.

(4) The service provider shall ensure the JOBS components available under WAC 388-300-2200 are provided to persons in the young person education pathway within the age and program limits specified in that section.

(5) The department may require a nonexempt AFDC custodial parent in the young person education pathway to participate in the JOBS educational activities set forth in the person's employability plan.

(6) The department may require a dependent child in an AFDC household who is sixteen or seventeen years of age to participate in high school completion or GED.

(7) The service provider shall monitor the participant's activity to ensure that pathway services continue to meet the participant's employability needs.

(8) The service provider shall ensure that a person participating in a JOBS component in the young person education pathway is provided with supportive services as required for the person to participate in the activities.

(9) The service provider shall refer the participant to the department for child care services as required for the person to participate in the pathway activities.

(10) The service provider shall refer persons in the pathway to the employment investment pathway service provider when:

(a) The person completes high school or GED; or

(b) An assessment of the person's progress in the activities indicates that another JOBS activity or other activity is more appropriate.

(11) The department shall sanction under WAC 388-300-3400 nonexempt AFDC recipients, including nonexempt custodial parents nineteen years of age or younger who:

(a) Have been required to participate in basic education activities under WAC 388-300-2200(5); and

(b) Fail or refuse to participate in pathway activities in accordance with the person's employability plan under WAC 388-300-1200.

NEW SECTION

WAC 388-300-0900 Employment investment pathway services. (1) The employment investment pathway shall provide a participant with job search, job readiness, job skills training, or basic or post-secondary educational services, or work-related activities to assist the person to find and retain employment.

(2) The service provider shall ensure a participant in the employment investment pathway is provided:

(a) An assessment of the person's employability as described in WAC 388-300-1100; and

(b) Employability plan development as described in WAC 388-300-1200.

(3) The service provider shall ensure the following JOBS services are provided to persons in the employment investment pathway within available funds:

(a) JOBS component activities described in WAC 388-300-2200 through WAC 388-300-3100 to the extent that participants meet the criteria for such components and funds are available; and

(b) Supportive services as required for the person to participate in the pathway activities.

(4) The service provider shall refer the participant to the department for child care services as required for the person to participate in the pathway activities.

(5) The service provider shall monitor the participant's JOBS activity to ensure the pathway services continue to meet the participant's employability needs.

(6) The department shall sanction under WAC 388-300-3400 a nonexempt participant who fails or refuses to participate in pathway activities in accordance with the person's employability plan developed under WAC 388-300-1200.

NEW SECTION

WAC 388-300-1000 Disability advocacy pathway. (1) The disability advocacy pathway service provider shall:

(a) Offer facilitation services to maximize income levels available to families with disabled family members; and

(b) Assist these family members to receive services for which they are eligible from the most appropriate state or federal program.

(2) The department shall ensure a person in the disability advocacy pathway is provided with:

(a) An evaluation of the severity and potential duration of the person's potentially disabling condition using WAC 388-511-1105;

(b) Referral to division of vocational rehabilitation, as appropriate; and

(c) As appropriate, assistance to a person filing application for:

(i) Old age and survivor's disability insurance;

(ii) Supplemental security income; and

(iii) Medicaid; or

(iv) An appeal to an adverse decision made by the Social Security Administration regarding the person's eligibility for such benefits as provided under Titles II, XVI, and XIX of the Social Security Act.

(3) The department shall not require a person to apply for federal services or benefits to replace receipt of AFDC benefits for the person or the person's child.

(4) The department may refer a person in the disability advocacy pathway to another pathway or another type of service when an assessment indicates another service is more appropriate or will more effectively meet the person's needs.

NEW SECTION

WAC 388-300-1100 Employability assessment. (1) The service provider and the participant shall jointly complete an assessment of the participant's employability before the person's participation in a JOBS component.

(2) The service provider must provide the person with an assessment prior to the person beginning any JOBS activity including initial job search.

(3) The service provider shall ensure the person has the opportunity to begin the assessment process within ten working days of the date the person was referred to the service provider.

(4) The service provider shall assess the participant's employability based on the person's:

(a) Literacy level and English language proficiency;

(b) Educational level and school experiences;

(c) Age;

(d) Occupational skills;

(e) Work maturity skills;

(f) Job finding skills;

(g) Skills deficiencies;

(h) Work history;

(i) Occupational aptitudes and employment goal preference;

(j) JOBS supportive service needs including transportation reimbursement;

(k) Needs for child care;

(l) Local labor market to include factors relating to local employment opportunities for the participant's approved employment goal as provided for under WAC 388-300-1200 (5) and (6); and

(m) Other factors which the department determines to be relevant to the employability of the participant.

(5) The service provider shall ensure the employability assessment includes a review of the family circumstances, which may include the needs of the participant's children.

(6) The service provider:

(a) Shall conduct the assessment through face-to-face interviews which are preferable, telephone conversations, or other forms of direct communication; and

(b) May use various methods including testing and self-assessment instruments.

NEW SECTION

WAC 388-300-1200 Employability plan. (1) The service provider and the participant shall jointly develop an employability plan based on the assessment described in WAC 388-300-1100.

(2) The service provider shall ensure the elements identified in the assessment under WAC 388-300-1100 (4) and (5) are considered when developing an employability plan with the participant.

(3) The service provider shall take into consideration the following elements when developing an employability plan with and for the participant:

(a) Preferences of the participant to the extent possible given the goals and constraints of the department, including program resources, available services, and local employment opportunities;

(b) Available JOBS program resources; and

(c) The federal requirements for participation rate, target group expenditure rate, and unemployed parent program participation rate to ensure the continuation of enhanced federal matching rates for state funds.

(4) The service provider shall ensure that the employability plan contains an employment goal which has been developed in consultation with the participant.

(5) The service provider shall have employment goal approval authority within the following guidelines:

(a) The employment in the occupation is available in the participant's local labor market; and

(b) The employment goal provides the participant with wages which lead to the person's family becoming ineligible for an AFDC grant due to earnings; and

(c) The participant does not have competitive skills in an occupation different than the proposed employment goal at a wage sufficient to make the person's family ineligible for an AFDC grant due to earnings; and

(d) The participant requires twenty-four months or less to complete a job skills training program at a technical college or employment certification program at a community college as specified under WAC 388-300-2500 in order to be competitive in the local labor market in the occupation; or

(e) The participant requires ninety quarter credit hours or sixty semester credit hours or less to complete an associate degree or a baccalaureate degree excluding prerequisite courses at an institution as specified under WAC 388-300-2600 to be competitive in the labor market in the occupation.

(6) The service provider shall consult with the department when the occupational goal or component may be appropriate but does not meet the guidelines in this section or in WAC 388-300-1300, or WAC 388-300-2200 through WAC 388-300-3100.

(7) The department shall have final approval authority for a participant's employment goal and component assignment.

(8) Participants who have been denied approval of an employment goal shall have the right to conciliation and, if requested, a fair hearing.

(9) The service provider shall ensure that the employability plan includes:

(a) Labor market information relative to the employment goal;

(b) The component activities to be undertaken by the participant as approved under WAC 388-300-1200.

(c) The supportive services and child care needed by the participant to take part in JOBS;

(d) Any other needs of the family that might be met by JOBS, such as participation of a dependent child in drug education or life skills planning sessions; and

(e) Any job search or other participation requirements placed upon the participant.

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NEW SECTION

WAC 388-300-1300 Component approval. (1) The service provider shall approve a component for inclusion on an employability plan before the participant may begin participation in the component.

(2) A participant is not eligible for JOBS funding for component costs, supportive services, or child care for a component unless the service provider has approved the component or the component would meet the approval criteria for inclusion on the person's employability plan.

(3) The service provider shall approve job search for inclusion on a participant's employability plan when the participant would benefit from labor market information, assistance in identifying prospective employers, and other guidance provided in the job search component while conducting a focused job search effort.

(4) The service provider shall approve other components for inclusion on a participant's employability plan when the following criteria have been met:

(a) The participant requires new or additional vocational, occupational, job search, job readiness, or other employment-related skills and abilities in order to find and retain employment in the local labor market; and

(b) The component provides specific occupational skills or abilities needed by the participant to enter or re-enter employment in the participant's approved employment goal; and

(c) The component will enable the participant to become employed in the participant's approved employment goal; and

(d) Objective measurements such as tests or previous academic achievement indicate the participant possesses the aptitude, skills, or abilities to complete the component and work in the occupation; and

(e) Completion of the component does not provide the participant with an associate or bachelor degree or post-graduate degree if the participant already possesses a bachelor degree; and

(f) The component does not:

(i) Include religious worship, exercise, or instruction; or

(ii) Serve to assist, promote, or deter religious activity; and

(g) The participant meets the specific component criteria as listed in WAC 388-300-2200 through WAC 388-300-3100.

NEW SECTION

WAC 388-300-1400 Funding priority criteria. (1) The department shall ensure that JOBS funds are obligated and expended in a manner that maximizes JOBS program federal match rates as specified in 45 CFR 250.73 and 45 CFR 250.74.

(2) The department shall have the authority to adjust funding levels among priority groups in subsection (3) of this section when the department is not meeting the following federal requirements:

(a) Fifty-five percent of all JOBS funds expended on target group members;

(b) Achievement of the required participation rate of nonexempt AFDC recipients in JOBS program components as specified in 45 CFR 250.74; and

(c) Achievement of the required AFDC-E program participation rate in work-related JOBS program components or employment under WAC 388-300-2100 as specified in 45 CFR 250.74.

(3) To achieve the federal requirements specified in subsection (2) of this section, the department shall make JOBS funded services available to eligible AFDC-E and AFDC-R households in the following priority:

(a) All AFDC-E cases;

(b) Exempt and nonexempt target group AFDC-R cases provided that volunteers are given first consideration in determining the priority of participation within target groups;

(c) All other nonexempt cases; and

(d) All other cases or dependents.

(4) The service provider shall have the authority to determine if a participant is eligible for JOBS component costs, supportive services, or child care already identified on the person's employability plan when the participant has made independent changes in any of the following plan elements:

(a) Employment goal;

(b) Course of educational or training activities; or

(c) Component activity.

(5) The department shall ensure that, within available funds, a participant continues to receive funding to support the components and services identified in the participant's employability plan if the component and services are available in the community service office from which the participant is receiving an AFDC grant when the participant:

(a) Changes geographic location to the extent that the person's AFDC case management is transferred to a different community service office in Washington state; and

(b) Continues the plan activities without interruption.

(6) The service provider shall allocate its funds in accordance with the priority groups identified in subsection (3) of this section, to the extent funds are available.

(7) The service provider shall fund component costs and supportive services identified on the employability plan, in accordance with the priority groups listed in subsection (3) of this section, when the service provider has approved components.

(8) The service provider shall fund a participant's one-time work-related services without regard to the priority group status of the participant.

NEW SECTION

WAC 388-300-1500 Annual review for continued funding. (1) The service provider shall review all employability plans to determine whether to continue funding the participant's employability plan components after the close of a state fiscal year.

(2) The service provider shall conduct annual reviews before the beginning of the federal fiscal year (October 1).

(3) The service provider shall perform the following tasks at the annual review of each participant:

(a) Determine if the participant has made or is continuing to make satisfactory progress or participating satisfactorily in the most recently assigned component based on the reviews of the participant's progress conducted throughout the previous year;

(b) Approve components for inclusion on the employability plan for the following state fiscal year, subject to funding limitations for participant assignment, based on the component assignment criteria in WAC 388-300-2200 through WAC 388-300-3100; and

(c) Obligate funds for component costs and supportive services approved for inclusion on the participant's employability plan in accordance with the funding priorities established in WAC 388-300-1400.

(4) The service provider shall have the authority to establish waiting lists for participants who have been denied component activities because of a lack of available funds for that specific component.

NEW SECTION

WAC 388-300-1600 Component costs and supportive service funding conditions. (1) A JOBS participant shall use other funding sources, such as Pell grants or VISTA stipends, before receiving JOBS funding for post-secondary and job skills training component costs and supportive services costs, as described under chapter 388-51 WAC.

(2) The department shall not require a participant to accept student loans when offered as part of a student financial aid package.

(3) The department shall not authorize funding of components costs for participants participating in self-initiated education or training under WAC 388-300-3000.

(4) A JOBS participant shall be eligible for JOBS funding of component costs, supportive services, and child care for a component when:

(a) The service provider has approved the component for inclusion on the person's employability plan; and

(b) The person has provided the service provider with all information regarding student financial aid or other available resources; and

(c) The person is a member of a priority group for which funding is available; or

(d) Funding for component costs or supportive services were previously denied due to lack of funds, provided that:

(i) Funds subsequently become available; and

(ii) The participant was on a waiting list for funding under WAC 388-300-1700.

NEW SECTION

WAC 388-300-1700 Lack of program funds. (1) The department shall establish waiting lists for referrals to service providers when the service provider has exhausted available pathway funds.

(2) The department shall:

(a) Determine which priority groups will be deferred to waiting lists;

(b) Create referral waiting lists for participants who have been denied access to services due to lack of priority group funds;

(c) Rank participants on the waiting list for the person's priority group according to the date the participant was denied access to program services; and

(d) Issue the participant a written notice that access to services are denied due to lack of funds.

(3) If funds become available during the state fiscal year, the department shall refer the participant to a program service provider according to:

(a) The priority group status of the participant; and

(b) The participant's ranking in the priority group as determined under subsection (2)(c) of this section.

(4) When a service provider has exhausted funds or capacity to deliver services for component costs or supportive services for specific components, the service provider shall:

(a) Inform the department that funds are not available to support an approved component for a specific JOBS participant;

(b) Create funding waiting lists for participants who will be issued written funding denials by the department based on the lack of component funds; and

(c) Place a participant on a waiting list for component funding when funding is not available. The service provider shall rank the participant on the list according to the date the service provider informed the department that funding was not available for that person.

(5) The department shall issue any funding denial notices required due to lack of program funds under subsections (1) or (4) of this section in accordance with WAC 388-300-1900.

NEW SECTION

WAC 388-300-1800 Termination of payments for component costs, supportive services, and child care. (1) The service provider shall terminate payments for component costs or supportive services related to an approved component when so directed by the department.

(2) The department may direct the service provider to terminate component cost or supportive service payments when:

(a) The service provider has notified the department that the participant:

(i) Is not meeting the definition of satisfactory progress in WAC 388-300-0200; or

(ii) Has ceased to participate in the component before completion of the activity;

(b) The department independently determines the conditions in subsection (2)(a) of this section exist.

(3) The department may terminate child care payments when:

(a) The JOBS service provider has notified the department that the participant:

(i) Is not meeting the definition of satisfactory progress in WAC 388-300-0200;

(ii) Has ceased to participate in the component before completion of the activity.

(b) The department independently determines the conditions in subsection (3)(a) of this section exist. However, the department must notify both the JOBS service provider and the child care service provider of such termination at the time the department sends notice to the participant.

(4) The department shall ensure that participants whose component costs and supportive services are terminated under subsection (2) of this section receive advance written notice under WAC 388-300-1900.

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(5) Participants shall have the right to appeal decisions made under this section through the department's fair hearing process under WAC 388-300-3600.

NEW SECTION

WAC 388-300-1900 Notice of component decisions or funding decisions. (1) The department shall provide participants with written notification of decisions regarding denial of:

(a) Components considered for inclusion on an employability plan; or

(b) Funding of component costs, supportive services, or child care.

(2) The department shall provide participants with written notification of departmental decisions to terminate previously approved component costs and supportive services.

(3) The department shall ensure denial or termination notices include:

(a) The reason for the decision;

(b) A statement of the legal basis for the action;

(c) A description of the component, component cost, supportive service, or child care which has been denied or which will be terminated;

(d) The amount of funds denied or disallowed for continued payment in the case of terminations; and

(e) The circumstances under which the person is entitled to continued participation or benefits pending the outcome of a fair hearing under WAC 388-300-3600.

(4) The department shall notify participants of a decision to deny components, component costs, supportive services, or child care within ten working days of the denial decision.

(5) The department shall notify participants of the service provider's intention to terminate component costs or supportive services at least ten working days prior to the termination or other action.

(6) The department shall ensure the written notification sent to participants informs the participant of their right to appeal any part of the decision under WAC 388-300-3600.

NEW SECTION

WAC 388-300-2000 Child care. (1) The department shall guarantee a JOBS participant Title IV-A child care under chapter 388-51 WAC for the period of time the participant is:

(a) Participating in an approved JOBS component or an approvable component under WAC 388-300-1300;

(b) Waiting to enter JOBS or employment and during gaps in participation within the following limitations:

(i) For up to two weeks in normal circumstances; or

(ii) For up to one month if child care would otherwise be lost and the activity is scheduled to begin during the month.

(c) For employment for the period of time available for transitional child care under chapter 388-51 WAC.

(2) The department shall not deny a JOBS participant child care due to the lack of program funds for component costs and supportive services if the person is participating in an approved component under WAC 388-300-1300 without JOBS program funding.

(3) The department may terminate JOBS child care if approved components are terminated as described under WAC 388-300-1800.

NEW SECTION

WAC 388-300-2100 Unemployed parent program. (1) The department may require one or both parents in an AFDC-E household to participate a minimum of sixteen hours a week in one or a combination of the following JOBS components or employment-related activities:

(a) WEX;

(b) OJT;

(c) Work supplementation;

(d) Unsubsidized employment;

(e) Job search for the first two months of AFDC eligibility; or

(f) Work study assignments which are part of a student financial aid package.

(2) The department shall consider participation in the Washington Service Corp under RCW 50.65.030 as participation in an employment-related activity for purposes of this section.

(3) The department may require an AFDC-E parent twenty-four years of age or younger who has not completed high school or equivalent to participate in educational activities as described in WAC 388-300-2200 in lieu of the activities in subsection (1) of this section.

(4) The department shall consider a person making satisfactory progress, as defined in WAC 388-300-0200, in an educational activity provided for in subsection (2) of this section to be meeting the participation requirements for the unemployed parent program.

NEW SECTION

WAC 388-300-2200 Basic educational activities. (1) The department may require specific AFDC recipients who have not completed high school or GED certification to participate in basic educational activities.

(2) The service provider shall ensure that high school, GED certification or other educational activities are included in the employability plan for the following participants:

(a) A custodial parent nineteen years of age or younger who has not completed high school or equivalent;

(b) An AFDC-E parent who has not completed high school or equivalent and is:

(i) Twenty-four years of age or younger; and

(ii) Not participating in at least sixteen hours per week in work activities or unsubsidized employment as described under WAC 388-300-2100; or

(c) Dependent children in an AFDC household who are sixteen or seventeen years of age who have not completed high school or equivalent and are not in high school.

(3) The service provider may determine that high school completion or GED certification is not appropriate for:

(a) An AFDC-R custodial parent twenty to twenty-four years of age who has:

(i) A basic literacy level;

(ii) An approved employment goal which does not require a high school diploma or GED;

(b) An AFDC-R custodial parent eighteen or nineteen years of age who:

(i) Is participating in another JOBS program activity which will lead to self-sufficiency; or

(ii) Has been denied admittance to a school or a training institution due to the participant's behavior or the institution's administrative reasons;

(c) An AFDC-R custodial parent or a dependent child sixteen or seventeen years of age when:

(i) An individual assessment, which does not rely solely on grade completion, indicates that the education or GED is not in the best interests of the person or the person's family; and

(ii) The person is participating in another JOBS educational activity or in skills training activities, combined with education.

(4) The department may require nonexempt custodial parents eighteen or nineteen years of age to participate in training or work activities, subject to the twenty-hour limit in WAC 388-300-0400 instead of high school completion or GED certification when:

(a) The parent fails to make satisfactory progress in successfully completing the educational activity; or

(b) Participation in educational activities is inappropriate for the parent based on an educational assessment and the parent's employment goal. The department shall ensure such determinations:

(i) Occur before an education activity assignment; and

(ii) Are based on an employment goal described in the employability plan.

(5) The department may require basic and remedial education for any JOBS participant who:

(a) Has not completed a high school education;

(b) Does not have at least a grade 8.9 basic literacy level; and

(c) Is twenty years of age or older and needs basic literacy services to function at a level which meets the standards of local employers.

(6) The department shall require English proficiency education for a participant who lacks sufficient English language skills to allow employment commensurate with the participant's approved employment goal.

(7) Service providers shall encourage a JOBS participant to participate in educational components as one component in an employability plan when the participant:

(a) Has not completed high school;

(b) Does not demonstrate basic literacy level achievement;

(c) Has an employment goal which requires high school completion or GED; or

(d) Needs remedial or English proficiency education to meet current standards of the local labor market.

(8) The service provider shall require all participants in educational activities to participate full-time, as defined by the educational institution, unless the participant is concurrently engaged in another JOBS component.

NEW SECTION

WAC 388-300-2300 Job readiness activities. (1) The department shall ensure job readiness activities prepare participants for work by assuring that participants:

(a) Are familiar with general workplace expectations; and

(b) Exhibit work behavior and attitudes necessary to compete successfully in the labor market.

(2) Job readiness activities include, but are not limited to:

(a) Life skills training, including, but not limited to, self-esteem building and communication skills training;

(b) Job search techniques, including, but not limited to:

(i) Resume writing skill development;

(ii) Interviewing skills development; and

(iii) Job search skill development related to accessing unadvertised job openings.

(c) Identifying employer expectations; and

(d) Learning how to access and use labor market information for the purpose of identifying which employers are most likely to be hiring employees; and

(e) Job retention skills including, but not limited to:

(i) Conflict resolution;

(ii) Time management; and

(iii) Decision making.

(3) Within available funds, the service provider shall require a participant to participate in job readiness when the participant:

(a) Lacks job search skills;

(b) Does not have recent work history;

(c) Lacks work maturity skills;

(d) Has a history of poor job retention; or

(e) Is a young parent involved in education components.

NEW SECTION

WAC 388-300-2400 Job search program. (1) The department shall ensure the job search program provides a participant with information, job seeking skills training, one-to-one support, and counseling needed by the participant to find and to retain employment.

(2) The department shall ensure the following time limits are applied to job search:

(a) In the initial twelve consecutive months that a family is on assistance, the department shall not require participation in job search for more than sixteen weeks within the following limits:

(i) An initial eight week period which begins on the date of the application for assistance and continues for eight consecutive calendar weeks; and

(ii) An additional eight week period which can begin at any time following the initial eight week period of job search and does not have to be completed during consecutive calendar weeks. "An additional eight week period" means eight weeks of full-time participation or the equivalent. An equivalent to full-time for eight weeks includes twenty hours a week for sixteen weeks, or one day a week for forty weeks.

(b) During subsequent years that a family is on assistance, the person is eligible for job search for eight weeks of full-time participation or the equivalent, as stated in (2)(a)(ii);

(c) The department may require a participant to participate in job search beyond the sixteen week period in the initial year and the eight week period during subsequent years only if job search is performed as part of an educational, training, or employment component. For example, a JOBS participant may be required to conduct a search for

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unsubsidized employment one day per week while participating in WEX; and

(d) The department shall ensure that if a family becomes ineligible for AFDC, then reapplies, the potential JOBS participant becomes eligible for an additional sixteen weeks of job search, as provided under subsections (2)(a)(i) and (ii) of this section.

(3) Participants in job search activities may engage in activities including, but not limited to:

(a) Applying for job openings listed in newspapers or with public or private agencies;

(b) Interviewing with employers for potential job openings;

(c) Attending classes or workshops designed to provide instruction or assistance with the job application process and resume writing or interviewing with employers;

(d) Meeting with the service provider one-to-one or with a group to develop an effective approach to finding employment; and

(e) Accepting referral to prospective unsubsidized job openings developed for the participant by the service provider.

(4) The service provider may require nonexempt applicants or recipients to participate in job search when it is included on the participant's employability plan developed under WAC 388-300-1200.

(5) The service provider shall establish specific requirements for each participant in job search including, but not limited to:

(a) The number of employer contacts to be made by the participant each week;

(b) The type of employment sought by the participant; and

(c) The frequency of required reporting back to the service provider.

(6) The department shall allow exempt target and nontarget AFDC applicants and recipients to volunteer for job search within available funds.

(7) The service provider may assign a participant in the employment investment pathway to job search when job search services will assist the person enter or re-enter employment and the participant:

(a) Has recent work history; and

(b) Has skills for employment currently available in the participant's local labor market;

(c) Is completing or assigned to job readiness or a work-related component; or

(d) Volunteers to participate in job search.

(8) The service provider shall ensure that the component meets the criteria for approval in WAC 388-300-1300.

(9) The department may require a person to participate or a person may volunteer to participate in initial job search under subsection (2) of this section provided:

(a) An applicant is not required to participate in initial job search as a condition of eligibility for AFDC;

(b) The department does not delay the processing of a person's application for AFDC due to participation in initial job search;

(c) The service provider has conducted an assessment of the participant's employability under WAC 388-300-1100; and

(d) Initial job search may extend beyond the date of eligibility determination.

(10) The service provider may require job search under subsection (2)(c) of this section if it is designed to improve the participant's employment prospects.

(11) The service provider shall terminate job search if an assessment of the person's progress in obtaining employment indicates another JOBS activity is more appropriate.

(12) The service provider shall refer the participant to the employment investment pathway or other services within the pathway if job search is terminated under subsection (11) of this section.

NEW SECTION

WAC 388-300-2500 Jobs skills training. (1) The department shall ensure job skills training provides a participant with specific occupational skills through instruction in a classroom, laboratory, or workshop setting.

(2) The service provider shall approve job skills training for inclusion in a participant's employability plan when:

(a) The participant lacks job skills to compete in the local labor market at a wage level that would make the person's family ineligible for an AFDC grant due to earnings;

(b) The participant has an employment goal which requires the participant to acquire occupational skills beyond those the person currently possesses provided that such skills could not be achieved through participation in available openings in:

(i) On-the-job training under WAC 388-300-2800; or

(ii) The work experience program under WAC 388-300-2700.

(c) The criteria for approving a JOBS component for inclusion in a participant's employability plan under WAC 388-300-1300 have been met;

(d) Completion of the job skills training would take no more than twenty-four months; and

(e) The participant has fulfilled all entrance requirements set forth by the institution.

(3) The service provider shall ensure that job skills training is available to a parent in an AFDC-E household only when at least one parent in the household is participating a minimum of sixteen hours a week in a component allowed under the unemployed parent program under WAC 388-300-2100.

(4) Institutions providing job skills training must be:

(a) An institution of higher education defined under section 11(a) or section 381 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(b) A vocational school meeting the provisions of section 435 (b) or (c) of the Higher Education Act, as amended; or

(c) A public institution the state has authorized to provide such a program within the state.

NEW SECTION

WAC 388-300-2600 Post-secondary education. (1) The department shall ensure post-secondary education provides a participant with specific academic instruction and occupational skills through instruction in a classroom setting.

(2) Within available funds, the service provider shall approve post-secondary education for inclusion in a participant's employability plan when the participant:

(a) Lacks job skills to compete in the local labor market at a wage level that would make the person's family ineligible for an AFDC grant; and

(b) Has an approved employment goal which requires that the participant acquire occupational skills beyond those which could be achieved through participation in:

(i) Job skills training under WAC 388-300-2500; or

(ii) On-the-job training under WAC 388-300-2800; or

(iii) The work experience program under WAC 388-300-2700.

(c) Meets the criteria for approving a JOBS component for inclusion in an employability plan as set forth in WAC 388-300-1300; and

(d) Is within ninety quarter credit hours or sixty semester hours of completion of the course of study, and the required coursework can be completed within twenty-four months.

(3) The service provider shall ensure that post-secondary education is available to a parent in an AFDC-E household only when at least one parent in the household is participating a minimum of sixteen hours a week in a component allowed under the unemployed parent program as described in WAC 388-300-2100.

(4) The service provider shall only consider component approval when the institution providing the post-secondary education is:

(a) An institution of higher education as defined under section 11(a) or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended; or

(b) A public institution the state has authorized to provide such a program within the state.

NEW SECTION

WAC 388-300-2700 Work experience program (WEX). (1) The department shall ensure WEX provides a JOBS participant with:

(a) Instruction in work practices essential to increase work maturity;

(b) The opportunity to exercise skills specific to employment in a supervised employment site with a public or private nonprofit employer;

(c) The opportunity to experience working and learning what the demands of employment are, both on the job and at home; and

(d) The opportunity to conduct job search or participate in job readiness activities while participating in a work activity.

(2) The service provider shall consider WEX for inclusion in a participant's employability plan when the participant:

(a) Is an AFDC-E household member who has been unsuccessful in finding employment during the previous eight or more weeks of job search;

(b) Possesses job skills but needs current work history;

(c) Lacks work maturity; or

(d) Has been unable to retain previous employment for reasons other than labor market conditions.

(3) The service provider shall take into consideration the participant's prior education, training, proficiency, experience, skills, basic literacy, interests, and barriers to employment when determining if WEX is an appropriate assignment for a participant.

(4) The service provider shall ensure:

(a) The component meets the conditions for approval in WAC 388-300-1300;

(b) An AFDC recipient's employment has priority over participation in WEX;

(c) WEX assignments serve a useful public purpose in a public or private nonprofit organization; and

(d) Agencies providing WEX opportunities meet appropriate standards of health, safety, and other reasonable working conditions at the work site.

(5) The department shall ensure that WEX positions:

(a) Meet the conditions of WAC 388-300-3700 regarding displacement of regular employees; and

(b) Are not used to fill vacant, unfilled positions.

(6) The service provider may require a nonexempt AFDC recipient to participate in WEX assignments for up to twenty hours a week based on the participant's work experience needs and available funding;

(7) The service provider shall ensure that participants assigned to WEX are:

(a) Assigned to one WEX assignment for not more than nine months;

(b) Re-assessed following the completion of each WEX assignment;

(c) Covered by industrial insurance as required under Title 51 RCW;

(d) Not required to perform tasks which:

(i) Are in any way related to religious, political, electoral, or partisan activities; or

(ii) Would result in the displacement of a person currently employed as provided under WAC 388-300-3700.

(e) Not required to travel unreasonable distances from home or to remain away from home overnight to participate in the WEX assignment without the participant's consent; and

(f) Not be required to use income or resources to pay WEX participation costs.

NEW SECTION

WAC 388-300-2800 On-the-job training (OJT). (1) The department shall ensure OJT provides a participant with occupational skills through training at a work site.

(2) The service provider shall consider on-the-job training for inclusion in a participant's employability plan when:

(a) The participant lacks skills which are in demand in the local labor market at a wage level that will make the participant's family ineligible for an AFDC grant due to earnings;

(b) The participant has basic skills in an occupation, but requires additional occupational skills beyond those which could be achieved through participation in the work experience program under WAC 388-300-2700;

(c) The criteria for approving a JOBS component for inclusion in an employability plan have been met as set forth in WAC 388-300-1300; and

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(d) The participant meets the employer's standards for educational achievement.

(3) The service provider shall ensure:

(a) OJT assignment hours are consistent with the hours in the normal work week for the occupation;

(b) The OJT assignment duration is consistent with the federal Department of Labor Dictionary of Occupational Titles Specific Vocational Preparation occupational guidelines; and

(c) The total amount of the reimbursement paid to the employer does not exceed fifty percent of the total gross wages for regular hours including, as appropriate, gross wages paid to the participant for release time for training.

(4) OJT participants shall be compensated:

(a) At the same rates, including benefits and periodic increases, as similarly situated employees or trainees; and

(b) In accordance with applicable law, but in no event less than the higher of the federal minimum wage or applicable state or local minimum wage.

(5) The department shall provide child care for OJT participants under the income assistance child care program as described in chapter 388-51 WAC.

(6) If an OJT participant becomes ineligible for AFDC due to earned income rules, or in the case of a principal earner in an unemployed parent case due to the one hundred hour rule, such person shall:

(a) Remain a JOBS participant for the duration of the OJT; and

(b) Be eligible for child care and other supportive services as described under chapter 388-51 WAC.

(7) The service provider shall ensure the participant's OJT assignment meets the following conditions:

(a) State or local safety and health standards;

(b) Assignments are not related to political, electoral, religious, or partisan activities;

(c) The employer provides industrial insurance coverage as required under Title 51 RCW; and

(d) The employer provides unemployment compensation coverage for the participant as required under Title 50 RCW.

(8) The department shall require that no work assignment under this program displaces regular employees as specified under WAC 388-300-3700.

(9) The department shall ensure that funds available to carry out the program are not used to assist, promote, or deter union organizing.

(10) When an OJT agreement has been terminated due to the displacement of a regular employee, the JOBS participant's continued employment with the employer shall be at the sole discretion of the person and the employer.

(11) The service provider shall terminate the subsidized employment of JOBS participants if the place of employment or its regular employees are involved in a strike, lockout, or bona fide labor dispute.

NEW SECTION

WAC 388-300-2900 Work supplementation program (WSP). (1) The department shall ensure WSP provides employment opportunities to an otherwise eligible AFDC recipient by using all or part of the person's AFDC grant to subsidize the person's wages for up to nine AFDC payment months.

(2) The department may operate WSP as the employment partnership program (EPP) described in chapter 74.25A RCW with the following provisions:

(a) The department shall contract with local community-based organizations to develop employment positions in EPP; and

(b) Participation in WSP shall be voluntary.

(3) An AFDC recipient shall not be subject to sanction under AFDC rules for refusal to or failure to participate in WSP.

(4) The department shall consider WSP participants to be employed from the date of hire by the employer.

(5) WSP participants are eligible for:

(a) JOBS one-time work-related expenses for the first thirty days of employment in a WSP assignment;

(b) The thirty dollars plus one-third of earned income exclusion from income; and

(c) The work-related expense disregards.

(6) The department shall ensure that the WSP participant is considered an AFDC recipient regardless of the family's receipt of a residual AFDC grant.

(7) The department shall ensure that an AFDC-E qualifying parent participating in WSP is considered to be in a JOBS component rather than in employment for purposes of the one hundred hour rule and therefore is not categorically ineligible for AFDC due to working one hundred or more hours a month.

(8) The department shall ensure that child care payments are available for any eligible children of the participant for the full length of the WSP employment.

(9) An eligible employer shall certify to the service provider or to the local employment partnership council in EPP sites that the employee's employment complies with the following conditions:

(a) Work conditions are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(b) Employment activities are not related to religious, political, electoral, or partisan activities;

(c) The employer provides industrial insurance coverage as required under Title 51 RCW;

(d) The employer provides the participant with unemployment compensation coverage as required under Title 50 RCW; and

(e) Participants hired following the completion of the subsidy period shall be provided benefits equal to those provided to other employees including:

(i) Social security coverage;

(ii) Sick leave;

(iii) The opportunity to join a collective bargaining unit; and

(iv) Medical benefits.

(10) The department shall ensure that no work activity under this program:

(a) Conflicts with WAC 388-300-3700; or

(b) Fills an established, unfilled position vacancy in the work site.

(11) The department shall ensure that funds available to carry out the program are not used to assist, promote, or deter union organizing.

(12) When a work supplementation agreement has been terminated due to displacement of a regular employee, the

JOBS participant's continued unsubsidized employment with that employer is at the sole discretion of the person and the employer.

(13) The department shall terminate WSP subsidies to an employer which becomes involved in a strike, lockout, or bona fide labor dispute after the WSP subsidy period begins.

(14) The department shall ensure that work activities under this program have promotional opportunities or reasonable opportunities for an increase in the employee's wage.

(15) The department shall ensure that EPP positions under WSP pay a minimum of five dollars per hour.

(16) Employers who participate in WSP may receive subsidies at a rate of up to fifty percent of the employee's total gross wages.

(17) The department shall determine Medicaid eligibility for a participant who is ineligible for a residual AFDC grant as if the participant were an AFDC recipient.

(18) The department shall determine that a participant who is ineligible for a residual cash grant due only to WSP participation remains eligible for Medicaid benefits.

(19) Under chapter 74.25A RCW, the legislative authority in the county in which EPP is operating shall appoint an Employment Partnership Council (EPC).

(20) Under chapter 74.25A RCW, the EPC shall have responsibility for:

(a) Recruiting and encouraging local employers to create new job opportunities for AFDC recipients through EPP;

(b) Accepting employer's certification of compliance with the conditions set forth in subsection (3) of this section;

(c) Determining if employers have terminated an EPP employee's unsubsidized employment without good cause as required under subsection (20)(b) of this section; and

(d) Recommending to the department that subsidies should be recovered when an employer has terminated an EPP employee for reasons other than good cause.

(21) When an EPP work assignment does not last six months following the EPP subsidization period, the department shall, upon recommendation of the local employment partnership council, recover state supplemented wages from an employer from the beginning of the subsidization period under subsections (22) and (23) of this section.

(22) The local employment partnership council shall recommend to the department that the department recover subsidies paid to the employer during WSP under the following conditions:

(a) The employer terminated before the end of six months of unsubsidized employment, the employment of the worker for whom the employer had previously received wage subsidies; and

(b) The employer did not have good cause for terminating the employment of the employee under subsection (23) of this section.

(23) The employment partnership council may determine that good cause exists for termination of an employee when:

(a) The employee's act or failure to act caused harm to the employer's business; or

(b) The employee was discharged for good cause due to misconduct, or conviction of a felony or gross misdemeanor:

(i) As defined and determined under chapter 50.20 RCW as amended; and

(ii) As interpreted under WAC 192-16-019 as amended.

NEW SECTION

WAC 388-300-3000 Self-initiated training or education. (1) The department shall consider a person's training or education to be self-initiated if the person is enrolled in or is attending school at the time the person would otherwise begin participation in JOBS.

(2) The service provider shall conduct an assessment under WAC 388-300-1100 before considering a component for approval and inclusion in the participant's employability plan.

(3) The service provider shall ensure that the training or education component meets the criteria for occupational goal and component approval in WAC 388-300-1300.

(4) The service provider shall allow a person to continue in the training or education activity when:

(a) The participant is attending at least half-time;

(b) The participant is making satisfactory progress in the activity; and

(c) The course of study is consistent with the approved employment goal.

(5) The service provider shall not cause the number of hours available for self-initiated education or training to be limited or restricted by assignment of the participant to another component except in the case of an AFDC-E household where one parent must be participating sixteen hours per week in an unemployed parent program component under WAC 388-300-2100.

(6) The JOBS program shall not pay component costs such as tuition, books, supplies, and fees for a participant's self-initiated training or education.

(7) Participants shall be eligible for JOBS child care and supportive services while participating in approved self-initiated training or education provided the provisions in subsection (5) of this section are met in the case of AFDC-E participants.

NEW SECTION

WAC 388-300-3100 Job development and placement services. (1) Job development and placement services are those activities conducted by a service provider on behalf of a participant designed to:

(a) Solicit a public or private employer's unsubsidized job openings;

(b) Discover job openings with public or private employers;

(c) Market participants for specific job openings; and

(d) Secure job interviews for participants.

(2) The service provider shall offer job development and placement services to a participant when an assessment indicates that the person:

(a) Has skills that are in demand in the local labor market; and

(b) Has not been successful in job search efforts.

(3) The service provider shall focus job development and placement efforts on the skills of an individual participant.

(4) The service provider shall ensure that the participant is informed of the name of employers that will be or have been contacted on that participant's behalf.

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(5) The service provider shall ensure that information provided to employers about a participant is made known to that participant before contacting employers.

(6) The service provider shall not release information to employers in addition to information regarding the participant's job skills without the participant's written authorization.

NEW SECTION

WAC 388-200-3200 Good cause for refusal or failure to participate. (1) The department shall determine whether a person has good cause:

(a) For refusal to or failure to participate in an assigned JOBS component; or

(b) To accept or to retain employment.

(2) The department may determine good cause without the participation of the participant. In such cases, the determination process includes, but is not limited to, the department independently:

(a) Determining if the person intentionally refused to or failed to participate in JOBS;

(b) Documenting efforts to resolve the issues prior to conciliation as provided in WAC 388-300-3300;

(c) Reviewing the case record to determine:

(i) Potential causes for refusal or failure to meet program requirements; and

(ii) If the person may have had good cause for nonparticipation.

(3) The department may determine that the participant has good cause for reasons including, but not limited to:

(a) A person is the parent or other needy caretaker of a child five years of age or younger and the activity or employment requires such person to participate more than twenty hours per week. The department shall ensure this subsection does not apply to a person subject to the provisions for educational activities under WAC 388-300-2200;

(b) A person's employment results in the family of the participant experiencing a net loss of income. A net loss of income results if the family's gross income, less necessary work-related expenses, is less than the cash assistance the person was receiving before employment. The participant's grant income includes, but is not limited to, earnings, unearned income, and cash assistance;

(c) A person's physical, mental, or emotional inability to perform the required activity;

(d) A person's court-ordered appearance or temporary incarceration;

(e) Urgent personal or family circumstances which would interfere with successful participation;

(f) Breakdown in transportation arrangements with no readily accessible alternate transportation;

(g) Inclement weather preventing a person, and others similarly situated, from traveling to or participating in the prescribed activity;

(h) The person is prevented from participating due to a breakdown in child care arrangements, or unavailability of child care;

(i) The nature of the required activity is hazardous to the participant;

(j) A person's required activity:

(i) Interrupts a program in process for permanent rehabilitation or self-support; or

(ii) Conflicts with an imminent likelihood of re-employment in the person's regular occupation.

(k) Nonreceipt of participation requirements or a notice of appointment with program staff;

(l) Availability of a position because of a labor dispute;

(m) A person's refusal to accept major medical treatment (for example, major surgery) needed for employability;

(n) Supportive services enabling participation are not available;

(o) A person is homeless;

(p) Discrimination by an employer in terms of age, sex, race, color, religion, national or ethnic origin, physical or mental handicap, political affiliation, or marital status prevented the participant's employment or JOBS participation;

(q) Working hours or nature of employment interfere with the participant's religious observances, convictions, or beliefs as a member of a bona fide religious organization;

(r) Work involves conditions in violation of applicable health and safety standards;

(s) The employment, or offer of employment, does not provide for workers' compensation or other benefits afforded to a person similarly situated working for the same employer;

(t) The employment would cause a person to violate the terms of the person's existing union membership;

(u) As a condition of employment, the person is required to join, resign from, or refrain from joining any legitimate labor organization;

(v) The employment:

(i) Involves unreasonable demands or conditions, such as working without getting paid on schedule; or

(ii) Exceeds the daily or weekly hours customary to the occupation.

(w) The wages of the employment do not meet minimum wage standards or are not customary for such work in the community. This does not apply to work experience as participants do not receive a wage; or

(x) Refusal by an AFDC-E qualifying parent to accept employment of one hundred hours or more per month, the wages for which, less mandatory payroll deductions and necessary work-related expenses, would not equal or exceed the family's AFDC cash benefits. This does not apply to work experience which does not involve wages.

(4) If the department cannot determine that good cause exists from the information independently available, the department shall notify the person in writing of the opportunity to explain the circumstances, if any, which may constitute good cause for nonparticipation in JOBS. The department shall ensure the notice:

(a) Provides ten days advance notice of an appointment to discuss potential good cause;

(b) Provides a description of the program requirement the person failed to meet;

(c) Informs the person of the person's right to provide an explanation of any failure to meet the program requirement;

(d) Informs the person that lack of good cause may result in the reduction of the person's AFDC grant;

(e) Informs the person of the right to conciliation; and

(f) Informs the person that failure to respond to appointments to determine good cause results in a good cause determination made from available information.

(5) The department shall provide written notice to a participant of any good cause determinations made regarding the participant's nonparticipation in JOBS and, when appropriate, that the person can resume participation without further action.

(6) When the department has determined a participant has refused or failed to participate without good cause in the JOBS program, the department shall notify the service provider who initiated the good cause proceeding of the good cause determination.

(7) Participants determined to lack good cause for failing to participate in JOBS components or activities shall be offered conciliation services under WAC 388-300-3300 by the service provider who initiated the good cause determination.

NEW SECTION

WAC 388-300-3300 Conciliation. (1) The department shall ensure conciliation is used to resolve a misunderstanding or disagreement before either results in a fair hearing or a sanction.

(2) Either the service provider or the JOBS participant may initiate conciliation. A participant may request conciliation of any dispute orally or in writing by:

(a) Notifying the service provider that conciliation is desired; and

(b) Specifying the matter to be addressed.

(3) The service provider who initiated the request for a good cause determination shall conduct conciliation with a participant who has been determined by the department to lack good cause for participation in the JOBS program and has so informed the service provider under WAC 388-300-3200. The service provider shall:

(a) Accomplish conciliation through a face-to-face meeting with the person; or

(b) Arrange a telephone interview with the person if a face-to-face meeting is not possible; and

(c) Continue conciliation if the participant cannot be contacted. The service provider shall continue to attempt to contact the person for thirty days from the date the first notice was mailed.

(4) The service provider shall conduct conciliation before the department imposes a sanction.

(5) The service provider shall provide the participant with written notice of the conciliation appointment. The service provider shall ensure that this notice contains:

(a) A description of the matter in dispute;

(b) An explanation of the person's right to a conciliation period not to exceed thirty calendar days from the date of notice;

(c) The date and time of the conciliation appointment;

(d) The consequences of failing to resolve the dispute through conciliation; and

(e) The person's right to a fair hearing regardless of the outcome of conciliation.

(6) The service provider shall mail such notice not less than ten working days before the conciliation appointment.

(7) The service provider shall:

(a) Remain available for conciliation for thirty days from the date of the first notice;

(b) Use the conciliation process to determine if the situation is a result of a misunderstanding or failed communication and can therefore be resolved;

(c) During the conciliation interview, explain the person's rights and responsibilities under JOBS, including consequences of continued refusal to participate; and

(d) Inform a person that if the person feels aggrieved or disadvantaged by the conciliation process or a decision resulting from the conciliation process, that the person may appeal through the department's standard grievance procedure and/or fair hearing procedure.

(8) The service provider or the participant may terminate conciliation before the expiration of the thirty-day period:

(a) Upon written request by the participant to terminate conciliation; or

(b) If the service provider documents reasons which indicate the dispute cannot be resolved by conciliation based on current efforts.

(9) The service provider shall notify the department of all conciliation results.

(10) The department shall take no adverse action relative to the matter in dispute if the matter is successfully resolved.

(11) If a dispute is not resolved through conciliation, the department shall provide the person with an opportunity for a fair hearing.

NEW SECTION

WAC 388-300-3400 Sanctions for refusal or failure to participate. (1) When an AFDC recipient required to participate in the JOBS program refuses or fails to participate in JOBS without good cause, the department shall apply sanctions during the following periods:

(a) For the first failure to comply, until the failure to comply ceases;

(b) For the second such failure to comply, until the failure to comply ceases or three months, whichever is longer;

(c) For each subsequent failure to comply, until the failure to comply ceases or six months, whichever is longer.

(2) Failure to participate is a consistent pattern of noncooperation in JOBS and includes, but is not limited to:

(a) Failure to meet the requirements for assessment and employability plan development, high school or GED completion, or job search requirements;

(b) Not appearing for appointments with the service provider;

(c) Not appearing for appointments with other than the service provider when referred for employment-related activity, including social services;

(d) Not accepting or continuing required JOBS component activity; or

(e) Failure to accept a job offered when good cause is not established under WAC 388-300-3200.

(3) During the period specified under section (1) of this section, the department shall impose a sanction on the person by excluding:

PROPOSED

(a) The person's needs in determining the family's need for assistance and the amount of the assistance payment; and

(b) If the sanctioned person is the qualifying parent in a family eligible for the AFDC due to an unemployed parent, unless the second parent is participating in the JOBS program, the needs of the second parent in determining:

(i) The family's need for assistance; and

(ii) The amount of the assistance payment.

(4) If the person is the only dependent child, the department shall exclude the person's needs in determining the family's need for assistance and the amount of the assistance payment.

(5) If a sanction is applied to the only caretaker relative in the family, the department may continue to make payments:

(a) For the remaining members of the assistance unit in the form of protective payments; or

(b) If a protective payee cannot be identified, on behalf of the remaining members of the assistance unit, to the sanctioned caretaker relative.

(6) The department shall notify, in writing, a person whose failure or refusal continues for three months of the person's option to end the sanction. The department's notice shall advise a sanctioned person that the person may terminate:

(a) The first or second sanction by participating in the JOBS program or accepting employment; and

(b) A subsequent sanction after six months have elapsed by participating in the program or accepting employment.

(7) The department shall ensure that imposition of sanction is preceded by a timely written notice of adverse action under WAC 388-33-376. The department shall ensure the notice contains:

(a) An explanation of the reasons for the proposed action;

(b) The factual reasons for the determination that the person failed to participate in JOBS without good cause;

(c) An explanation of the rights to a fair hearing and continued benefits;

(d) An explanation of how the sanction can be terminated by complying with program requirements; and

(e) In the case of a household receiving AFDC due to the unemployment of a parent, an explanation of:

(i) The sanction and benefit reduction to the second parent; and

(ii) The right of that parent to stop application of the sanction against the second parent by participating in the JOBS program.

(8) The department shall not impose a sanction until conciliation has been attempted.

NEW SECTION

WAC 388-300-3500 Complaints and grievances. (1) A person who is volunteering for or required to participate in any JOBS component has the right to file a complaint or grievance with the department regarding the person's participation in JOBS. The department shall ensure that the person is informed of this right at the time of assignment to a JOBS pathway or component.

(2) A regular employee who is aggrieved under WAC 388-300-3700 shall have the right to file a complaint or grievance.

(3) The department shall pursue complaints or grievances in accordance with standard grievance procedures provided in WAC 388-33-389.

(4) The department shall inform any person who files a complaint or grievance that filing such a complaint or grievance shall not:

(a) Interfere with the person's rights to request a fair hearing by the department on the issue; or

(b) Be required of a person before the person requests a fair hearing.

(5) A person who has been assigned to a JOBS pathway or component shall not be relieved of required JOBS activities pending the results of a filed grievance or a request for a fair hearing.

NEW SECTION

WAC 388-300-3600 Fair hearings. (1) The department shall conduct fair hearings following chapter 388-08 WAC and shall ensure fair hearings are governed by that chapter and this section. If a provision of this section conflicts with a provision in chapter 388-08 WAC, the department shall ensure that the provisions in this section control.

(2) An AFDC applicant and recipient shall have the right to a fair hearing on any JOBS decision affecting participation in JOBS.

(3) A regular employee who is aggrieved under WAC 388-300-3700 shall have the right to a fair hearing.

(4) A person to whom the department has issued a notice of adverse action shall have the right to contest the department's proposed action.

(5) A person who contests the department's proposed action under subsection (4) of this section has ninety days to file a request for a fair hearing.

(6) If a person files a request for a fair hearing under subsection (4) of this section within ten days of the issuance, that person shall not have the sanction imposed until the fair hearing decision has been made.

(7) The department may impose sanctions under WAC 388-300-3400 if:

(a) The person's adverse action is not contested within ten days of issuance; or

(b) The person loses the fair hearing on the action.

(8) Any AFDC assistance received pending a fair hearing or hearing decision is considered to be an overpayment when the fair hearing decision subsequently finds against the participant.

(9) If a person requests a fair hearing, the person's AFDC assistance may not be suspended, reduced, discontinued, or terminated until the fair hearing is concluded if the person requested the fair hearing:

(a) Within ten days of the notice of adverse action; or

(b) On or before the effective date of the action.

(10) If a regular employee requests a fair hearing under this section, the decision of the administrative law judge hearing the issue shall:

(a) Provide an opportunity for the employer or other persons or entities to rectify the situation; and

(b) State the actions to be taken by the department, or the service provider, if any. The department's or the service provider's actions may include, but are not limited to:

(i) Removing the JOBS participant from the place of employment;

(ii) Establishing an overpayment for the amount of the subsidy;

(iii) Removal of the employer from involvement in the program for a specified period of time; or

(iv) Prohibition of future referrals or placements with the employer.

(c) Include the effective date of implementation and methods for extending that date. At the discretion of the administrative law judge hearing the issue, the judge may make a decision effective the date of delivery or of mailing, retroactive, or remedial in nature. The department shall ensure an appeal of the decision does not in itself delay implementation of the order.

(11) The department shall ensure a person who requests a fair hearing under this section receives an adjudicative decision in writing within ninety days of the request.

(12) The department shall ensure an adjudicative decision issued under this section includes:

(a) A notice of appeal rights to the federal level; and

(b) The requirements for filing such an appeal as specified under 45 CFR 251.4.

NEW SECTION

WAC 388-300-3700 Displacement of regular employees. (1) The service provider shall ensure that WEX, OJT, and work supplementation, including employment partnership program (EPP), component activities for JOBS participants do not:

(a) Result in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in hours of overtime or nonovertime work, wages, or employment benefits;

(b) Impair existing contracts for services or collective bargaining agreements;

(c) Result in the employment or assignment of a participant or the filling of a position when:

(i) Any other person is on layoff from the same or a substantially equivalent job within the same organizational unit; or

(ii) An employer has terminated any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created by hiring a participant whose wages are subsidized under this program.

(d) Infringe on promotional opportunities of any currently employed person.

(2) The department shall ensure that work supplementation component activities for JOBS participants do not result in the filling of any established unfilled position vacancy by a participant in a component activity under WAC 388-300-2700 or WAC 388-300-2900.

(3) Displaced regular employees who feel aggrieved shall have the right to:

(a) A grievance procedure under WAC 388-300-3500 or fair hearing; and

(b) Appeal rights under WAC 388-300-3800.

NEW SECTION

WAC 388-300-3800 Employment protection. (1) A person participating in the JOBS program components on-the-job training, work supplementation program, or work experience has the right to a grievance procedure under WAC 388-300-2900 and a fair hearing under WAC 388-300-3600 to resolve a complaint regarding:

(a) On-the-job working conditions; or

(b) Worker's compensation coverage.

(2) A regular employee, or the employee's representative, who believe the work assignment of a JOBS participant violates any of the prohibitions in WAC 388-300-3800 has the right to:

(a) A grievance procedure under WAC 388-300-3500; and

(b) A fair hearing under WAC 388-300-3600 which the department shall concurrently attempt to resolve through the grievance procedure if not previously used to resolve the complaint.

(3) Regular employees who file grievances or fair hearings under subsection (1) or (2) of this section may appeal the final adjudicative decision or order with:

(a) The Washington courts under the provisions of part V of chapter 34.05 RCW; or

(b) The Office of Administrative Law Judges, U.S. Department of Labor, under the provisions of 45 CFR 251.5(3).

(4) A person may use both appeal routes specified in subsection (3) of this section provided that such appeals are filed concurrently and within the limits set forth in either part V of chapter 35.05 RCW or 45 CFR 251.5(b) respectively, each measured from the date of the final adjudicative decision.

NEW SECTION

WAC 388-300-3900 Tribal JOBS. (1) The department shall refer an applicant or recipient of AFDC who is an Indian to the tribal JOBS program if the person resides in the designated service area of an Indian tribe which operates a tribal JOBS program.

(2) The department shall provide JOBS services to an Indian living outside the designated service area of tribal JOBS program.

(3) The department shall remove from the AFDC grant the needs of a person whom the tribe determines:

(a) Is not exempt; and

(b) Has not participated in the tribal JOBS program; and

(c) Did not have good cause for refusal or failure to participate in the tribal JOBS program.

(4) The department shall provide a tribal JOBS participant with child care, according to chapter 388-51 WAC. Under chapter 388-51 WAC, a participant in the tribal JOBS program shall be eligible for transitional child care.

(5) A participant in the tribal JOBS program shall receive all other supportive services from the tribal JOBS program.

PROPOSED

PROPOSED

WSR 95-15-104
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 93-16—Filed July 19, 1995, 9:59 a.m.]

Original Notice.

Title of Rule: Chapter 173-354 WAC, Used oil management standards.

Purpose: To encourage the recycling and sound management of used oil.

Other Identifying Information: Equivalent to 40 CFR Part 279.

Statutory Authority for Adoption: Chapter 70.95I RCW, RCW 70.105.125, 70.95.060.

Statute Being Implemented: Chapter 70.95I RCW, also RCW 70.105.220 - [70.105].270.

Summary: Establishes rules in the management of used oil from generation to disposal. Simplifies recycling requirements, as well as requirements related to other higher forms of management as delineated in RCW 70.105.150. In addition, sets standards for prevention of release to the environment, and recordkeeping for facilities which manage used oil.

Reasons Supporting Proposal: Federal requirement under Resource Conservation and Recovery Act. Divert nearly four million gallons of used oil from entering state's waters annually.

Name of Agency Personnel Responsible for Drafting: William P. Green, Solid Waste Services, 300 Desmond Drive, Lacey, WA 98503, (360) 407-6109; Implementation and Enforcement: David E. B. Nightingale, Solid Waste Services, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6106.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Due to public request, the department has prepared a table comparing, essentially paragraph for paragraph, the contents of the federal rule (40 CFR part 279) with this rule. Those interested in receiving this document, should mail requests to: David Nightingale, Solid Waste Services Program, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 95804-7600, or call (360) 407-6106, or FAX (360) 407-6102.

In addition, the department is seeking specific comments both pro and con to the following issues:

Do you prefer the increased readability and simplified format?

What threshold should exist for the reporting of oil spills in WAC 173-354-200?

Are secondary containment requirements in WAC 173-354-320 and 173-354-340 adequate or overly burdensome?

Should used oil from households and small businesses be allowed to mix or commingle, as discussed in WAC 173-354-460?

Is the 1.0% ash content for burning used oil in WAC 173-354-525 to stringent? What alternatives are there to protect air quality?

How should oil filters be managed in WAC 173-354-700? Should oil filters be banned from disposal in municipal solid waste landfills?

Rule is necessary because of federal law, 40 Code of Federal Regulations 271.26.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will encourage used oil recycling by establishing the infrastructure to manage the used oil through simplified rules. As collection has increased across the state in response to the implementation of the 1991 Used Oil Recycling Act, concerns arose among the citizens and collectors as to if the oil was being managed in an environmentally sound manner. Concerns of liability were also expressed for improperly managed oil under the Model Toxic Control Act. In addition, there was discussion to regulate oil under the dangerous waste regulations. To answer these concerns, and, by removing the uncertainty, ecology hopes to encourage more businesses to properly manage used oil. With the added convenience, more used oil will be collected and recycled.

Proposal Changes the Following Existing Rules: The rule incorporates, and replaces chapters 212-51 and 173-330 WAC. Also incorporated and replaced is WAC 173-303-515 of the Dangerous Waste Regulations, chapter 173-303 WAC. This was done to provide a comprehensive rule for the regulated community to refer to. Sections of the Uniform Fire Code are also referenced, and in some cases repeated. Sections of chapter 173-400 WAC are also referenced.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: David E. B. Nightingale, Solid Waste Services, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6106, or FAX (360) 407-6102.

Hearing Location: Auditorium, Ecology Headquarters, 300 Desmond Drive, Lacey, WA 98503, on September 7, 1995, at 2-4 p.m. and 5-7 p.m.

Assistance for Persons with Disabilities: Contact David E. B. Nightingale by September 5, 1995, TDD (360) 407-6006.

Submit Written Comments to: David E. B. Nightingale, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, FAX (360) 407-6102, by September 21, 1995.

Date of Intended Adoption: October 10, 1995.

July 14, 1995
Terry Husseman
Deputy Director

Chapter 173-354 WAC
USED OIL MANAGEMENT STANDARDS

NEW SECTION

WAC 173-354-008 How to find quick answers in these rules. The first thing you need to know is if you have or manage used oil. You can find the answer to this by using the flow chart (Table 1) in section -090. If the flow chart tells you that you have used oil, then you go to section -100 to find out what part of the rule is specifically important to you. After matching your activities to a definition(s) in section -100, go to Table 2 at the end of that section to find which other sections of the rule apply to you. For a specific topic, you can scan the titles to each section in the table of contents.

ADVISORY: For example, if you have used oil (Table 1) and if you are a general used oil collection center, a

description of your role in used oil collection is defined in section -100 (3)(b). The sections of the rule that apply to you are then provided in Table 2 at the end of section -100.

[Statutory Authority: Chapter 34.05 RCW]

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

NEW SECTION

WAC 173-354-010 Why is this rule being written? This rule is being written to encourage the collection, reuse and recycling of used oil by households and businesses. This rule will set standards for safe, environmentally correct ways to manage and handle used oil. The goal of the department is to prepare a rule which is readable and whose information is easily accessible to the regulated community. Therefore, within the rule, there are *"ADVISORY"* paragraphs which provide examples on how to comply with the rule or provide additional important information. Ecology does not enforce the advisories and is not bound by them.

[Statutory Authority: Chapter 70.95I RCW]

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

NEW SECTION

WAC 173-354-020 Management hierarchy for used oil and oil-bearing materials. (1) Used oil should be managed according to the following hierarchy:

Reclaiming for reuse on-site,

Re-refining,

Recycling to other petroleum products,

Energy Recovery.

This rule has been designed to encourage this management hierarchy.

(2) For oil bearing materials such as oil filters and absorbents, the following hierarchy applies:

Energy Recovery,

Municipal Solid Waste Incineration,

Municipal Solid Waste Landfill.

[Statutory authority: Chapters 70.95, 70.95I, and 70.105 RCW]

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

NEW SECTION

WAC 173-354-050 Who and what is governed by the rule. (1) All used oil as defined in section 100(1) is subject to this chapter, except as specifically noted in section -070 of this chapter. Used oil, which exhibits any of the characteristics or criteria of hazardous waste, is governed by this chapter instead of chapter 173-303 WAC, except as specifically noted in section 070 of this chapter.

(2) Used oil containing more than 1,000 ppm total halogens is governed by this rule if it has been shown that the oil contains no hazardous waste.

ADVISORY: This requirement is intended to parallel the "Rebuttable Presumption" concept in the federal rule (40 CFR Part 279). All demonstrations allowed by that rule are acceptable here.

ADVISORY: One way to show that the oil has no hazardous waste is to show that the halogenated compounds were in the product before use. Information regarding the product's original composition may be found on a Material Safety Data Sheet (MSDS).

(3) Transformer oils and other dielectric fluids that meet the definition of used oil and contain no detectable PCBs must be managed by any of the following:

(a) the provisions of this chapter,

(b) chapter 173-303 WAC, as appropriate, or,

(c) the Toxic Substances Control Act (TSCA) (40 CFR Part 761).

ADVISORY: Due to the specific source of these oils and their unique chemistry, a separate recycling system may be necessary.

(4)(a) Products derived from the processing of used oil which are burned for energy recovery are subject to the provisions of this chapter.

(b) Products derived from the processing of used oil which are disposed or used in a manner constituting disposal are to be managed in accordance with section 900 of this chapter.

(5)(a) Wastewater, which is subject to regulation under the Clean Water Act, contaminated with used oil under abnormal operating conditions, and

(b) used oil recovered from wastewaters are governed by this chapter.

ADVISORY: "Abnormal Operation" can be construed to mean: (1) anytime plant equipment is malfunctioning which results in substantial leaks or spills of used oil, and/or (2) an accidental release of wastewater and/or oil to the environment.

(6) Used oil contaminated with CFC's if the used oil was removed from a refrigeration unit and the CFC's are destined for reclamation are subject to this chapter.

(7) Mixtures of used oil and non-hazardous solid wastes are subject to the provisions of this chapter. Mixtures of used oil and commercial products, such as fuels are subject to the provisions of this chapter.

ADVISORY: This subsection includes mixtures of used oil with kerosenes, Stoddard solvents, and other petroleum hydrocarbons with flash points between 140 and 212 degrees F. These mixtures can be sent to re-refining or energy recovery as appropriate. Petroleum hydrocarbons with flash points below 140 degrees F. are regulated under the Dangerous Waste Regulations.

(8) Used oil generated on a vessel as part of normal operations shall become subject to the provisions of this chapter once it is transported ashore. At the point at which the oil is transported ashore, the used oil is generated. The owner or operator of the vessel and the person(s) who removed or accepted the oil ashore are co-generators of the oil. They are all responsible for compliance with this chapter and may decide among them who will meet these requirements.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

PROPOSED

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

NEW SECTION

WAC 173-354-070 Who and what are not governed by this rule. (1) Used Oil that is mixed with other Moderate Risk Waste is not governed by this rule and is to be managed through the Moderate Risk Waste system. Used Oil that is mixed with dangerous waste is not governed by this rule and is governed by the Dangerous Waste Regulations.

(2) Used oil containing more than 1,000 ppm total halogens where it has not been shown that the oil contains no hazardous waste. These oils, presumed to contain hazardous waste, are treated as hazardous waste.

(3) Products derived from the processing of used oil are not considered used oil nor solid nor hazardous waste if they are:

(a) used beneficially;

(b) not burned for energy recovery; and

(c) not used in a manner constituting disposal.

The products in this subsection specifically, but not exclusively, apply to re-refined lubricants and re-refining distillation still bottoms, if such still bottoms are used as feedstock to manufacture asphalt products.

(4) Wastewater, which is subject to regulation under the Clean Water Act contaminated with small amounts of used oil is exempt from this chapter. These small amounts of used oil are those generated from small drips, leaks, or spills, which occur during normal operation of machinery and/or equipment. Used oil generated during times of abnormal operation are governed under section -050(5).

ADVISORY: Stormwater is an example of wastewater which generally contains small amounts of used oil from small drips or leaks from the normal operation of vehicles. In the case of a catastrophic spill the oil spilled would need to be recovered and recycled.

(5) Used oil which is commingled with crude oil or natural gas is exempt from the requirements of this chapter after the commingling has taken place, provided that the mixture is subsequently processed at an oil refinery or re-refinery.

(6) Cooking oil, and oils derived from animals or vegetables are not governed by this rule.

(7) The following groups are exempt from the provisions of this chapter, except the disposal prohibitions in section -150:

(a) household used oil generators;

(b) farmers who generate an average over a calendar year of 25 gallons a month or less of used oil from vehicles or machinery used on the farm; and

(c) Moderate Risk Waste collection events and other used oil recycling events.

(d) The oil from these groups become subject to this chapter once it is turned over to a used oil collection center. Oil from farmers in (b) may be turned in at a public used oil collection center, if authorized by the owner of the facility, and the county in which it resides.

(8) Petroleum contaminated soils are exempt from this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW.]

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

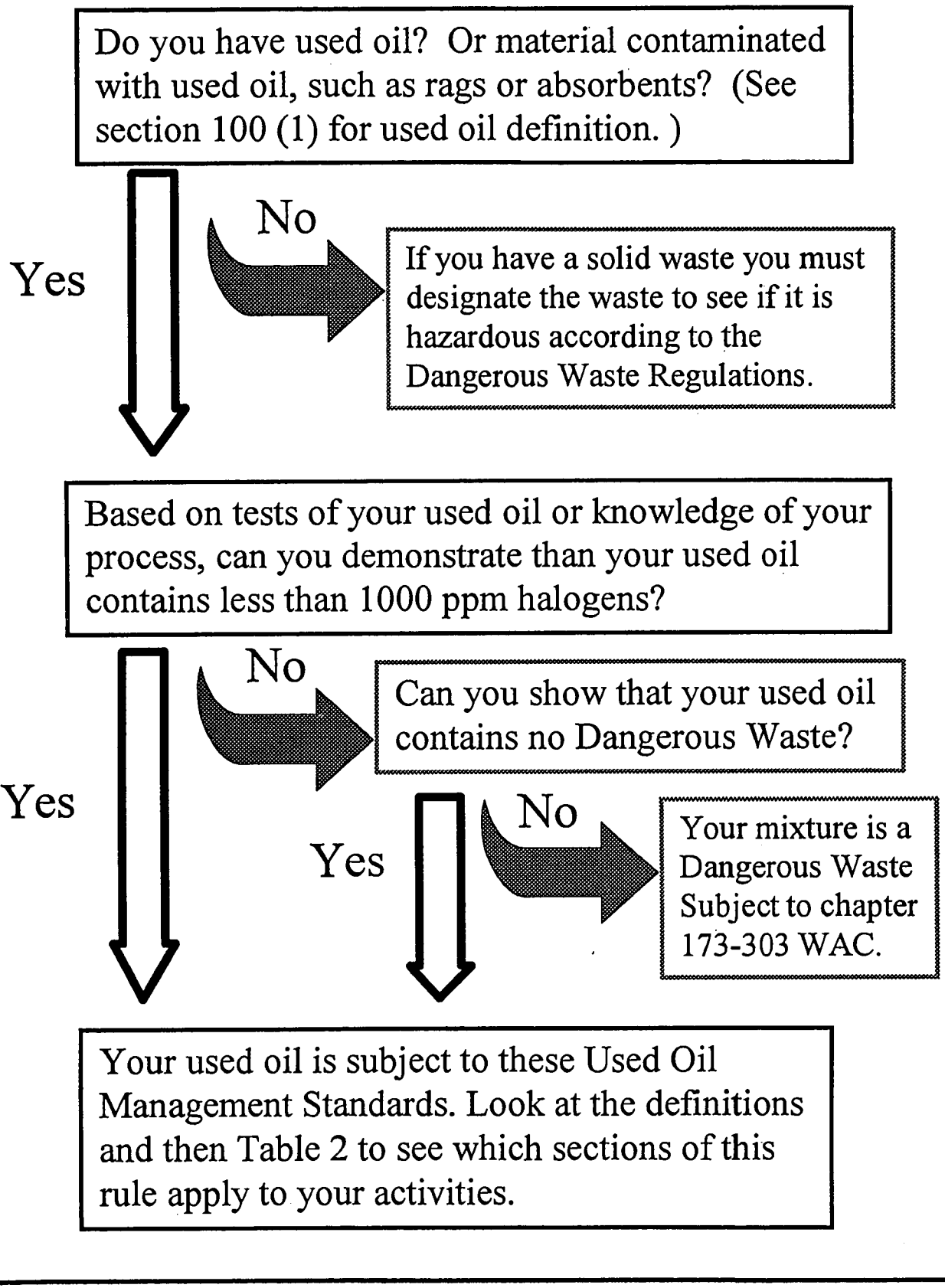
NEW SECTION

WAC 173-354-090 How does the rule affect you? (1) All applicable sections of the rule govern your activities. For example, if you generate your own used oil and transport oil for others, then both the generator and transporter sections would apply to you.

(2) Table 1, on the next page, should assist you in finding whether this rule applies to you. The table is for general cases only, some specific cases may deviate. If so, contact your Ecology Regional Office for assistance.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

TABLE 1: How Does The Rule Affect You?



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

NEW SECTION

WAC 173-354-100 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

ADVISORY: The definitions below are based on functional criteria. What you do with used oil, how much used oil you manage, and where the oil came from will determine which functional definitions apply to you.

(1) The definition of used oil and other related definitions (a) "Used Oil" means (i) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine. This includes synthetic oil derived from these sources OR,

(ii) any oil derived from crude oil, used, and as a result of that use, has been contaminated with chemical or physical impurities. OR,

(iii) any oil which has been refined from crude oil, and as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser.

(b) "Used oil" does not include used oil to which hazardous wastes have been added.

(c) "hazardous wastes" for the purposes of this chapter includes dangerous wastes and any Moderate Risk Wastes except used oil.

(d) "Lubricating oil" or "Lubricating fluid" means any oil designed for use in, or maintenance of, a vehicle, including but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" or "Lubricating fluid" does not mean petroleum hydrocarbons or their derivatives or mixtures with a flash point below 212 degrees Fahrenheit.

(e) "Household used oil" is used oil that has been generated at or by a household for household purposes and not in connection with a home-operated or other business.

ADVISORY: A business which comes to a home to perform automotive maintenance including collection of used automotive crankcase oil is considered the generator of the used oil.

(2) Introducing the definition of "management units" and other related definitions

(a) "Management Units" means a container, tank, or units which are a part of a facility which manages used oil in accordance with the provisions of this chapter. All used oil management units are subject, at a minimum, to this chapter and Articles 9, 10, and 79 of the locally adopted Uniform Fire Code. Questions and actions with regard to the Uniform Fire Code should be directed to the local fire marshall.

ADVISORY: To distinguish between a management unit and a management facility: "management units" are the actual physical devices used which hold the oil; a "management facility" is the site where these devices are located. A management facility generally means transporters, transfer facilities, re-refiners, processors, and marketers of used oil, as well as, burners of off-specification oil.

(b) "Container" means any portable device, such as a drum or vehicle mounted tank, in which used oil is accumulated, stored, transported, treated, disposed of, or otherwise handled. .

(c) "Tank" means any stationary device designed to contain an accumulation of used oil which is primarily constructed of non-earthen materials which provides structural support. Examples of non-earthen materials include: wood, concrete, plastic, steel or other metals commonly used for structural purposes.

There are two types of tanks: aboveground and underground.

(i) "Underground tanks" are any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of used oil, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. Underground tanks are subject to chapter 173-360 WAC, as well as this chapter.

(ii) "Aboveground tanks" are those tanks not regulated as underground tanks.

(3) Definitions for the types of persons and facilities who handle and manage used oil There are several types of facilities and persons involved in the management of used oil:

(a) A "used oil Consolidation Point" means any place where you collect and/or store used oil that came only from other business locations that you own or operate. You may not ship more than 55 gallons of your oil to your consolidation point in any single trip or 220 gallons per month from any given site or location. In addition, you may accept household used oil at your consolidation point. However, if you accept used oil from another business generator you will be considered a general used oil collection center.

ADVISORY: An example is where Jim's Auto Supply #5 collects used oil and also brings the oil collected from Jim's Auto Supply stores #1 through #4 to store #5. Jim owns or operates all five stores. Jim's Auto Supply #5 is an consolidation point.

(b) A "General used oil Collection Center" means any place which collects used oil from any used oil generator. Used oil may not be shipped to a collection center in quantities greater than 55 gallons at any time or 220 gallons on a monthly basis from any one generator.

(c) A "public used oil collection center" means a site where a household used oil collection container or tank has been placed or a vehicle designed or operated to collect household used oil.

ADVISORY: The term "vehicle" used above is intended to refer solely to mobile collection systems for household used oil. Moderate Risk Waste collection events are not included in this definition. Transportation of household used oil between public used oil collection centers and consolidation points is considered self transportation by the generator and is governed by section -380.

(d) A "used oil Fuel Marketer" means the person who ships used oil from their facility directly to a used oil burner.

ADVISORY: Generators and transporters who send off-specification used oil to processors or re-refiners who in turn incidentally burn the used oil as part of re-refining or processing are not fuel marketers.

ADVISORY: One way to tell if you are a marketer is if you have a contract (written or unwritten) with a burner to burn your off-specification used oil.

(e) A "used oil burner" means a facility where used oil is burned for energy recovery according to the conditions in sections 515 - 555 of this chapter.

(f) A "used oil Generator" is anyone, as identified by location, whose act or process produces used oil or first causes used oil to become regulated.

(g) A "household used oil generator" is an individual who generates used oil from normal household activities associated with the home, automobiles, and pleasure craft. A business who services households, such as a lube shop, is not considered a household used oil generator.

(h) A "used oil Processor" means a facility which processes used oil. "Processing" means chemical or physical operations designed to produce oils and other oil derived products from used oil. Processing includes intermediary steps to produce fuel oils, other used oil derived products and lubricants. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oil to produce fuel oils, large scale filtration, simple distillation, and chemical or physical separation.

ADVISORY: Examples of intermediary steps are: 1) where one facility removes sulfur from the used oil before it is sent for final processing at another facility, and/or 2) where one facility produces base lube stock for sale and the other facility blends in the additives to produce the final lubricating fluids for sale. For each of these examples both facilities are considered processors.

(i) "Reclaiming for Reuse" means recovering used oils at the generation site for reuse in the oils' originally intended use. Reclaiming for reuse processes are limited to no more than 1,000 gallons of used oil per month by dewatering, and solid or particulate removal.

(j) A "used oil Re-refiner" is a facility that re-refines used oil and is a type of used oil processor.

(k) "Re-refining used oil" means the reclaiming of used oil into new lubricating fluids which meet all applicable American Petroleum Institute (API) and Society of Automotive Engineers (SAE) standards. "Re-refining used oil" does not mean combustion or landfilling. Re-refining produces, as a by-product, "re-refining distillation bottoms" which means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

(l) A "Self-Transporter" is a generator or an employee of the generator transporting the business' own used oil without a RCRA identification number used for transportation of used oil in a vehicle owned by the generator or an employee of the generator.

ADVISORY: Because households are not generators, the person collecting household used oil is the generator who may then self transport their used oil.

(m) A "Seller" is any person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off their premises, or five hundred or more oil filters to ultimate consumers for use or installation off their premises.

(n) A "used oil Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for not more than 35 days. Transfer facilities accept used oil from multiple generators. Transfer facilities that store oil more than 35 days are considered used oil processors.

ADVISORY: Collection centers and consolidation points are not primarily transportation-related facilities, and therefore would not typically be considered a Transfer Facility.

(o) A "used oil Transporter" is anyone who has obtained a RCRA identification number and transports used oil, or transports and collects used oil from more than one generator. Transporters include the owners and operators of used oil transfer facilities. Transporters may consolidate or aggregate loads of used oil for transportation. Transporters may also perform incidental operations such as dewatering and solids separation as long as these occur as part of the normal course of used oil transportation. Transporters may not perform more complex processing operations such as sulfur or metals removal.

For further clarification on these definitions see 40 CFR part 279.1 or RCW 70.95I.010. The terms not defined in this chapter are defined in WAC 173-303-040. In case of conflict, the definitions in chapter 70.95I RCW supersede all others.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

PROPOSED

Table 2: What part of the rule is specifically important to you?
REMEMBER: MORE THAN ONE DEFINITION MAY APPLY TO YOU. ALL THE SECTIONS THAT APPLY TO ANY OF YOUR DEFINITIONS APPLIES TO YOU.

Used Oil Management Activities/Roles	Ref in 100(3)	Sections of the rule which apply to you
Burner	(e)	150, 200, 320/340, 440, 460, and 515 through 555
General Collection Center	(a)	150, 200, 300, 320/340, 360, 380
Consolidation Point	(b)	150, 200, 300, 320/340, 360, 380
Fuel Marketer	(d)	150, 200, 320/340, 360, 420, 440, 500, 515 through 555, and either 300, 400 - 460, or 600 - 680
Generator	(f)	150, 200, 240, 320/340, 360, 380
Household	(g)	150
Processor	(h)	150, 200, 320/340, 360, 420, 440, 600, 620, 640, 660, 670, and 680
Re-refiner	(j)	150, 200, 320/340, 360, 420, 440, 600, 620, 640, 660, 670 and 680
Seller	(m)	800
Transfer Facility	(n)	150, 200, 320/340, 360, 400, 420, 440, 460
Transporter	(o)	150, 200, 320/340, 360, 400, 420, 440, 460

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

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.

NEW SECTION

WAC 173-354-150 What to do and not to do with your used oil. (1) All used oil shall be taken to a used oil collection center or other facility or location operated according to this chapter.

(2) No one shall mix used oil with hazardous waste.

(3) The use of used oil for dust suppression or weed abatement is prohibited.

(4) Any action which will render free-flowing and the otherwise recyclable oil to a state to where it is no longer recyclable is prohibited unless specifically allowed in this chapter. This prohibition does not include the use of adsorbents to clean up oil from spills, leaks, or other incidents, which have rendered the oil non-recyclable. See section -720 for rules governing the use and disposal of absorbents. No person may sell or distribute absorbent-based kits as a means for collecting, recycling, or disposing of used oil which renders free-flowing used oil non-recyclable.

ADVISORY: If you have used oil that can reasonably be recycled, you must do so. If the used oil is absorbed, for example on rags or loose adsorbents, that cannot be easily recovered for recycling, it may be disposed of in an environmentally safe manner.

(5) [Used Oil] shall not be discharged into or upon any street, highway, drainage canal or ditch, storm drain, sewer or flood control channel, lake or tidal waterway, or upon the ground. (UFC 79.113)

(6) Used oil shall not be managed in surface impoundments or waste piles unless these activities are a part of a permitted dangerous waste treatment, storage, or disposal facility.

[Statutory Authority: Chapters 19.27, 70.94, 70.95I, and 70.105 RCW]

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

NEW SECTION

WAC 173-354-200 Spills & prevention requirements (1) Everyone who handles used oil, except households, is subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR Part 112).

(2) Used oil shall be stored in a used oil management unit. See subsection 100(2) of this chapter.

(a) Management units aboveground shall be maintained in good condition (no severe rusting, structural defects or deterioration) and free from visible leaks.

Advisory: Regular inspection of all used oil management units is recommended. Frequency of inspection should probably be related to frequency of use. As a minimum, each unit should be inspected each time it is emptied.

(b) Aboveground management units and fill pipes to underground storage tanks shall be labeled or clearly marked with the words "Used Oil"

(c) In the case of a spill or other release to the environment from aboveground management units a generator must:

(i) Stop the release;

(ii) Contain the released used oil;

(iii) Clean up and properly manage the released used oil and other materials used in the cleanup;

(iv) Repair or replace any leaking used oil management units, to prevent further releases; and

(v) Report the release to the Washington State Emergency Management Division at 1 (800) 258-5990.

(d) In case of a spill or release to the environment from an underground storage tank a generator must comply with spill management and reporting procedures in chapter 173-360 WAC.

[Statutory Authority: Chapters 70.95I, 70.105 RCW, and 70.148]

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

NEW SECTION

WAC 173-354-230 Reclaiming used oil for reuse on-site (1) Generators who perform reclaiming for reuse of used oil on-site are to maintain and operate the reclaiming areas to minimize the possibility of fire, explosion, sudden and non-sudden releases of used oil and other chemicals to the soil, air, and/or water which could threaten human health or the environment.

(2) Reclaimers of used oil must maintain a log of used oil processed. Each entry must include the following as a minimum:

(a) date of entry,

(b) quantity of used oil processed,

(c) originating process on site,

(d) process consuming the reclaimed oil,

(e) initials or name of person making the log entry.

(3) The used oil reclamation logs shall be kept for at least three years.

(4) Off-site reclamation is governed as incidental processing under section -400. Off-site reclaimers are considered transporters.

ADVISORY: This section is originally intended for compressor oils containing CFCs and mineral oils used by electrical utilities in transformers. It is expected that as additional reclamation technologies become available the scope of this section will expand accordingly.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-300 Collection center standards. This section applies to all used oil collection centers.

(1) There are three types of collection centers:

(a) Public used oil collection center, which collects only household used oil;

(b) General used oil collection center, which collects oil from any used oil generator, ; and

(c) Used oil consolidation point, which only collects oil from the used oil generator which owns or operates the consolidation point.

ADVISORY: Two or more smaller generators may formally combine their resources to establish a used oil collection cooperative. Such a cooperative may establish a collection center which all members of the cooperative may use. These cooperative sites will be considered used oil consolidation points and the cooperative will be considered the single generator. For example, a local chapter of the Automotive Services Association organizes its members to form a cooperative who then sets up a 500 gallon used oil tank as a collection center for members in the area.

(2)(a) Used oil collection centers may accept no more than 5 gallons at any time or no more than 55 gallons over a month from a household. The collection center may choose which of these bases to accept used oil from a household.

ADVISORY: Because the accumulation, storage, and transport of used oil in large volumes can present significant risks to the environment collection centers are encouraged to educate their households to bring a maximum of 5 gallons at a time.

(b) General used oil collection centers and used oil consolidation points may accept no more than 55 gallons at any time or 220 gallons per month from any business. General used oil collection centers may choose which of these bases to accept used oil from businesses.

(c) If a household only collection center, a general collection center and/or consolidation point exist on the same site, the oil from the centers may be commingled for transport after each center or tank is analyzed in accordance with section 460 of this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

PROPOSED

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 173-354-320 Site design and maintenance requirements for above-ground tanks up to and including 660 gallons (1) This section is for everyone who accumulates, collects, or stores used oil in an above ground tank where the largest tank does not exceed 660 gallons.

(2) You must notify your local fire department and jurisdictional health district of your activities. Either or both may elect to require a permit on your facility.

ADVISORY: Fire departments should permit your facility as containing a class III-B Combustible Liquid under Article 79 of the Uniform Fire Code. Health districts may require a solid waste handling permit, but typically do not issue permits for this type of facility.

ADVISORY: If you are collecting household used oil, you should also notify Ecology's RECYCLE Information Line, so your site can be publicized. Just call 1-800-RECYCLE (732-9253). You should also contact your local recycling coordinator.

(3) All used oil sites must also comply with all the following requirements in this subsection, or provide equivalent environmental protection:

(a) provide secondary containment for the tank area.

ADVISORY: The following are some examples of how this requirement can be satisfied: secondary containment spill pallets, secondary containment drum containers, a sloping floor on the site, and double walled tanks with leak detection. Leak detection means any method or device which can provide the operators with an indication of a primary containment leak.

(b) provide a means to prevent water from entering the tank, such as but not limited to, a cover over the tank area, or a roof.

(c) provide a surface sloping towards the tank opening to reduce spills.

ADVISORY: a surface sloping towards the tank opening can aid in preventing spills and maintaining general cleanliness. Periodic inspection of tank area and removal of litter and residue oil may reduce incidents of abuse and vandalism at the tank site.

(d) provide a suitable outlet for emptying the tank by suction. No pressurization of the tank shall be permitted.

(e) provide protection, as necessary, to prevent injury to the tank;

ADVISORY: The types of tank injury that is intended to be alleviated by this protection includes vandalism, and collisions with vehicles. Methods to prevent these occurrences include fencing and placement of cement or steel bollards.

(f) provide adequate fire protection equipment, such as extinguishers, as delineated in articles 9, 10, and 79 of the Uniform Fire Code.

(g) facilities must be located, including necessary setbacks, in accordance with articles 9, 10 and 79 of the Uniform Fire Code as applied by your local fire official.

(h) prevent contamination of stormwater runoff, soils, and groundwater, or introduction of oil into surface waters.

ADVISORY: Use of berms at the uphill side of the facility will prevent runoff from crossing the site and picking up contaminants. Placing a tank inside a building, on the downhill side of a building, or under the eaves of a building may prevent stormwater contamination from the site.

(i) take measures, as needed, to prevent contamination of the oil with other hazardous or solid wastes.

ADVISORY: In the case of centers collecting household used oil, this may include providing information as to the location of the nearest household hazardous waste collection facility or event.

[Statutory Authority: Chapters 19.27, 70.95I, and 70.105 RCW]

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

NEW SECTION

WAC 173-354-340 Site design and maintenance requirements for above-ground tanks over 660 gallons (1) This section is for everyone who accumulates, collects, or stores used oil in above-ground tanks where the largest tank exceeds 660 gallons.

ADVISORY: This section is intended for the used oil management facilities, such as transporters, processors, marketers, and re-refineries.

(2) You should notify your local fire department and jurisdictional health district of your activities. Either or both may elect to require a permit on your facility.

ADVISORY: Fire departments should permit your facility as containing a class III-B Combustible Liquid under Articles 9, 10 and 79 of the Uniform Fire Code. Health districts may require a solid waste handling permit, but typically do not issue permits for this type of facility.

(3) All used oil sites must also comply with all the following requirements in this subsection, or provide equivalent environmental protection:

(a) provide secondary containment in the form of a platform made of impermeable material and containing 110% of the capacity of the largest management unit.

(b) provide a liquid tight cover on each tank.

(c) provide a system of liquid-tight hoses, pipes, and/or pumps to introduce or remove the used oil from the tank. No pressurization of the tank shall be permitted.

(d) provide protection, as necessary, to prevent injury to the tank.

ADVISORY: If constructed properly, the containment platform may satisfy this requirement.

(e) provide adequate fire protection equipment, such as extinguishers, as delineated in article 9, 10, 79 of the Uniform Fire Code.

(f) facilities must be located, including necessary setbacks, in accordance with articles 9, 10, and 79 of the Uniform Fire Code.

(g) prevent contamination of stormwater runoff, soils, and groundwater, or introduction of oil into surface waters.

(h) take measures, as needed, to prevent contamination of the oil with other hazardous or solid wastes.

[Statutory Authority: Chapters 19.27, 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-360 Signs at collection and management centers. As appropriate, all sites which collect or manage used oil shall post the following signs:

(1) A sign(s) placed in conspicuous locations in and/or around the establishment informing the public that used oil is accepted there.

(2) A sign(s) placed within two feet of the tank or facility identifying it as a used oil collection center and containing information to discourage the collection of contaminated used oil.

(3) A sign(s) that state "No Smoking or Open Flame" according to specifications in the Uniform Fire Code and visible from all sides of the facility,

(4) signs (1) and (2) are required only at household or public used oil collection centers.

[Statutory Authority: Chapters 19.27, 70.95I, 70.105 RCW]

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

NEW SECTION

WAC 173-354-380 For generators and all collection centers—Transporting your own oil (1) You can transport your own oil on your own site.

ADVISORY: You should transport the oil in a container that will not spill or cause a fire hazard and in accordance with applicable Department of Transportation regulations.

(2) You can self-transport your oil off-site to a used oil collection center or consolidation point. Self-transportation of oil must take place under the following conditions:

(a) You transport the used oil in a vehicle owned by the you or your employee;

(b) You transport no more than 55 gallons of used oil per day or 220 gallons per month;

(c) If the oil is being transported to an consolidation point, you must own or operate the consolidation point;

(d) If the oil is being transported to an used oil collection center, the used oil collection center must be in compliance with all applicable sections of this chapter. You may also self-transport household used oil to a used oil collection center.

(3) If you do not or cannot self-transport as in (2) above, you must ensure that your used oil is transported only by transporters who have obtained an RCRA identification number.

ADVISORY: You can get an RCRA identification number and become a transporter of your own oil by following the direction and meeting the requirements in section 400.

[Statutory Authority: Chapter 70.105 RCW.]

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

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.

NEW SECTION

WAC 173-354-400 Standards for transfer facilities and transporters which manage used oil. (1) This section applies to all used oil transporters. Owners/operators of transfer facilities are considered transporters and are subject to this section. Transporters may consolidate or aggregate loads of used oil for transportation. Transporters may also perform incidental operations such as dewatering and solids separation as long as these occur as part of the normal course of used oil transportation. Transporters may not perform more complex processing operations such as sulfur or metals removal.

(2) This section does not apply to:

(a) on-site transportation,

(b) self-transportation (WAC 173-354-380), and

(c) household used oil prior to being received at one of the facilities regulated under this chapter. Once used oil is accepted by a facility regulated under this chapter, it is managed the same (by the provisions of this chapter) regardless of origin.

(3) Used oil destined for export or expected for import shall be subject to the provisions of this chapter only while the oil is physically within the boundaries of this state.

(4) A used oil transporter may only deliver used oil to one of the following:

(a) another used oil transporter who has obtained an RCRA identification number;

(b) a used oil processor or re-refiner who has an RCRA identification number;

(c) an off-specification used oil burner with an RCRA identification number; and

(d) an on-specification used oil burner.

(e) a Moderate Risk Waste collection facility, or

(f) a permitted municipal solid waste incinerator which burns household used oil for energy recovery.

(5) Used oil transporters must comply with all applicable packaging, labeling, and placarding rules in 49 CFR 173, 178, and 179. Some highly contaminated loads may also be subject to additional regulations of the Department of Transportation.

(6) In the case of a discharge of used oil during transportation, the transporter shall comply with the requirements in WAC 173-354-200 (2)(c).

(a) In addition, the transporter shall notify the appropriate federal agencies according to 49 CFR 171. Water transporters shall also notify in accordance with 33 CFR 153.

(b) If a federal, state, or local official, acting within official responsibilities, determines that the immediate removal of the discharged oil is necessary for the protection of human health and the environment, the official may authorize the transportation of the discharged oil by transporters who do not have RCRA identification numbers.

(7)(a) Used oil transporters must keep a record of each used oil shipment either imported into the state or accepted for shipment. Records for each shipment must include:

(i) the name and address of the generator, transporter, processor or re-refiner who provided the used oil, as well as

PROPOSED

their RCRA identification number, if they have one (generators don't have to have one),

(ii) quantity of oil accepted and date of acceptance, and

(iii) the signature, dated upon receipt of the used oil, of a representative of the provider of the used oil.

(b) Used oil transporters must keep a record of each shipment of used oil either exported out of state or delivered to another used oil transporter, or a used oil burner, processor, re-refiner or disposal facility. Records of each delivery must include:

(i) The name, address and RCRA identification number of the receiving facility,

(ii) The quantity of used oil delivered and the date of delivery, and

(iii) the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(c) The records described in this subsection must be maintained for at least three years.

(8) Transporters who generate residues from the storage or transport of used oil shall manage them according to this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW].

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

NEW SECTION

WAC 173-352-440 Management facilities—Identification numbers (1) This section applies to transporters, transfer facilities, processors, re-refiners, and marketers of used oil. Facilities which burn off-specification used oil in accordance with sections 515 through 555 of this chapter are also subject to this section.

(2) Facilities in (1) who do not have an RCRA identification number must obtain one. To do so, request a Form 2 from Ecology, fill it out and return it to Ecology. You will be notified of your number.

(3) Facilities who have an RCRA identification number should notify Ecology of their intent to transport, process, market, re-refine or otherwise manage used oil under that number.

(4) Facilities must use their identification number on all correspondence with Ecology, and in all records related to the receipt, shipment, transport, or management of used oil. Facilities must also make their number available to all who send them oil for management, all to whom oil is sent for management, and all transporters.

(5) Facilities must also file an Dangerous Waste Annual Report with Ecology regarding their used oil activities. This report can be filed in conjunction with any report regarding dangerous waste activities by the same facility at the same site.

[Statutory Authority: Chapter 70.105 RCW]

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

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NEW SECTION

WAC 173-354-460 Management facilities—Testing the used oil (1) This section applies to transporters, transfer facilities, processors, re-refiners, and marketers of used oil. Facilities which burn off-specification used oil in accordance with sections 515 through 555 of this chapter are also subject to this section.

(2) Used oil facilities in (1) must determine if the total halogen content of the used oil being accepted for management or stored at a transfer facility exceeds 1000 ppm. The facility may make this determination in two ways:

(a) testing the used oil; or

ADVISORY: Current methods commonly used to test for the presence of halogens include a flame test using a copper wire dipped in oil, halogen sniffers, "litmus sticks", and colorometric liquid tests.

(b) applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(3) If the used oil contains more than 1000 ppm of total halogens, then it must be demonstrated by the facility or the generator that it has not been mixed with hazardous waste, as stated in WAC 173-354-050(2).

(4) If it cannot be demonstrated that used oil has not been mixed with hazardous waste, then the oil is subject to the Dangerous Waste Regulations, Chapter 173-303 WAC.

ADVISORY: If the used oil becomes subject to the Dangerous Waste Regulations, the generator of the used oil must have or acquire an RCRA identification number which will be assigned to that waste.

ADVISORY: It is primarily the responsibility of the generator to apply its knowledge about the processes or material feedstocks in coming to conclusions on used oil status. This information should be provided to the management facility and the management facility should in turn provide the generator with test results.

(5) When a load of oil is declared a hazardous waste by following (2) through (4) above, the facility making the test is responsible to report the determination to the complaint trackers in the appropriate Ecology regional office where the generator is located.

(6) Records of analyses and/or information used to comply with this subsection shall be maintained by the facility for at least three years.

[Statutory Authority: Chapter 70.105 RCW]

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

NEW SECTION

WAC 173-354-500 Marketing of used oil for energy recovery. This section applies to anyone who ships used oil directly to a facility, regulated under sections 515 through 555 of this chapter, which will burn the used oil for energy recovery. This person is called a used oil marketer. Marketer does not include anyone who ships used oil to a processing or re-refining facility regulated under sections 600 through 680 of this chapter.

(1) Used oil marketers must:

(a) comply with the standards in either section 300 or section 400 or sections 515 through 555 or sections 600 through 680 of this chapter; and

(b) comply with sections 400 and 545 of this chapter.

(2) If the oil is on-specification, the marketer must comply with section 620 of this chapter.

(3) If the oil is off-specification, the marketer must:

(a) send the oil to a burner who:

(i) has an RCRA identification number;

(ii) burns the used oil in a facility identified in subsection 545(1) of this chapter;

(iii) has received the certification described in section 555 of this chapter. The marketer must maintain this certification until at least three years following the last shipment to the burner;

(b) comply with section 670 of this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW].

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

NEW SECTION

WAC 173-354-515 Used oil fuels—General provisions (1) These sections (515 - 555) apply to all used oil which is burned for energy recovery in a land-based facility or in state waters except:

(a) household used oil;

(b) used oil that is burned by a processor or re-refiner which is incidental to the processing or re-refining of used oil; and

(c) used oil burned in a space heater, provided that:

(i) the heater burns only used oil generated by the owner or operator of the heater, on-specification oil, and/or household used oil;

(ii) the heater is designed to have a maximum input of 500,000 BTUs per hour;

(iii) the combustion gases from the heater are vented to ambient air; and

(iv) the heater is operated according to manufacturers instructions.

(2) If a burner generates residues from the storage or burning of used oil, s/he must manage the residues in accordance with this chapter.

(3) Used oil burners may aggregate off-specification oil with on-specification oil and/or virgin oil for purposes of burning, but not for purposes of producing on-specification used oil. Burners may do incidental processing, if it is in the normal course of their business and which does not increase the marketability of the used oil.

[Statutory Authority: Chapters 70.95I and 70.105 RCW}

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

NEW SECTION

WAC 173-354-525 Used oil fuels—Specifications (1) The oil which is burned and not exempted by section 515 is divided into two classifications: on-specification oil and off-specification oil. The specifications for used oil are found in Table 3:

Table 3: Used Oil Fuel Specifications

Constituent or Property	Determining Level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Total Halogens	4000 ppm maximum***
Sulfur	1.0 percent maximum
Ash	0.1 percent maximum
Flash point	100 degrees Fahrenheit minimum

ppm means "parts per million" or milligrams/liter

(2) All burners of used oil not exempted in subsection (1) of this section must test the used oil or use other information about the process or feedstock materials to determine if it is on-specification or off-specification.

[Statutory Authority: Chapters 70.94, 70.95I, and 70.105 RCW]

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

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

NEW SECTION

WAC 173-354-535 Used oil fuels—On-specification used oil On-specification oil is that oil which meets the specifications in Table 3 in section 525.

ADVISORY: On-specification oil, in particular, should be re-refined or otherwise processed to yield usable oil products. If recycling is not available, the oil may be used for energy recovery.

In order to burn on-specification oil, the burner must:

(1) maintain copies of the analyses or other information that demonstrate that the used oil is on-specification;

(2) keep an operating log which shows the name and address of the facility receiving the shipment, the date of delivery, the quantity of used oil delivered, and a cross reference to the analysis that demonstrated that the oil was on-specification; and

(3) maintain the records in (1) and (2) above for at least three years.

[Statutory Authority: Chapter 70.105 RCW]

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

PROPOSED

NEW SECTION

WAC 173-354-545 Used oil fuels—Off-specification oil (1) Off-specification used oil can only be burned in the following facilities:

(a) industrial furnaces as defined in WAC 173-303-040;

(b) boilers, as defined in WAC 173-303-040, that are identified as follows:

(i) industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, by mechanical and chemical processes;

(ii) utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) space heaters meeting the conditions of subsection (1)(c) of this section; or

(c) hazardous waste incinerators regulated under 40 CFR 264 and 265 or WAC 173-303-670.

(2) All burners of off-specification oil with greater than 500,000 BTU per hour rated output must comply with the following:

(a) register with the local air authority of Ecology,

(b) if a new used oil burner, file a notice of construction with local air authority or Ecology,

(c) maintain opacity less than 20% or as required by local air authority,

(d) maintain emissions below 0.1 grains per dry standard cubic foot, and

(e) general nuisance provisions of WAC 173-400-040.

[Statutory Authority: Chapters 70.94, 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-555 Used oil fuels—Recordkeeping and certification (1)(a) Used oil burners must keep a record of each used oil shipment accepted for burning. These records must include the following information:

(i) the name, address, and RCRA identification number of the transporter who delivered the used oil to the burner;

(ii) the name, address, and RCRA identification number (if applicable) of the generator, processor or re-refiner from whom the used oil was sent to the burner;

(iii) the quantity of used oil accepted; and

(iv) the date of acceptance.

(b) The record in (a) above may take the form of a log, invoices, manifests, bill of lading or other shipping documents, and should be maintained by the burner for at least three years.

(2)(a) Before a burner accepts the first shipment of off-specification oil from a generator, transporter, processor, or re-refiner the burner must provide to the generator, transporter, processor and/or re-refiner a one-time written and signed notice or certificate that:

(i) the burner has notified Ecology stating the location and general description of his used oil management activities; and

(ii) the burner will burn the used oil only in the facilities listed in subsection 545(1).

(b) The certificate described in (a) above must be maintained for at least three years from the date the burner last receives shipment of off-specification oil from that generator, transporter, processor, or re-refiner.

[Statutory Authority: Chapters 70.95I and 70.105 RCW].

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

NEW SECTION

WAC 173-354-600 Processing and re-refining used oil—General requirements (1) This section applies to the owners and operators of facilities which process and/or re-refine used oil.

(2) Processing and re-refining facilities are to be maintained and operated to minimize the possibility of fire, explosion, sudden and non-sudden releases of used oil and other chemicals to the soil, air, and/or water which could threaten human health or the environment.

(3) Each processing and re-refining facility must be equipped with the following, unless site conditions indicate otherwise:

(a) a communications system which will immediately instruct employees in an emergency situation, as well as summon assistance from the appropriate agencies. The communications system must be designed so that:

(i) whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to the communications system, and

(ii) whenever an employee is working alone at the site, s/he must have immediate access to the external communications system.

(b) fire suppression and other equipment required by the applicable sections of Articles 9, 10, and 79 of the Uniform Fire Code, and

(c) spill control and decontamination equipment.

(d) All equipment required by this subsection shall be tested and maintained in a manner to ensure proper operation during an emergency.

(4) Proper aisle space must be maintained so as to allow unobstructed access to and movement in all areas of the facility.

(5) Used oil processors and re-refiners who initiate shipments of used oil off-site must ship the used oil using a transporter who has obtained an RCRA identification number.

(6) Owners and operators who generate used oil residues from the storage, processing, or re-refining of used oil must manage these wastes according to this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-620 Processing and re-refining used oil—Emergency and contingency planning (1)(a) The owner or operator of the facility must attempt to familiarize the following organizations with the design and operations of the facility and make arrangements for their assistance in times of emergency:

(i) member organizations of the local emergency preparedness committee and Ecology's spill response group should be familiarized with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) local medical centers, hospitals, and/or clinics should be familiarized with the properties of used oil and other materials handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility; and

(iii) emergency response contractors and equipment suppliers.

(b) Where two or more like organizations (such as two or more fire departments) will provide assistance, one of them should be designated as lead and/or first responder.

(c) Refusals to participate by the organizations in (a) should be documented in the operating record of the facility.

(2) Each owner and operator of a used oil processing or re-refining facility must have a contingency plan which will implement the requirement in subsection (1) of this section and which must be carried out in the event of a fire, explosion, release, or other environmental emergency.

(a) The contingency plan will describe the measures to be taken by facility personnel in time of emergency.

(b) If the facility already has an emergency preparedness/response plan, it may amend said plan to meet the requirements of this subsection.

(3) The contingency plan must contain:

(a) a description of the arrangements made with various organizations as referenced in subsection (1) of this section;

(b) an up-to-date list of names, addresses and phone numbers (home and office) of persons eligible to act as emergency coordinator. If more than one person appears on the list, a primary coordinator must be designated (see section (640) for description of the emergency coordinator's duties);

(c) an up-to-date list of all emergency equipment (including a physical description, location, and brief outline of capabilities for each item). Equipment listed must include fire suppression, spill response, communications (internal and external), and decontamination equipment.

(d) an evacuation plan for facility personnel, which includes the signal(s) for evacuation and primary and secondary evacuation routes.

(4) The contingency plan must be reviewed and immediately amended, as necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The facility changes—in its design, construction, operations, maintenance, or other circumstances—in a way that will increase the potential for fire, explosion, release, or other emergency, or changes the response necessary for an emergency; or

(d) the list of emergency coordinator or the list of emergency equipment changes.

(5) Copies of the contingency plan and all revisions to the plan must be:

(a) maintained at the facility; and

(b) submitted to all organizations that have agreed to assist in emergency management as described in subsection (1) above.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-640 Processing and re-refining used oil—Emergency procedures (1) At all times, there must at least one employee either on the facility premises or capable of reaching the facility in a short period of time. This employee, designated the emergency coordinator, must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of the used oil handled, the location of all records in the facility, and facility layout. In addition, the emergency coordinator must have the authority to commit the resources needed to carry out the contingency plan.

(2) Whenever there is an imminent or actual emergency, the emergency coordinator (or his/her designee) will immediately notify facility personnel and responding agencies, if their assistance is needed.

(3) Whenever there is a fire, explosion, release or other emergency, the emergency coordinator must immediately identify the character, exact source, amount, and real extent of released materials. At the same time, s/he must also assess possible hazards (both direct and indirect) to human health and the environment. S/he may do this by observation, use of facility records, or chemical analysis.

(4) If the emergency coordinator determines that the facility has had an emergency situation which could threaten human health or the environment outside the facility, s/he must:

(a) notify the Emergency Management Division at 1 (800) 258-5990 with the following information: name and telephone number of the reporter; name and address of the facility; time and type of incident; name and quantity of materials involved (to the extent known); the extent of any injuries; and the possible hazards to human health or the environment outside the facility; and

(b) notify the appropriate local officials, if an evacuation seems advisable, and assist them in making the decision to evacuate or not.

(5) During an emergency, the emergency coordinator must take all reasonable measures to ensure that the incident does not occur, recur or spread to other parts of the facility. Measures to be taken, as appropriate, include full or partial shut down of the facility, collecting and containing released materials, and removing or isolating containers. In the event of a shut down, the emergency coordinator is responsible to

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monitor for leaks, rupture, gas generation, and pressure buildup.

(6) After the emergency and before operations resume in the affected areas of the facility, the coordinator is responsible to:

(a) immediately provide for the recycling, storage, or disposing of all used oil and other materials released during the incident, as well as all contaminated soils and waters;

(b) ensure that no waste or used oil that may be incompatible with released material is recycled, treated, stored, or disposed of in the affected areas of the facility until cleanup is complete;

(c) ensure that all emergency equipment listed in the contingency plan is cleaned and fit for its intended use;

(d) ensure that the owner or operator has notified Ecology and the appropriate local authorities that the facility is in compliance with section 660.

(7) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing of the contingency plan. Within fifteen days after the incident, s/he must notify Ecology, and include the following information:

(a) Name, address, and telephone number of the owner or operator;

(b) Name, address, and telephone number of the facility;

(c) Date, time, and type of incident;

(d) Name and quantity of materials involved;

(e) The extent of any injuries;

(f) An assessment of actual or potential hazards to human health or the environment, as applicable; and

(g) Estimated quantity and disposition of recovered material that resulted from the incident.

[Statutory Authority: Chapters 70.95I and 70.105 RCW.]

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

NEW SECTION

WAC 173-354-660 Processing and re-refining used oil—Site closure (1) Owners or operators who close an aboveground tank system they have used to process or store used oil must remove or decontaminate used oil residues in the tank, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil. Waste from this removal/decontamination is subject to Chapters 173-303 WAC, and 173-340 WAC unless such waste can still classify as used oil under this chapter. If the owner or operator demonstrates that all contaminated soils cannot be removed or decontaminated, then the site must close in accordance with Chapters 173-303 WAC, and 173-340 WAC.

(2) Owners or operators who store oil in containers, shall, at closure, remove all containers from the site which contain oil or oil residues. They shall also remove or decontaminate used oil residues in the tank, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil. Waste from this removal/decontamination is subject to Chapters 173-303 WAC, and 173-340 WAC, unless such waste can still classify as used oil under this chapter.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-670 Processing and re-refining used oil—Analysis plans Owners and operators of processing and/or re-refining facilities must prepare an analysis plan describing the methods to verify that oil with more than 1000 ppm has not been mixed with hazardous waste (subsection 050(2)) and on-specification oil (section 525). For each of these, the analysis plan must contain:

(1) whether the determination will be made using chemical analysis or knowledge of materials and products;

(2) if chemical analysis is selected: a sampling methodology must be selected. In addition, the frequency of sampling, the parameters analyzed for, the methods for analysis for the parameters and how the information will be used for verification must be documented.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

NEW SECTION

WAC 173-354-680 Processing and re-refining used oil—Recordkeeping Used oil processors and re-refiners must maintain the following records, in addition to those already described in this section:

(1) a record of each used oil shipment received, which must include:

(a) The name, address, and RCRA identification number of the transporter who delivered the use oil to the processor/re-refiner;

(b) The name, address, and RCRA identification number (if applicable) of the generator, processor or re-refiner from whom the used oil was sent;

(c) The quantity of used oil accepted; and

(d) the date of acceptance.

(2) a record of each shipment of used oil sent to a used oil burner, processor, re-refinery, or disposal facility, which must include:

(a) The name, address, and RCRA identification number of the transporter who transported the oil to the burner, processor, re-refinery, or disposal facility;

(b) the name, address, and RCRA identification number of the burner, processor, re-refinery, or disposal facility receiving the oil;

(c) the quantity of used oil shipped; and

(d) the date of shipment.

(3) Records made in compliance with (1) and (2) above may take the form of a log, invoices, manifests, bills of lading or other shipping documents. Records must be retained for at least three years.

(4) The owner or operator of the facility must keep a written operating record at the facility. This record should

be maintained until the closure of the facility, and must contain the following information:

(a) records of analyses of used oil performed according to the analysis plan described in section 670;

(b) records of incidents and emergencies as required by subsection 640(7); and

(iii) refusals to participate in emergency assistance as described in section 620.

[Statutory Authority: Chapters 70.95I and 70.105 RCW]

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

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 173-354-700 Management of used oil filters

EDITOR'S NOTE: Ecology has received a majority of comments suggesting an outright ban of disposal of used oil filters in landfills. Ecology is delaying this decision pending additional comments from the public to this draft rule.

(1) Used oil filters are subject to the provisions of this chapter under subsection -050(7). The purpose of this section is to increase the recycling of used oil filters, and the oil found therein, as much as possible.

ADVISORY: For information regarding the ability to recycle used oil filters you may call 1 (800) 99FILTER.

(2) If the residual steel is to be recycled as scrap, the filter must be drained by:

(a) puncturing and draining for 24 hours, or

(b) crushing with at least 40,000 pounds of force, or

(c) dismantling the filter.

ADVISORY: The destruction of the filter through recycling or burning may reduce the generator liability under the Model Toxics Control Act. Landfilling, on the other hand, may not significantly reduce this liability.

(3) If the residual solid waste (steel and fibers) is to be disposed of in a municipal solid waste landfill (if allowed by local authorities), the filters must be crushed (with 40,000 pounds of force minimum) or dismantled to remove all but residual oil.

(4) If the oil filters go to a municipal solid waste combustor, the filter need not be processed to remove all of the oil, it only needs to be processed to avoid any leakage in transport.

(5) Terne-plated used oil filters are subject to the Dangerous Waste Regulations, Chapter 173-303 WAC.

Advisory: Terne-plated filters are generally associated with large commercial trucks; production of these filters ended in the United States January 1, 1993. Some imported filters, however, may still be terne plated.

[Statutory Authority: Chapter 70.105 RCW]

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

NEW SECTION

WAC 173-354-720 Oil adsorbents, rags and other oil bearing wastes. (1) The use of adsorbents which would render oil unrecyclable are prohibited. Oil from spills, leaks, machinery wiping or cleaning residues, or drips are by their nature unrecyclable. The use of adsorbents is limited to these non-recyclable oils.

ADVISORY: Oil that can be easily recovered, for example oil from a crankcase or oil reservoir, is considered recyclable oil. If you need to use an absorbent to manage the oil or prevent its intrusion into the environment, the oil is not recyclable.

(2) Adsorbents and other material containing oil must be drained, crushed, squeezed, wrung-out, or otherwise processed to remove any and all free-flowing quantities of oil.

(3) Materials that have had all free flowing oil removed may be discarded into a Municipal Solid Waste incinerator or landfill unless prohibited by the jurisdictional health district or other local ordinances.

(4) Materials containing used oil and a dangerous waste such as a listed solvent are dangerous wastes and must be managed in accordance with chapter 173-303 WAC.

[Statutory authority: Chapter 70.95I RCW]

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

NEW SECTION

WAC 173-354-800 Model local ordinance for signs to be used in retail establishments. *ADVISORY: Local government is responsible for establishing ordinances governing posting of signs in retail establishments concerning used oil recycling, RCW 70.95I.040(5). The following is a model ordinance provided as a public service to local government for this purpose. It is intended that the model can be adopted by reference by local government agencies.*

(1) Whereas, the legislature has declared automotive used oil to be a resource, it is in the public interest to recover said resource to greatest extent possible,

Whereas, much household used oil enters the environment each year causing much damage,

Whereas, a convenient collection system is necessary to the collection of household used oil,

Whereas, the education of the public as to locations and needs for oil recycling is paramount to the establishment of a convenient used oil collection system,

Whereas, the legislature has provided in RCW 70.95I.040 that retailers of automotive oil provide this education to their customers through the posting of signs, and that local government be responsible to enforce this provision,

Therefore,

(2) Sellers of automotive oil must post and maintain signs regarding used oil recycling according the provisions of this ordinance,

(3) Signs must be posted in a location visible to the public at either of three locations: automotive display, cash register, or exterior window facing,

(4) Signs must be at least 11" X 14" and must contain as a minimum:

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(a) the oil drop with the recycling symbol inside,

(b) the phrase "Recycle Used Oil",

(c) the listing of at least one of the closest used oil collection center(s), and

(d) the 1-800-RECYCLE information line number and/or its local equivalent for location of publically available used oil collection centers.

(e) graphics or phrases encouraging the recycling of used oil as highly recommended.

(5) Enforcement of this ordinance is hereby delegated to the health district/department as part of the solid waste enforcement program authorized by chapter 70.95 RCW. The health district shall report to the Board annually as to its efforts to enforce this ordinance.

[Statutory authority: Chapters 70.95, 70.95I, and 70.105 RCW]

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

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 173-354-900 Disposal of used oil Used oil and used oil products which cannot be managed by burning, processing, or re-refining as described in sections 515 through 680 of this chapter, shall be considered as being disposed or being used in a manner constituting disposal. Materials subject to this chapter which are disposed or used in a manner constituting disposal are subject to the Dangerous Waste Regulations, Chapter 173-303, as these wastes generally designate as dangerous waste. Persons who are disposing of or using in a manner constituting disposal materials governed by this chapter, may petition the department to exclude the materials from the Dangerous Waste Regulations and/or this chapter. If exemption is granted for both, then the material will be governed by the Minimum Functional Standards for Solid Waste, chapter 173-304 or 351 WAC.

[Statutory Authority: Chapters 70.95, 70.95I. and 70.105 RCW].

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

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 173-354-990 Repealer. Recommendation is made to the State Fire Marshall to repeal:

Chapter 212-51 WAC, as its provisions are now included in sections 320, 340 and 360 of this chapter.

REPEALER

The following are hereby repealed:

WAC 173-303-515
Chapter 173-330 WAC.

WSR 95-16-001
WITHDRAWAL OF PROPOSED RULES
INSURANCE COMMISSIONER'S OFFICE
(By the Code Reviser's Office)
[Filed July 19, 1995, 2:10 p.m.]

WAC 284-30-950, proposed by the Insurance Commissioner's Office in WSR 95-02-075, appearing in issue 95-02 of the State Register, which was distributed on January 18, 1995, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 95-16-004
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 20, 1995, 12:09 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.

Purpose: To provide an explanation of how sales to and by the state of Washington, and its municipal corporations are taxed.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Title 82 RCW, particularly RCW 82.04.030, 82.04.419, 82.04.050, and 82.08.0291.

Summary: This rule is being revised to incorporate statutory changes which reclassified physical fitness services from service B&O taxable to retail sales per chapter 25, Laws of 1993 sp. sess., and subsequent legislation which provided a retail sales tax exemption for physical fitness classes provided by local governments (chapter 85, Laws of 1994). The current rule indicates that the copying of public records or document by governmental agencies is not subject to the retail sales tax. This is incorrect. The copying or duplicating of public records or documents is considered a retail sale, and subject to the retail sales tax.

Reasons Supporting Proposal: To incorporate 1993 and 1994 legislative changes, and to clarify existing tax reporting instructions.

Name of Agency Personnel Responsible for Drafting: Alan R. Lynn, 711 Capitol Way South, #303, Olympia, WA, (360) 586-9040; Implementation: Les Jaster, 711 Capitol Way South, #303, Olympia, WA, (390) [(360)] 586-7150; and Enforcement: Russell Brubaker, 711 Capitol Way South, #303, Olympia, WA, (390) [(360)] 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains how sales to and by the state of Washington and its municipal corporations are taxed. Municipal corporations are subject to B&O tax on income derived from "enterprise activities." The rule explains how municipal corporations can determine whether they are engaged in "enterprise activities." The rule explains the retail sales and use tax reporting responsibilities of departments and institutions of the state of Washington, and its municipal corporations. The rule lists retail sales and use tax exemptions which may apply to state agencies and municipal corporations. This rule will better help departments, institutions, and municipal corporations of the state of Washington to understand their tax reporting responsibilities.

Proposal Changes the Following Existing Rules: This is an amendment to WAC 458-20-189. This rule is being revised to clarify the tax reporting responsibilities of departments, institutions, and municipal corporations of the state of Washington. The rule currently does not indicate that physical fitness services provided by the state of Washington and municipal corporations are retail sales. Physical fitness services were reclassified to be retail sales by the 1993 legislature. Taxpayers relying on the current version of Rule 189 would incorrectly conclude that these services are subject to the service B&O tax. The current rule also indicates that the copying of public records or documents is not subject to the retail sales tax. This is incorrect. The copying or duplicating of public records or documents is considered a retail sale, and subject to the retail sales tax. The incorrect information contained in the current rule could result in substantial tax assessments unless taxpayers are informed of these changes.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The changes to this rule are made to conform to mandates of the legislature and the department is given no discretionary latitude. There are no "for profit" businesses within the SIC codes affected by this rule.

Hearing Location: General Administration Building, Director's Conference Room, Room #402, 11th and Columbia Streets, Olympia, Washington, on September 7, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request a copy of the information in an alternate format contact Sandra Yuen by August 29, 1995, TDD 1-800-451-7985, or (360) 753-3217.

Submit Written Comments to: Alan R. Lynn, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 7, 1995.

Date of Intended Adoption: September 15, 1995.

July 20, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending WSR 86-10-069 [86-18-069], filed 9/3/86)

WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts ((~~and other municipal subdivisions~~)), and fire districts. ((~~(1) Business and occupation tax. No deduction is allowed a seller in computing tax under the provisions of the business and occupation tax with respect to sales to the state of Washington, its departments and institutions or to counties, cities, school districts, or other municipal subdivisions thereof.~~

~~(2) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the business and occupation tax. Counties, cities, and other municipal subdivisions are not subject to the business and occupation tax upon amounts derived from license and permit fees, inspection fees, fees for copies of public records, reports and studies, processing fees involving fingerprinting and environmental impact statements, and taxes, fines or penalties, and interest thereon.~~

~~(3) Counties, cities and other municipal subdivisions are taxable with respect to amounts derived, however designated, from any "utility or enterprise activity" for which a specific charge is made.~~

~~(4) Utility activities. "Utility activities," which are taxable under the public utility tax, include water and electrical energy distribution, public transportation services, and sewer collection services. (See WAC 458-20-179.)~~

~~(5) Enterprise activity. An "enterprise activity," for the purposes of this rule, is an activity financed and operated in a manner similar to private business enterprises. The term includes activities which are generally in competition with private business enterprises and are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.~~

~~(6) Amounts derived from enterprise activities consisting of or from admission fees to special events, user fees (lockers, checkrooms), moorage fees (less than thirty days), cemetery and crematory fees, the granting of media broadcasting rights, and the granting of a license to use real property are taxable under the service and other activities classification of the business and occupation tax.~~

~~(7) Amounts derived from enterprise activities consisting of or from fees for participation in amusement or recreation (pay for play), user fees for off street parking and garages, and charges for sale and rental of tangible personal property are taxable under the retailing classification of the business and occupation tax.~~

~~(8) Under RCW 82.04.419, amounts derived from an activity which is not a "utility or enterprise activity" are tax exempt. Such tax exempt amounts include admission fees other than to special events, fees for on-street metered parking and parking permits, instruction fees, health program fees, athletic team registration fees, and interagency and intergovernmental charges for services rendered.~~

~~(9) All counties, cities and other municipal subdivisions engaging in utility or enterprise activities and all corporate agencies or instrumentalities of the state of Washington engaging in business activities are subject to tax as follows:~~

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(a) Extracting or manufacturing - taxable upon the value of products manufactured or extracted.

(b) Retailing or wholesaling - taxable upon gross proceeds of sales.

(c) Persons taxable under either the retailing or wholesaling classifications are not taxable under either extracting or manufacturing in respect to sales of articles extracted or manufactured by them in this state.

(d) Service and other business activities - taxable under the service and other business activities classification upon the gross income derived from services rendered by them.

(e) Public utility activities - taxable upon the gross income of the business (see WAC 458-20-179 and 458-20-17901).

(10) Counties and cities are not subject to the business and occupation tax on the cost of labor and service in the mining, sorting, crushing, screening, washing, hauling and stockpiling of sand, gravel and rock taken from a pit or quarry owned by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.)

(11) For operation of hospitals by the state or its political subdivisions see WAC 458-20-168 and 458-20-188.

(12) The business and occupation tax does not apply to the value of materials printed solely for their own use by school districts, educational service districts, counties, cities, towns, libraries, or library districts.

(13) Retail sales tax. The retail sales tax applies to all retail sales made to the state of Washington, its departments and institutions and to counties, cities, school districts and all other municipal subdivisions of the state. The retail sales tax does not apply to sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. An exemption is also allowed municipal corporations, the state and all political subdivisions thereof for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. The retail sales tax does not apply to sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any public utility enterprise except a tugboat business (RCW 82.08.0256).

(14) Where tangible personal property or taxable services are purchased by the state of Washington, its departments or institutions for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax must be paid by the state of Washington to its vendors. So-called sales between a department or institution of the state of Washington and any other such department or institution constitute interdepartmental charges (see WAC 458-20-201) and the retail sales tax is not applicable.

(15) The state of Washington, its departments and institutions and all counties, cities, and other municipal subdivisions are required to collect the retail sales tax on all retail sales of tangible personal property or services classified as retail sales, including sales of equipment or other capital assets. The retail sales tax is not applicable to charges for the production, searching, or copying of public records or documents by such public agencies charged with the responsibility to keep and provide such information. However, the tax does apply to charges for the sale of books, rules, regulations, and other materials sold from an inventory of such things, even though the charge is required by law or covers only the costs of production and distribution of such materials. The retail sales tax is not applicable to the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling and stockpiling of sand, gravel and rock taken from a pit or quarry owned by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.)

(16) The sales tax does not apply to sales to the state or a local governmental unit thereof of ferry vessels, component parts thereof, nor labor and services in respect to construction or improvement of such vessels.

(17) Use tax. The state of Washington, its departments and institutions and all counties, cities, school districts, and other municipal subdivisions are required to report the use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.

(18) Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads.

(19) The use tax does not apply to the use of ferry vessels or component parts thereof by the state or local governmental units.

(20) Public utility tax. No deduction in computing tax liability under the provisions of the public utility tax is allowed to any person or firm by reason of the fact that sales are to the state of Washington or any of its municipal subdivisions.

(21) Counties, cities and other municipal subdivisions of the state operating public utilities or public service businesses are subject to the provisions of the public utility tax.

(22) Neither the public utility tax nor the business tax apply to amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for the retirement of obligations and payment of interest thereon issued for capital purposes. Service charges shall not be included in this exemption even though used wholly or in part for capital purposes (see WAC 458-20-179).

(23) Where there is doubt as to the tax consequences applicable to any activity or transaction, the question should be submitted to the department of revenue for determination.

(1) **Introduction.** This section discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington, counties, cities, towns, school districts, and fire districts. Hospitals or similar institutions operated by the state of Washington, or a municipal corporation thereof, should refer to WAC 458-20-168. School districts should also refer to WAC 458-20-167. Persons providing physical fitness activities and amusement and recreation activities should also refer to WAC 458-20-183.

Persons providing public utility services may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-179 (Public utility tax);

(b) WAC 458-20-180 (Motor transportation, urban transportation);

(c) WAC 458-20-250 (Refuse-solid waste collection business etc.); and

(d) WAC 458-20-251 (Sewerage collection business).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Municipal corporations" means counties, cities, towns, school districts, and fire districts of the state of Washington.

(b) "Public service business" means any business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, irrespective of whether the business has the powers of eminent domain or the state exercises its control over the business. It includes, among others and without limiting the scope hereof, water distribution, light and power, refuse collection, public transportation, and sewer collection and treatment.

(c) "Subject to control by the state," as used in (b) of this subsection, means control by the utilities and transportation commission or any other state department required by law to exercise control of a business of a public service nature as to rates charged or services rendered.

(d) "Enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. The term includes those activities which are generally in competition with private business enterprises and which are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

(3) **Persons taxable under the business and occupation tax.**

(a) Sellers are subject to the B&O tax upon sales to the state of Washington, its departments and institutions, or to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the B&O tax. RCW 82.04.030.

(c) Municipal corporations are not subject to the B&O tax upon amounts derived from activities which are exclusively governmental. RCW 82.04.419. Thus, the B&O tax does not apply to license and permit fees, inspection fees, fees for copies of public records, reports, and studies, pet adoption and license fees, processing fees involving fingerprinting and environmental impact statements, and taxes, fines, or penalties, and interest thereon. Also exempt are fees for on-street metered parking and on-street parking permits.

Municipal corporations are also exempt from the B&O tax on grants received from the state of Washington, or the United States government. RCW 82.04.418

(d) Municipal corporations deriving income, however designated, from any enterprise or public service business activity for which a specific charge is made are subject to the provisions of the B&O or public utility tax. Charges between departments of a particular municipal corporation are interdepartmental charges and not subject to tax. (See also WAC 458-20-201 on interdepartmental charges.)

(i) When determining whether an activity is an enterprise activity, user fees derived from the activity must be measured against total costs attributable to providing the activity, including direct and indirect overhead. This review should be performed on the fiscal or calendar year basis used by the entity in maintaining its books of account.

For example, a city operating an athletic and recreational facility determines that the facility generated two hundred fifty thousand dollars in user fees for the fiscal year. The total costs for operating the facility were four hundred thousand dollars. This figure includes direct operating costs and direct and indirect overhead, including asset depreciation and interest payments for the retirement of bonds issued to fund the facility's construction. The principal payments for the retirement of the bonds are not included because these costs are a part of the asset depreciation costs. The facility's operation is an enterprise activity because it is more than fifty percent funded by user fees.

(ii) An enterprise activity which is operated as a part of a governmental or nonenterprise activity is subject to the B&O tax. For example, City operates Community Center, a large athletic and recreational facility, and three smaller neighborhood centers. Community Center operates with its own budget, and the three neighborhood centers are lumped together and operated under a single separate budget. Community Center and the neighborhood centers are operated as a part of an overall parks and recreation system, which is not more than fifty percent funded by user fees.

Each budget must be independently reviewed to determine whether these facilities are operated as enterprise activities. The operation of Community Center would be an enterprise activity only if the user fees account for more than fifty percent of Community Center's operating budget. The total user fees generated by the three neighborhood centers would be compared to the total costs of operating the three centers to determine whether they, as a whole, were operated as enterprise activity. Had each neighborhood center operated under an individual budget, the user fees generated by each neighborhood center would have been compared to the costs of operating that center.

(4) **Business and Occupation tax.**

(a) Municipal corporations engaging in public service business activities should refer to the sections of chapter 458-20 WAC mentioned in subsection (1)(a-d) above to determine their B&O tax liability. Municipal corporations engaging in enterprise activities are subject to the B&O tax as follows:

(i) **Service and other business activities tax.** Amounts derived from, but not limited to, special event admission fees for concerts and exhibits, user fees for lockers and checkrooms, charges for moorage (less than thirty days), and the granting of a license to use real property are subject to the

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service and other business activities tax if these activities are considered enterprise activities. (See also WAC 458-20-118 on the sale or rental of real estate.) The service tax applies to fees charged for instruction in amusement and recreation activities, such as tennis or swimming lessons.

Prior to July 1, 1993, fees charged for physical fitness activities and saunas were subject to the service tax. These activities are a retail sale beginning July 1, 1993. Physical fitness activities include weight lifting, exercise facilities, aerobic classes, etc. (See also WAC 458-20-183 on amusement and recreation activities, etc.)

(ii) **Extracting tax.** The extracting of natural products for sale or for commercial use is subject to the extracting B&O tax. The measure of tax is the value of products. (See WAC 458-20-135 on extracting.) Counties and cities are not, however, subject to the extracting tax upon the cost of labor and services performed in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned by or leased to the county or city when these products are either stockpiled for placement or are placed on a street, road, place, or highway of the county or city by the county or city itself. Nor does the extracting tax apply to the cost of or charges for such labor and services if the sand, gravel, or rock is sold by the county or city to another county or city at actual cost for placement on a publicly owned street, road, place, or highway. RCW 82.04.415.

(iii) **Manufacturing tax.** The manufacturing of products for sale or for commercial use is subject to the manufacturing B&O tax. The measure of tax is the value of products. (See WAC 458-20-136 on manufacturing.) The manufacturing tax does not apply to the value of materials printed by counties, cities, towns, or school districts solely for their own use. RCW 82.04.600.

(iv) **Wholesaling tax.** The wholesaling tax applies to the gross proceeds derived from sales or rentals of tangible personal property to persons who resell the same without intervening use. The wholesaling tax does not, however, apply to casual sales. (See WAC 458-20-106 on casual sales.) Sellers must obtain resale certificates from their customers to support the wholesale nature of any transaction. (Refer to WAC 458-20-102 on resale certificates.)

(v) **Retailing tax.** User fees for off-street parking and garages, and charges for the sale or rental of tangible personal property to consumers are taxable under the retailing B&O tax. The retailing tax does not, however, apply to casual sales. (See WAC 458-20-106.) Fees for amusement and recreation activities, such as golf, swimming, racquetball, and tennis, are retail sales and subject to the retailing tax if the activities are considered enterprise activities. Charges for instruction in amusement and recreation activities are subject to the service tax. (See also WAC 458-20-183 and (i) of this subsection.)

On and after July 1, 1993, charges for physical fitness and sauna services are classified as retail sales and subject to the retailing tax. (See chapter 25, Laws of 1993, sp.s.) While a retail sales tax exemption for physical fitness classes provided by local governments is available on and after July 1, 1994 (see subsection (6)(h) of this section), the retailing B&O tax continues to apply.

(b) Persons selling products which they have extracted or manufactured must report, unless exempt by law, under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. (See WAC 458-20-19301 on multiple activities tax credits.)

(5) **Retail sales tax.**

(a) The retail sales tax generally applies to all retail sales made to the state of Washington, its departments and institutions, and to municipal corporations of the state.

(b) The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on all retail sales of tangible personal property or services classified as retail services unless specific exemptions apply. Retail sales tax must be collected and remitted even though the sale may be exempt from the retailing B&O tax. For example, a city police department must collect retail sales tax on casual sales of unclaimed property to consumers, even though this activity is not subject to the B&O tax because these sales are considered casual sales. (See also WAC 458-20-106.)

(c) The state of Washington, its departments and institutions, and all municipal corporations are required to collect retail sales tax on the total charge for providing copies of public records or documents, even if the total charge includes fees for both searching and copying the records or documents. Retail sales tax must be collected and remitted even though providing copies of public records or documents may be a governmental activity which is not subject to the B&O tax. Municipal corporations should report the gross amount of such sales under both the retailing B&O and retail sales tax classifications when reporting these sales, and claim a "government function" deduction under the retailing B&O tax classification only.

(d) Sales between a department or institution of the state and a municipal corporation, or between municipal corporations are retail sales. For example, State Agency sells office supplies to County. State Agency is making a retail sale. State Agency must collect and remit retail sales tax upon the amount charged, even though the B&O tax does not apply to this sale. The amount of retail sales tax must be separately itemized on the sales invoice. RCW 82.08.050. State Agency may claim a tax paid at source deduction for any retail sales or use tax previously paid on the acquisition of the office supplies. (See WAC 458-20-102 on purchases for dual purposes.)

(e) Departments or institutions of the state of Washington are not considered sellers when making sales to other departments or institutions of the state because the state is considered to be a single entity. RCW 82.08.010(2). Therefore, the "selling" department or institution is not required by statute to collect the retail sales tax on these sales.

All departments or institutions of the state of Washington are, however, considered "consumers." RCW 82.08.010(3). A department or institution of the state purchasing tangible personal property from another department or institution is required to remit to the department of revenue the retail sales or use tax upon that purchase, unless it can document that the "selling" institution previously paid the appropriate retail sales or use tax on that item.

(6) **Retail sales tax exemptions.** The retail sales tax does not apply to the following:

(a) Sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. However, prime contractors and subcontractors for city or county housing authorities should refer to WAC 458-20-17001 (Government contracting etc.) to determine their tax liability.

(b) Charges to municipal corporations and the state of Washington for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. RCW 82.08.0271.

(c) Sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a municipal corporation thereof for use in conducting any public service business except a tugboat business. RCW 82.08.0256.

(d) Sales of or charges made for labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, or rock taken from a pit or quarry owned or leased to a county or city, when the materials are either stockpiled in the pit or quarry, placed on the public road by the county or city itself, or sold at cost to another county or city for use on public roads. RCW 82.08.0275.

(e) Sales to one municipal corporation by another municipal corporation directly or indirectly arising out of, or resulting from, the annexation or incorporation of any part of the territory of one municipal corporation by another. RCW 82.08.0278.

(f) Sales to the state of Washington, or a municipal corporation in the state, of ferry vessels and component parts thereof, and charges for labor and services in respect to construction or improvement of such vessels. RCW 82.08.0285.

(g) Sales to the United States. However, sales to federal employees are subject to the retail sales tax, even if the federal employee will be reimbursed for the cost by the federal government. (See WAC 458-20-190 on sales to the United States.)

(h) On and after July 1, 1994, charges for physical fitness classes, such as aerobics classes, provided by local governments. RCW 82.08.0291. (See also chapter 85, Laws of 1994.) Local governments must collect retail sales tax on charges for other physical fitness activities such as weight lifting, exercise equipment, and running tracks.

This exemption does not apply if a person other than a local government provides the physical fitness class, even if the class is conducted at a local government facility.

(7) **Deferred sales or use tax.**

(a) If the seller fails to collect the appropriate retail sales tax, the state of Washington, its departments and institutions, and all municipal corporations are required to pay the deferred sales or use tax directly to the department.

(b) Purchases of cigarette stamps, vehicle license plates, license plate tabs, disability decals, or other items to evidence payment of a license, tax, or fee are purchases for consumption by the state or municipal corporation, and subject to the retail sales or use tax.

(c) Where tangible personal property or taxable services are purchased by the state of Washington, its departments and institutions, for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax applies.

(d) Persons producing or manufacturing products for commercial or industrial use are required to remit use tax upon the value of those products, unless a specific use tax exemption applies. RCW 82.12.020. This value must correspond as nearly as possible to the gross proceeds from retail sales of similar products. (See WACs 458-20-112 and 134 on value of products and commercial or industrial use, respectively.)

For example, a municipal corporation must remit use tax upon the value of materials printed solely for its own use, even though a B&O tax exemption is provided by RCW 82.04.397. The municipal corporation may claim a tax paid at source deduction if it previously paid retail sales or use tax on materials, such as paper or ink, incorporated into the finished product. (See WAC 458-20-102 on purchases for dual purposes.)

(i) Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads. RCW 82.12.0269.

(ii) If a department or institution of the state of Washington manufactures or produces tangible personal property for use or resale to any other department or institution of the state, use tax must be remitted upon the value of that article even though the state is not subject to the B&O tax.

For example, State Agency manufactures office furniture for resale to other departments or institutions of the state of Washington. State Agency will also on occasion use office furniture it has manufactured for its own offices. Use tax is due on the office furniture sold to the other departments or institutions of this state, and on the office furniture State Agency puts to its own use. The taxable value of the office furniture sold to the other departments or institutions of this state is the selling price. The taxable value for the office furniture State Agency puts to its own use is the selling price at which State Agency sells comparable furniture to other departments or institutions of the state. State Agency may claim a credit for retail sales or use taxes previously remitted on materials incorporated into the furniture State Agency resells or puts to its own use.

(e) A donee is generally subject to use tax upon the use of any donated item of tangible personal property, if the appropriate retail sales or use tax was not paid by the donor. Effective May 1, 1995, a use tax exemption is available to state or local governmental entities using tangible personal property donated to them. (See chapter 201, Laws of 1995.) The donor, however, remains liable for the retail sales or use tax on the donated property, even though the state or local governmental entity's use of the property is exempt of tax.

(8) **Persons subject to the public utility tax.**

(a) Persons deriving income subject to the provisions of the public utility tax may not claim a deduction for amounts received as compensation for services rendered to the state

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of Washington, its departments and institutions, or to municipal corporations thereof.

(b) The public utility tax does not apply to income received by the state of Washington, or its departments and institutions from providing public utility services.

(c) Municipal corporations operating public service businesses are subject to the provisions of the public utility tax. Municipal corporations should refer to WACs 458-20-179 (Public utility tax), 458-20-180 (Motor transportation, urban transportation), 458-20-250 (Refuse-solid waste collection business, etc.) and 458-20-251 (Sewerage collection business) to determine their public utility tax liability.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) City operates a community center which provides a number of activities and services. The center charges fees for court activities including tennis and racquetball, general admission to the swimming pool, swimming lessons, aerobics classes, and the use of weight equipment. The community center also provides programs targeted at youth and senior populations. These programs include arts and craft classes, dance instruction classes, and day camps providing a wide variety of activities such as picnics, nature walks, volleyball, and other games. The center provides banquet and meeting rooms to civic groups for a fee, but does not provide a meal service with the banquet facilities. The community center's operation is an enterprise activity, because it is more than fifty percent funded by user fees.

City's tax liability for the fees charged by the community center are as follows:

(i) Retailing B&O and retail sales taxes apply to all charges for the court activities, general admission to the swimming pool, and the use of weight equipment;

(ii) The retailing B&O tax applies to fees charged for aerobics classes. Retail sales tax does not apply because of the sales tax exemption for physical fitness classes provided by local governments.

(iii) Service and other business activities B&O tax applies to all fees for swimming lessons, the arts and crafts classes, dance instruction classes, day camps, and the rental of the banquet and meeting rooms. Retail sales tax does not apply to any part of the charge for the day camp because the portion of the day camp activities considered to be retail is minimal.

(b) City operates a swimming pool located at a high school. This swimming pool is open to the public in the evenings. City charges user fees for swimming lessons, water exercise classes, and general admission to the pool. City will occasionally "rent" the pool to a private organization for the organization's own use. In these cases, the private organization controls the overall operation and admission to the facility. City has no authority to control access and/or use when "renting" the pool to these organizations. City compares the user fees generated by the swimming pool to the total costs associated with the operation of the pool on an annual basis. The user fees never total "more than fifty percent" of the cost of pool operation, therefor the operation of the pool is not an enterprise activity.

City must collect and remit retail sales tax on all retail sales for which a retail sales tax exemption is not available, even though the B&O tax does not apply. Retail sales tax must be charged and collected on all general admission charges. Retail sales tax does not apply to the water exercise classes because of the retail sales tax exemption provided for physical fitness classes provided by local governments. City would not collect retail sales tax on the charges for the swimming lessons or the "rental" of the pool to private businesses (license to use real estate) because these charges are not retail sales.

(c) City sponsors various baseball leagues as a part of City's efforts to provide recreational activities to its citizens. Teams joining a league are charged a "league fee." Individual participants are charged a "participation fee." The league fee entitles a team to join the league, and reserve the use of the ball fields for league games. The participation fee entitles an individual team member to participate in the baseball activity. City does not account for the operation of the ball fields under a single specific budget. The user fees generated from the baseball fields, as well as the costs of operating and maintaining these fields, are accounted for in City's overall parks and recreation system budget, which is not an enterprise activity.

The participation fees are retail sales and subject to the retail sales tax, because the team members pay these fees for the right to actually engage in an amusement and recreation activity. The league fees are not retail sales, because they simply entitle the teams to join an association of baseball teams that compete amongst themselves. (Refer also to WAC 458-20-183 on amusement and recreational activities.) The participation fees and league fees are not subject to the B&O tax, because these baseball fields are not operated as an enterprise activity. Had these fields been operated as an enterprise activity, the participation fees and league fees would also have been subject to the retailing and service and other business activities B&O tax classifications, respectively.

(d) Jane Doe enters into a contract with City to provide an aerobics class at City's community center. Jane is responsible for providing the aerobics class. City merely "rents" a room to Jane under a license to use agreement.

Jane Doe must collect and remit retail sales tax upon the charges for the aerobics classes. The charges for the aerobics classes do not qualify for the retail sales tax exemption provided by RCW 82.08.0291 merely because the classes are held at a local government facility. Jane Doe is not entitled to the retail sales tax exemption available to local governments.

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

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

WSR 95-16-005
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 20, 1995, 12:11 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-238 Sales of watercraft to nonresidents.

Purpose: To provide an explanation of the retail sales tax exemptions available for sales of watercraft to nonresidents, when delivery is made in Washington.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Title 82 RCW, particularly RCW 82.08.0266, 82.08.02665, and 82.12.0251.

Summary: This rule is being revised to incorporate statutory changes providing a retail sales tax exemption for sales of watercraft to residents of foreign countries per chapter 119, Laws of 1993. The current rule incorrectly indicates that a retail sales tax exemption is not available for sales to residents of foreign countries. The rule is also being revised to explain the use tax exemptions available to nonresidents bringing watercraft into Washington for enjoyment and/or repair. The documentary requirements necessary to qualify for these retail sales and use tax exemptions are also clarified.

Reasons Supporting Proposal: To incorporate 1993 legislative changes, and to clarify existing tax reporting instructions and documentary requirements.

Name of Agency Personnel Responsible for Drafting: Alan R. Lynn, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-9040; Implementation: Les Jaster, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-7150; and Enforcement: Russell Brubaker, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the retail sales tax exemptions available for sales of watercraft to persons who are not residents of the state of Washington, when delivery is made in this state. It explains the documentary requirements needed to substantiate a claim of tax exemption. The rule explains the use tax exemptions available for nonresidents bringing watercraft into Washington for enjoyment and/or repair. This rule will better help watercraft sellers and buyers, and nonresidents bringing watercraft into Washington for enjoyment or repair, determine the circumstances under which the sale, purchase, or use of watercraft is exempt from the retail sales and/or use tax.

Proposal Changes the Following Existing Rules: This is an amendment to WAC 458-20-238. This rule is being revised to explain the retail sales tax exemption for sales to residents of foreign countries. The current rule states that sales of watercraft to residents of foreign countries are subject to the retail sales tax, when delivery is made in Washington. This is incorrect. The 1993 legislature passed chapter 119, Laws of 1993, which provides a retail sales tax exemption for these sales. The rule has been also revised to clarify the documentation requirements necessary to substantiate an exempt sale. Additional language has been added to explain the use tax exemptions available to nonresidents bringing their watercraft into Washington for personal enjoyment or for repairs. Failing to amend this rule could result in a loss of business to Washington-based watercraft sales and repair businesses.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The changes to this rule are made to conform to mandates of the legislature and the department is given no discretionary latitude. The department is not aware of any new or additional administrative responsibilities placed on a business because of this rule. The department has mitigated this rule to remove any inconsistencies between this rule and rules used by the Department of Licensing.

Hearing Location: General Administration Building, Director's Conference Room, Room #402, 11th and Columbia Streets, Olympia, Washington, on September 7, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request a copy of the information in an alternate format contact Sandra Yuen by August 29, 1995, TTY 1-800-451-7985, or (360) 753-3217.

Submit Written Comments to: Alan R. Lynn, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 7, 1995.

Date of Intended Adoption: September 15, 1995.

July 20, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending WSR 83-21-061, filed 10/17/83)

WAC 458-20-238 Sales ((~~to nonresidents of watercraft requiring Coast Guard registration or documentation~~)) of watercraft to nonresidents. ((~~The term "Coast Guard registration," in addition to its ordinary meaning, will include registration numbering by the state of principal use when this function has been assumed by the state under the Federal Boating Act of 1958.~~

~~BUSINESS AND OCCUPATION TAX~~

~~In computing tax under the retailing classification, no exemption or deduction is allowed by reason of the fact that watercraft requiring Coast Guard registration are sold to nonresidents for use outside this state.~~

~~RETAIL SALES TAX~~

~~Under RCW 82.08.0266 an exemption from retail sales tax is allowed in respect to sales to nonresidents of this state for use outside of this state of watercraft requiring Coast Guard registration, even though delivery be made within this state, but only when (a) the watercraft will not be used within this state for more than forty-five days and (b) the seller receives from the buyer an exemption certificate as hereafter provided, and examines acceptable proof that the buyer is a resident of a state other than the state of Washington. The exemption certificate should be in substantially the following form, one copy to be filed with the department of revenue with the regular excise tax return and a duplicate to be retained by the dealer as a part of his records.~~

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~~EXEMPTION CERTIFICATE~~

~~I, (printed or typed name of purchaser), hereby certify: That I am a bona fide resident of the state of .... and my address is (street and number or route), (city, town or post office), (state). That on this date I have purchased from (dealer) the following described watercraft:~~

~~Make and Model ..... Length ....~~
~~How propelled: Inboard .... Outboard ....~~
~~Horsepower ....~~

~~I further certify that this water craft will be registered or documented with the (Coast Guard or State of principal use), will not be used in the state of Washington for more than forty-five days and is exempt from Washington State Retail Sales Tax under RCW 82.08.0266.~~

~~I hereby declare, under penalty of perjury, that the above statements are true and correct to the best of my knowledge and belief.~~

~~Date ...... Signature ....~~

~~CERTIFICATION OF DEALER~~

~~I hereby certify that I personally examined the following items of documentary evidence submitted by the above purchaser to establish his residence in the state of ....:~~

~~.... Payroll or W-2 Forms~~
~~.... Driver's License~~
~~.... Fishing or Hunting License~~
~~.... Voter's Registration Card~~
~~.... Copies of Income Tax Returns~~
~~.... Other .... Explain ....~~

~~.................... ....~~
~~(signature of dealer or representative) (Dealer's registration number with Department of Revenue)~~

~~....................~~
~~title officer or agent~~

~~The foregoing exemption is limited to sales of watercraft requiring Coast Guard registration or, where the state in which the boat will be principally used has assumed the registration and numbering function under the Federal Boating Act of 1958, to sales of watercraft which have been registered and numbered by such state of principal use. The exemption is also available in respect to sales of vessels which are documented (registered, enrolled, or licensed) by the United States Coast Guard to and in a port other than in the state of Washington. This exemption is applicable only to the sale of watercraft in condition to be waterborne and not to unattached component parts, repair parts, repair labor, etc. The exemption is not applicable for sales to Canadian or other foreign country residents taking delivery in this state.~~

~~USE TAX~~

~~The use tax will be applicable to the use by a nonresident of watercraft registered or documented with the Coast Guard or with the state of principal use when the watercraft was purchased from a Washington vendor and is first used within this state for more than forty-five days.~~))

(1) **Introduction.** This section explains the retail sales tax exemption provided by RCW 82.08.0266 for sales to nonresidents of watercraft requiring United States Coast Guard registration or documentation. It also explains the retail sales tax exemption provided by RCW 82.08.02665 for sales of watercraft to residents of foreign countries, which became effective July 25, 1993. (See chapter 119, Laws of 1993.) These statutes provide the exclusive authority for granting a retail sales tax exemption for sales of such watercraft when delivery is made within Washington. This section explains the requirements which must be met, and the documents which must be preserved, to substantiate a claim of exemption. It also discusses use tax exemptions for nonresidents bringing watercraft into Washington for enjoyment and/or repair.

This section primarily deals with the retail sales and use taxes where delivery takes place in Washington. Purchasers of watercraft should also be aware that there is a watercraft excise tax which may apply to the purchase or use of watercraft in Washington. (See chapter 82.49 RCW.) Sellers should refer to WAC 458-20-193 if they deliver the vessel to the purchaser at an out-of-state location.

(2) **Business and occupation tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, notwithstanding the sale may qualify for an exemption from the retail sales tax. If the seller is also the manufacturer of the vessel, the seller must generally report under both the "production" (extracting and/or manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit system. Manufacturers should also refer to WAC 458-20-136 (Manufacturing, etc.) and WAC 458-20-19301 (Multiple activities tax credits).

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. However, under certain conditions retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Sales to residents of other states.** RCW 82.08.0266 provides an exemption from the retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. This specific exemption does not apply to sales of watercraft to Canadian or other foreign country residents. The retail sales tax exemption which is available for sales of watercraft to Canadian or other foreign country residents is explained in subsection (3)(b) of this section.

(i) The exemption provided by RCW 82.08.0266 is limited to the following:

(A) Sales of watercraft which are required to obtain United States Coast Guard documentation; and

(B) Sales of watercraft requiring registration by the United States Coast Guard or the state in which the vessel will be principally used, but only when that state has assumed the registration and numbering function under the Federal Boating Act of 1958.

(ii) The following requirements must be met to perfect any claim for exemption:

(A) The watercraft must leave Washington waters within forty-five days of delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of a state other than the State of Washington; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate. (See subsection 4, below.)

(iii) The exemption provided by RCW 82.08.0266 does not extend to the sale of boat trailers, unattached component parts, repair parts, repair labor, etc.

(b) **Sales to residents of foreign countries.** RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption became effective July 25, 1993. (See chapter 119, Laws of 1993.) The term "vessel," for the purposes of this subsection, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. This exemption is not limited to the types of watercraft qualifying for the exemption discussed in subsection (3)(a) above.

(i) The following requirements must be met to perfect any claim for exemption:

(A) The watercraft must leave Washington waters within forty-five days of delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of a foreign country; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate. (See subsection 4, below.)

(ii) This exemption does not extend to the sale of boat trailers, unattached component parts, repair parts, repair labor, etc.

(4) **Exemption certificate.** The exemption certificate must be completed in its entirety, and retained by the seller at the time of sale. The seller is required to review one piece of identification substantiating the nonresident status of the customer, and to indicate on the certificate the type of identification examined. This one piece of identification must either be a valid driver's license from the jurisdiction in which out-of-state residency is claimed, or a valid identification document which has a photograph of the holder and is issued by the out-of-state jurisdiction. If the customer is a partnership, corporation, limited liability company, association, or any other person who is not a natural person, the seller should refer to subsection (5) of this section for an explanation of what constitutes acceptable proof of the customer's nonresident status.

The seller should not accept an exemption certificate if the seller becomes aware of any information prior to completion of the sale which is inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application. The exemption certificate must be substantially in the following form:

EXEMPTION CERTIFICATE

Seller's Name . . . . . .
Buyer's Name . . . . . .
Address of Buyer . . . . . .
State or Foreign Country of Residence . . . . . .
Date of Sale . . . . . .
Make and Model of Vessel . . . . . .
Serial Number of Vessel . . . . . .

I certify that (a) the vessel described above will be registered or documented with the United States Coast Guard or the state of principal use; or (b) I am a resident of a foreign country and the vessel has been purchased for use outside the state of Washington. I further certify that this vessel will leave Washington State waters within forty-five days of delivery, and the purchase of this vessel is exempt from Washington State retail sales tax under the provisions of either RCW 82.08.0266 or RCW 82.08.02665. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Signature of buyer or buyer's representative . . . . . .

CERTIFICATION BY SELLER

I hereby certify that I have personally examined one of the following items of documentary evidence submitted by the above purchaser to establish residency in the state or country of . . . . . :

. . . Driver's License (list license number and date of expiration) . . . . . .
. . . Identification Card (list card number and date of expiration) . . . . . .

Signature of seller or agent of seller . . . . . .

(5) **Sales to residents of other states or countries who are not natural persons.** The types of identification described in subsection (4) of this section are not applicable for establishing the residency of partnerships, corporations, limited liability companies, or other persons who are not natural persons. Because many of the types of documentation which would establish the nonresident status of these persons contain confidential information (e.g. federal income tax returns), the seller may satisfy its requirement to examine and record documentary evidence by retaining at the time of sale a completed affidavit substantially in the following form:

AFFIDAVIT OF OUT-OF-STATE RESIDENCY

Name of buyer . . . . . .
Address . . . . . .
State or foreign country of residency . . . . . .
Registration # . . . . . .
Type of entity (e.g. corporation, partnership, etc.) . . . . . .

I certify that . . . (buyer's name) . . . is a resident of . . . (state or foreign country). . .

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Name of buyer's representative (printed) . . . . . .
Signature of buyer's representative . . . . . .

The affidavit of out of state residency may only be accepted and used for establishing the nonresident status of persons who are not natural persons. It may not be used as documentary evidence for sales to natural persons. The seller must at the time of sale retain this affidavit as well as the exemption certificate described in subsection (4) of this section. A partnership, corporation, limited liability company, or other person who is not a natural person is a "nonresident" for the purposes of exemption under RCW 82.08.0266 or RCW 82.08.02665 if that person's principal place of business is not in Washington, and that person is not incorporated in Washington.

(6) **Use tax.** Persons using watercraft on Washington waters are generally subject to the use tax if Washington retail sales tax has not been paid, unless such use is specifically exempted by law from the use tax.

(a) The deferred retail sales tax or use tax is due on the use by any nonresident of watercraft purchased from a Washington vendor and first used within this state for more than forty-five days if retail sales or use tax has not been paid by the user. Tax is due notwithstanding the watercraft qualified for retail sales tax exemption at the time of purchase.

(b) Watercraft brought into this state by nonresidents for their use and enjoyment while temporarily within this state are exempt from the use tax. However, it will be presumed that usage within Washington which exceeds more than sixty days in any twelve month period is more than temporary usage and use tax is due. (See RCW 82.12.0251.)

(c) Watercraft temporarily brought into this state by nonresidents for repair are exempt from the use tax if removed from this state within sixty days. If repair cannot be made within this period, the exemption may be extended by completing and filing with this department an affidavit verifying the vessel is located upon the waters of this state exclusively for repair, reconstruction or testing. This affidavit, titled "Nonresident Out-of-State Vessel Repair Affidavit", is effective for sixty days. If additional extensions of the exemption period are needed, additional affidavits may be completed. The affidavit should be sent to the department of revenue - compliance division. This affidavit is the affidavit which is required under RCW 88.02.030, and failure to complete this affidavit can result in requiring that the vessel be registered in Washington.

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In all examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) Company A sells a vessel to Jane Smith, a Canadian resident. Company A examines Jane Smith's driver's license to verify Jane to be a resident of Canada, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington and Jane removes the vessel from Washington waters within forty-five days of delivery. The sale of the vessel is not subject to the retail sales tax because all requirements for exemption under RCW 82.08.02665 have been satisfied.

(b) Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon, which has assumed the registration and numbering function under the Federal Boating Act of 1958. The vessel is removed from Washington waters within forty-five days of delivery. Company A examines a drivers license confirming John Doe to be an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax can not be used for purchases of vessels which require United States Coast Guard registration or documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for retail sales tax exemption.

(c) Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the State of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' drivers license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the vessel from Washington waters within forty-five days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does, however, apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the watercraft prior to delivery.

(d) Mr. Smith, a resident of California, brings his yacht into Washington for repair. Extensive repairs and testing require the yacht to remain in Washington waters for 90 days. Mr. Smith extends the exemption period by filing a "Nonresident Out-of-State Vessel Repair Affidavit" with the department of revenue prior to end of the initial sixty day exemption period. An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility and promptly removes the yacht from Washington waters.

Mr. Smith has not incurred a use tax liability on his yacht. The conditions and requirements exempting the yacht from use tax during the period of repair and testing have been met. However, retail sales tax is due, and must be

paid, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

WSR 95-16-006
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 20, 1995, 12:14 p.m.]

Original Notice.

Title of Rule: WAC 458-20-211 Leases or rentals of tangible personal property.

Purpose: RCW 82.04.050 was amended in 1993 to include the rental of equipment with an operator as a retail sale. This rule is being amended to implement this legislation. The legislation took effect on July 1, 1993.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: RCW 82.04.050.

Summary: This rule is being amended to explain that rentals of equipment with an operator is a retail sale for periods beginning July 1, 1993. The rule distinguishes rentals of equipment with an operator from subcontract services. The rule also will define "true leases" and "financing leases" and explain how each is taxable.

Reasons Supporting Proposal: RCW 82.04.050 was amended by the 1993 legislature to include equipment rentals with an operator as a retail sale.

Name of Agency Personnel Responsible for Drafting and Implementation: Les Jaster, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-7150; and Enforcement: Ken Capek, 711 Capitol Way South, Suite #401, Olympia, WA, (360) 753-3320.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides tax reporting information to persons renting or leasing tangible personal property or renting equipment with an operator. The rule explains the differences between renting equipment with an operator and performing subcontract services. The rule also explains the difference between "true leases" and "finance leases" and how each is taxable. The purpose of the rule is to assist these businesses in reporting their business and occupation taxes and retail sales tax so that the state receives the proper amount of tax in a timely manner and these businesses will not be subjected to a tax assessment at a later date.

Proposal Changes the Following Existing Rules: This proposal will result in a revision to WAC 458-20-211. The rule will explain that equipment rentals with an operator became a retail sale on July 1, 1993. The rule also explains the difference between "true leases" and "finance leases." The first change is the result of legislation. The second change is not a change in tax policy, but simply placing the department's existing tax policy in the rule.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. No statement was prepared because the Department of Revenue is not aware of any new or additional administrative burden placed on a business as a result of this rule. The changes in the rule are being made to conform with specific statutory changes.

Hearing Location: General Administration Building, Revenue Conference Room 402, 210 11th and Columbia Street, Olympia, WA, on September 20, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request a copy of the information in an alternate format contact Sandra Yuen by September 13, 1995, TTY 1-800-451-7985, or (360) 753-3217.

Submit Written Comments to: Les Jaster, Rules Coordinator, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 20, 1995.

Date of Intended Adoption: September 29, 1995.

July 20, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending Order 87-4, filed 8/11/87)

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) **Introduction.** This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. RCW 82.04.050(4) was amended by chapter 25, Laws of Washington 1993 sp.s to specifically include the rental of equipment with an operator as a retail sale. However, as will be explained in more detail below, some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act.

(2) **Definitions.**

(a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease", "leasing", "lessee", or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

((~~(2)~~)) (b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically

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bill on the basis of the amount of time the equipment was used.

(e) The term "true object test" as it relates to this section means the analysis of a transaction involving equipment and an operator to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator. This test can also be applied to rentals of tangible personal property when the seller performs some service in connection with the rental.

(f) The term "true lease" refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

(i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal;

(ii) The lessee acquires equity in the equipment;

(iii) The lessee is required to bear the entire risk of loss;

(iv) The lessee pays all the charges and taxes imposed on ownership;

(v) There is a provision for acceleration of rent payments, and

(vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." ((~~Also, under this statutory definition, the term "retail sale" includes the renting or leasing of tangible personal property to consumers. However, equipment which is operated by the owner or an employee of the owner is considered to be resold, rented, or leased only under the following, precise circumstances:~~)) Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired. Generally persons who rent equipment with an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired. Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the equipment is rented as tangible personal property. This can be demonstrated only when:

(a) ((~~The property consists of construction equipment;~~))

((~~(b)~~)) The agreement between the parties is designated as an outright lease or rental, without reservations; and,

((~~(c)~~)) (b) The ((~~customer~~)) lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

((~~(5) The third~~)) This last requirement ((~~above~~)) is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned ((~~servant~~)) employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

((~~(6) Thus, the terms leasing, rental, or bailment do not include any arrangements pursuant to which the owner of the equipment reserves dominion and control of the equipment and either operates the equipment or property or provides an employee operator, whether or not such employee operator works under the general supervision or control of the customer.~~))

((~~(7)~~)) (5) **Business and occupation (B&O) tax.**

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as ((~~"true"~~)) leases ((~~or rentals~~)) of operated equipment ((~~or property~~)) are generally subject to the retailing classification of the business and occupation tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a resale certificate from the lessor as provided in WAC 458-20-102.

(ii) Under unique circumstances when ((~~such things are~~)) equipment is rented for rerent by the lessee, without intervening use, then the original rental is subject to the wholesaling classification of tax and the subsequent rental is subject to the retailing classification. The original seller is required to obtain a resale certificate for these wholesale sales.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered to be the consumers of these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and subject to the retailing B&O tax.

((~~(8)~~)) (b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is

specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to the business and occupation tax (or public utility tax) according to the classification of the activities performed by the equipment and operator. ((~~Thus,~~)) In the case of building construction, it will be presumed that the rental of equipment with operator to a contractor is a retail sale unless the operator has responsibility for performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the leasing or renting of tangible personal property can be subject to the special "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions of RCW 82.08.0261, .0262, or .0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

(d) The following examples show how the tax would be applied to certain situations.

(i) The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed. ((~~and a similar~~))

(ii) A contractor performing work to contract specification making a charge to a ((~~contractor~~)) city for use of equipment and operator in the construction of a publicly-owned road would be taxable under public road construction.

(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.

(iv) Income from transporting persons or property for hire by motor vehicle is taxable under either motor transportation or urban transportation.

(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer.

(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.

((~~(9)~~)) (6) **Retail sales tax**. Persons who rent or lease tangible personal property to users or consumers are required to collect from their lessees the retail sales tax measured by gross income from rentals as of the time the rental payments fall due.

~~(10)~~ (a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for resale "as tangible personal property." Thus the retail sales tax does not apply upon sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators ((~~or making "true" leases of operated equipment~~)). However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing.

((~~(11) The retail sales tax does not apply upon the rental or lease of motor vehicles and trailers to nonresidents of this state for use exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when the motor vehicle or trailer is registered and licensed in a foreign state. For purposes of this exemption, the term "nonresident" shall apply to a renter or lessee who has one or more places of business in this state as well as in one or more other states but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained and operated from the renter's or lessee's place of business in another state.~~

~~(12) Effective April 3, 1986, (RCW 82.08.0295)~~))

(b) Financing leases are treated for state tax purposes as installment sales. The retail sales tax applies to the full selling price. Refer to WAC 458-20-198.

(c) The retail sales tax ((~~shall~~)) does not apply to lease payments made by a seller/lessee ((~~to a purchaser/lessor~~)) under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.

~~(13)~~ (7) **Use tax and/or deferred retail sales tax**. Consumers who rent or lease tangible personal property from others and who have not paid the retail sales tax to their lessors are liable for the retail sales tax or use tax on the amount of the rental payments as of the time the payments fall due unless an exemption from the tax applies.

~~(14) Effective April 3, 1986, (RCW 82.12.0295) the use tax shall not apply to lease payments by a seller/lessee to a lessor under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the use tax apply to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term. In both situations the availability of this use tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such property, equipment, and components.~~

~~(15)~~ (a) Bailment. The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental ((~~for such articles~~)) with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental may be computed by prorating the

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retail selling price over the period of possession had by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after tax has been paid by the bailee or any previous bailee upon the full original value of the article.

~~(16)~~ (b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from sales or use tax. (RCW 82.12.0265.)

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In some situations it may be difficult to determine if the transaction is a retail equipment rental with operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a specific ruling.

(a) ABC Crane is hired to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six story building while the prime construction contractor bolts the unit down. ABC Crane's operator will retain control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction.

(b) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate is obtained. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.

(c) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

(d) ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e) Farm Services, Inc. specializes in the cutting and baling of hay for farmers. The hay, after being cut and baled, is sold by the farmer. Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the service and other business activities B&O tax classification. See WAC 458-20-209.

(f) Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc. This is not a rental of equipment with an operator, nor is it considered as an air transportation service. This activity is directly part of the timber extracting and harvesting activity and is taxable as extracting for hire.

(g) ABC Sound Productions provides lighting, amplifying equipment, and speakers as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator. In applying the true object test, the promoter is primarily purchasing the use of the lighting and sound equipment. The performer or promoter could be expected to specify the color, location, and degree of lighting and may also request changes and modifications to the level of sound amplification during the performance.

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.

WSR 95-16-013
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 11:23 a.m.]

Original Notice.

Title of Rule: WAC 388-506-0610 AFDC-related medical programs and 388-513-1315 Eligibility determination—Institutional.

Purpose: The new legislation requires the department to consider the parent's income if the child is in inpatient chemical dependency/mental health treatment for less than ninety days.

Statutory Authority for Adoption: RCW 74.08.090 and ESSB 5439, Section 48.

Statute Being Implemented: RCW 74.08.090, ESSB 5439, Section 48.

Summary: Provide by rule the financial responsibility of the parent(s) of a child in inpatient chemical dependency/mental health treatment when determining Medicaid eligibility.

Reasons Supporting Proposal: Implement ESSB 5439, Section 48 concerning the financial responsibility of parent(s) of a child in inpatient chemical dependency/mental health treatment when determining Medicaid eligibility.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Medical Assistance Administration, 753-7462.

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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule affects a new group of Medicaid clients and would not have an economic impact on any industry or business.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by August 22, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 6, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3847, filed 4/26/95, effective 5/27/95)

WAC 388-506-0610 AFDC-related medical programs. (1) When determining eligibility for medical programs, the department shall consider:

(a) The family unit living in the same household as including all family members when determining program relationship;

(b) A relative financially responsible only as follows:

(i) The natural or adoptive parent or stepparent to a child eighteen years of age or younger living in the same household; and

(ii) Spouse to spouse living in the same household.

(c) As a separate medical assistance unit (MAU) the following family member living in the same household, when a family member is not eligible for a categorically needy medical care program:

(i) A child with countable income;

(ii) A child with countable resources which render another family member ineligible for a Medicaid program;

(iii) A child in common of unmarried parents;

(iv) Each unmarried parent of a child in common with such parent's separate children, if any; or

(v) A nonresponsible caretaker relative.

(d) Categorically related family members, other than those described under subsection (1)(c) of this section, in the same MAU; ((~~and~~))

(e) A pregnant minor as not living in the same household as her parent regardless of whether she lives with her parent. See subsections (4)(b) and (5)(b) of this section; and

(f) A child, seventeen years of age and younger, in inpatient chemical dependency treatment or inpatient mental health treatment as living in the parent's or legal guardian's household, unless:

(i) An assessment by the department or its designee indicates inpatient treatment is likely to last ninety consecutive days or more;

(ii) The child is in a court-ordered out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the child.

(2) The department shall consider income and resources jointly for spouses and spouses' children living in the same household unless the exceptions in subsection (1)(c) of this section are met. See WAC 388-506-0620 for the financial responsibility requirements for SSI-related clients.

(3) When determining eligibility for medical care, the department shall consider the countable income or resources of a child available only to the child when an exception in subsection (1)(c) of this section is met.

(4) The department shall consider the income of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall:

(i) Allow a parent one hundred percent of the Federal Poverty Level (FPL) for the parent and other members of the parent's MAU; and

(ii) Allocate income in excess of one hundred percent of the FPL on a prorated basis to all children eighteen years of age or younger in separate MAUs for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's income is actually contributed to the child.

(5) The department shall consider the resources of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall ensure a parent's countable resources are:

(i) Prorated; and

(ii) Allocated in equal shares to:

(A) The parent; and

(B) Each person for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's resources are actually contributed to the child.

(6) When determining medical care eligibility, the department shall not consider available, unless actually contributed to the client, the income and resources of a:

(a) Stepparent not legally liable for support of the stepchildren;

(b) Legal guardian other than the parent of the client;

(c) Caretaker other than the parent of the client;

(d) Alien sponsor;

(e) Sibling or child; or

(f) Spouse not living in the same household as the client.

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(7) The department shall determine each MAU's medical care eligibility using:

(a) The MAU's countable income and resources;

(b) Household size for the number of persons in the MAU; and

(c) The income and resource standards that apply to the household size equal to the number of persons in the MAU.

(8) The department shall exempt one vehicle as described under WAC 388-216-2650, for each separate MAU that owns such vehicle.

(9) When the household contains an SSI-related family member who is ineligible for AFDC-related categorically needy Medicaid because of income or resources, that member shall be removed from the MAU and placed in a separate categorical assistance unit (CAU). The department shall determine eligibility for:

(a) The remaining members of the MAU without consideration of the income or resources of the SSI-related client; and

(b) The SSI-related member using SSI-related income and resource rules.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-513-1315 Eligibility determination—Institutional. (1) The department shall find a person residing in or expected to reside in a Medicaid-approved medical facility for at least thirty consecutive days eligible for institutional care, if the person:

(a) Is Title XVI-related with gross income:

(i) Equal to or less than three hundred percent of SSI Federal Benefit Amount. The department shall determine a person's eligibility under the categorically needy program; and

(ii) Greater than three hundred percent of SSI federal benefit amount. The department shall determine a person's eligibility under the limited casualty program—medically needy program as determined under WAC 388-513-1395.

(b) Does not have nonexcluded resources, under WAC 388-513-1360 and 388-513-1365, greater than limitations under WAC 388-513-1310 and 388-513-1395(2).

(c) Is not subject to a period of ineligibility for transferring of resources under WAC 388-513-1365.

(2) The department shall determine institutional facility residents eligible for institutional care when the amount of the resources in excess of the amount in WAC 388-513-1310 plus countable income are less than the nursing facility private rate plus verifiable recurring medical expenses.

(3) The department shall allocate a client's income and resources as described under WAC 388-513-1380.

(4) When both spouses are institutionalized, the department shall determine the eligibility of each spouse individually.

(5) The department shall determine eligibility for a person residing or expected to reside in a Medicaid-approved medical facility less than thirty consecutive days as for a noninstitutionalized person.

(6) ((~~Effective January 1, 1991,~~)) The department shall determine eligibility for an AFDC-related child under eighteen years of age residing in inpatient chemical dependency treatment or inpatient mental health treatment as described under WAC 388-506-0610 (1)(f).

(7) For an institutionalized person twenty years of age or under, the department shall not consider the income and resources of the parents available unless the income and resources are actually contributed.

((~~(7)~~)) (8) The department shall not consider a person's transfer between medical institutions as a change in institutionalized status.

((~~(8)~~)) (9) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

WSR 95-16-014
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 11:24 a.m.]

Original Notice.

Title of Rule: New chapter 388-530 WAC, Pharmacy services; and repealing chapter 388-91 WAC, Medical care—Drugs.

Purpose: Give providers, clients, and general public additional information on medical assistance pharmacy payment methods and the limitations for the payments. New rules are needed to include payment methodology. Since adding payment methodology requires extensive rewriting of chapter 388-91 WAC, the department chose to renumber the drug material. The new chapter adds new sections for definitions, maintenance information, and provides rule clarity.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Gives providers, clients, and the general public additional information on medical assistance pharmacy payment methods and the limitations for the payments.

Reasons Supporting Proposal: New rules are needed to include payment methodology. Since adding payment methodology requires extensive rewriting of chapter 388-91 WAC, the department chose to renumber the drug material into a new chapter. The new chapter 388-530 WAC adds new sections for definitions, maintenance information, and proves [improves] rule clarity.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Medical Assistance Administration, 753-0529.

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

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

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

Proposal Changes the Following Existing Rules: See above.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. These changes do not impact small business as the department is including in WAC the methodology that is presently being used by the department.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 26, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by September 12, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by September 19, 1995.

Date of Intended Adoption: September 27, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

Reviser's note: The material contained in this filing will appear in the 95-17 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

WSR 95-16-016
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 11:26 a.m.]

Original Notice.

Title of Rule: Chapter 388-15 WAC, Social services for families, children and adults.

Purpose: Comply with new laws; eliminate redundancy; clarify department's purpose and intent; implement court order; incorporate new COPES services approved by the Health Care Financing Administration; modify chore eligibility; and delete rules for obsolete and unfunded services.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520, chapter 18, Laws of 1995 1st sp. sess.

Statute Being Implemented: RCW 74.08.090 and 74.09.520, chapter 18, Laws of 1995 1st sp. sess.

Summary: See Purpose above.

Reasons Supporting Proposal: Update rules to conform with recent changes in law through enacting the E2SHB 1908 and to implement the King County Superior Court Order No. 94-2-90298-7.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Lou Pearson and Lois Wusterbarth, Aging and Adult Services, 493-2538/493-2536.

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

Rule is necessary because of federal law, King County Superior Court Order 94-2-09298-7.

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

Proposal Changes the Following Existing Rules: See above.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The department contracts directly or indirectly with roughly forty agency providers who arrange for or deliver long-term care services to clients eligible for Medicaid personal care, chore, and COPES programs; however, the rules we are filing do not impact these small businesses, but rather affect client eligibility, cost participation, and make clients subject to estate recovery for these program services. The department's proposed rules do not impact any agency other than the department of social and health services.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 26, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by September 12, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by September 19, 1995.

Date of Intended Adoption: September 28, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

Reviser's note: The material contained in this filing will appear in the 95-17 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

WSR 95-16-017
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 11:27 a.m.]

Original Notice.

Title of Rule: WAC 388-46-110 Disqualification period for recipients convicted of unlawfully obtaining assistance.

Purpose: New rule affects general assistance and is intended to meet the requirements of a new section added to RCW 74.08.290. It provides that recipients of general assistance benefits who are convicted under RCW 74.08.331 will be ineligible for not less than six months for the first conviction, and not less than twelve months for a second or subsequent conviction.

Statutory Authority for Adoption: SB 5652 and RCW 74.08.290.

Statute Being Implemented: SB 5652 and RCW 74.08.290.

Summary: The rule provides that recipients of general assistance benefits who are convicted under RCW 74.08.331 will be ineligible for not less than six months for the first conviction, and not less than twelve months for a second or subsequent conviction.

Reasons Supporting Proposal: This rule is necessary to meet the intent of a new section added to RCW 74.08.290 which addresses the issue of welfare fraud.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Medina, 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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule affects only general assistance recipients and has no impact on small business.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by August 22, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 6, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

Chapter 388-46 WAC
RECIPIENT FRAUD((~~—REFERRAL TO PROSECUTOR~~))

NEW SECTION

WAC 388-46-110 Disqualification period for recipients convicted of unlawfully obtaining assistance. (1) A recipient convicted of unlawful practices in obtaining general assistance shall be disqualified from receiving further general assistance benefits.

(2) The disqualification shall apply only to convictions based on actions which occurred on or after July 23, 1995.

(3) The length of the disqualification shall be for a period to be determined by the court.

(4) The department shall terminate benefits to a recipient disqualified under this section following notice requirements specified under chapter 388-245 WAC.

WSR 95-16-023
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Filed July 21, 1995, 1:02 p.m.]

Original Notice.

Title of Rule: Marine finfish rearing facilities.

Purpose: The department (ecology) shall adopt criteria under chapter 34.05 RCW for allowable sediment impacts from organic enrichment due to marine finfish rearing facilities (i.e., aquaculture of fish in floating net pens).

Other Identifying Information: Marine finfish rearing facilities shall mean those private and public net pens located within Puget Sound where finfish are fed, nurtured, held, maintained, or reared to reach the size of release, or for market sale.

Statutory Authority for Adoption: RCW 90.48.220.

Statute Being Implemented: RCW 90.48.220.

Summary: Develop sediment quality criteria that will establish goals for determining what constitutes an allowable sediment impact from net pen facilities operations.

Reasons Supporting Proposal: Provide more regulatory certainty in the national pollutant discharge elimination system (NPDES) permitting of marine net pens and a definitive basis for local permitting of net pen facilities.

Name of Agency Personnel Responsible for Drafting: Pamela Sparks-McConkey, P.O. Box 47703, Olympia, WA 98504-7703, (360) 407-6491; Implementation and Enforcement: Bill Ward, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6098.

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 rule will (1) establish sediment quality criteria for allowable sediment impacts from net pen discharges; (2) apply these sediment standards as permit compliance requirements for national pollutant discharge elimination system (NPDES) permits; and (3) provide a sediment monitoring process for closure requirements for net pen facilities.

Proposal Changes the Following Existing Rules: The proposed rule will be an amendment to the sediment management standards (SMS), chapter 173-204 WAC. In addition, the SMS rule language was modified by correcting grammar and typos, addition of scientific findings, and clarification of existing rule language.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The rule amendment is reasonable and cost-effective as required in the Governor's Executive Order 94-07.

Economic Policy Act Compliance Document
Small Business Economic Impact Statement

Amendment: New Section, Chapter 173-204-412 WAC
Washington State Marine Finfish Rearing Facilities
Section of the Sediment Management Standards

The sediment management standards are being amended. The revised rule will include a section, marine finfish rearing facilities, that is intended to create significant cost reductions for most businesses affected by the existing requirements of the Department of Natural Resources. The cost reductions will come from the following changes in normal facility practices:

- Measuring the change in total organic carbon (TOC) rather than monitoring benthic organisms will reduce costs by 90%.
- The rule will limit monitoring of benthic organisms to situations that are likely to create damage or require a change in net pen management.

This rule amendment has been reviewed. It creates a cost savings for facilities in the SIC code 0273, Animal Aquaculture. No small business economic impact statement is required. The rule amendment is reasonable and cost effective as required in the Governor's Executive Order 94-07. It creates a cost reduction with no increase in environmental risk.

For a full copy of the analysis of this rule amendment please contact Pam Sparks-McConkey by phone, (360) 407-6491 or at one of the following addresses: (1) Central Programs, Department of Ecology, P.O. Box 47703, Olympia, WA 98504-7703; or (2) EMail address PSPA461@ecy.wa.gov.

Hearing Location: Anacortes Municipal Building (City Hall), 6th Street and Q Avenue, Anacortes, Washington 98221, on September 26, 1995, at 10:00 a.m.; at the Kitsap Memorial Armory, 19133 Jensen Way, Poulsbo, WA 98370-0059, on September 27, 1995, at 6:00 p.m.; and at the Ecology Headquarters Building, 300 Desmond Drive, Lacey, WA 98503, on September 28, 1995, at 6:00 p.m.

Assistance for Persons with Disabilities: Contact Pamela Sparks-McConkey by September 15, 1995, TDD (360) 407-6006.

Submit Written Comments to: Pamela Sparks-McConkey, P.O. Box 47703, Olympia, WA 98504-7703, FAX (360) 407-6904, by October 13, 1995.

Date of Intended Adoption: December 29, 1995.

July 20, 1995
Mary Riveland
Director

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-100 Authority and purpose. (1) This chapter is promulgated under the authority of chapter 90.48 RCW, the Water Pollution Control Act; chapter 70.105D RCW, the Model Toxics Control Act; chapter 90.70 RCW, the Puget Sound Water Quality Authority Act; chapter 90.52 RCW, the Pollution Disclosure Act of 1971; chapter 90.54 RCW, the Water Resources Act of 1971; and chapter 43.21C RCW, the state Environmental Policy Act, to establish marine, low salinity and freshwater surface sediment management standards for the state of Washington.

(2) The purpose of this chapter is to reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from surface sediment contamination by:

(a) Establishing standards for the quality of surface sediments;

(b) Applying these standards as the basis for management and reduction of pollutant discharges; and

(c) Providing a management and decision process for the cleanup of contaminated sediments.

(3) Part III, Sediment quality standards of this chapter provides chemical concentration criteria, biological effects criteria, human health criteria, and other toxic, radioactive, biological, or deleterious substances criteria which identify surface sediments that have no adverse effects, including no acute or chronic adverse effects on biological resources and no significant health risk to humans, as defined in this regulation. The sediment quality standards provide a regulatory and management goal for the quality of sediments throughout the state.

(4) The sediment criteria of WAC 173-204-320 through 173-204-340 shall constitute surface sediment quality standards and be used to establish an inventory of surface sediment sampling stations where the sediments samples taken from these stations are determined to pass or fail the applicable sediment quality standards.

(5) Part IV, Sediment source control standards of this chapter shall be used as a basis for controlling the effects of point and nonpoint source discharges to sediments through the National Pollutant Discharge Elimination System (NPDES) federal permit program, state water quality management permit programs, issuance of administrative orders or other means determined appropriate by the department. The source control standards establish discharge sediment monitoring requirements and criteria for establishment and maintenance of sediment impact zones.

(6) Part V, Sediment cleanup standards of this chapter establishes administrative procedural requirements and criteria to identify, screen, rank and prioritize, and cleanup contaminated surface sediment sites. The sediment cleanup standards of WAC 173-204-500 through 173-204-590 shall be used pursuant to authorities established under chapters 90.48 and 70.105D RCW.

(7) This chapter establishes and defines a goal of minor adverse effects as the maximum level of sediment contamination allowed in sediment impact zones under the provisions of Part IV, Sediment source control standards and as the cleanup screening levels for identification of sediment cleanup sites and as the minimum ((~~degree of~~)) cleanup levels to be achieved in all cleanup actions under Part V, Sediment cleanup standards.

(8) Local ordinances establishing requirements for the designation and management of marine, low salinity and freshwater sediments shall not be less stringent than this chapter.

Note: All codes, standards, statutes, rules or regulations cited in this chapter are available for inspection at the Department of Ecology, ((~~Mailstop PV-11~~)) P.O. Box 47703, Olympia, Washington ((~~98504-8711~~)) 98504-7703.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-130 Administrative policies. The department shall implement this chapter in accordance with the following policies:

(1) The department shall seek to implement, and as necessary modify this chapter to protect biological resources and human health consistent with WAC 173-204-100(2). To implement the intent of this subsection, the department shall use methods that accurately reflect the latest scientific knowledge consistent with the definitions contained in WAC 173-204-200 (14) and (15), as applicable.

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(2) At the interface between surface sediments, ground water or surface water, the applicable standards shall depend on which beneficial use is or could be adversely affected, as determined by the department. If beneficial uses of more than one resource are affected, the most restrictive standards shall apply.

(3) It shall be the goal of the department to modify this chapter so that methods such as confirmatory biological tests, sediment impact zone models, use of contaminated sediment site ranking models, etc., continue to accurately reflect the latest scientific knowledge as established through ongoing validation and refinement.

(4) Any person or the department may propose an alternate technical method to replace or enhance the application of a specific technical method required under this chapter. Using best professional judgment, the department shall provide advance review and approval of any alternate technical method proposed prior to its application. Application and use of alternate technical methods shall be allowed when the department determines that the technical merit of the resulting decisions will improve the department's ability to implement and meet the intent of this chapter as described in WAC 173-204-100(2), and will remain consistent with the scientific intent of definitions contained in WAC 173-204-200 (14) and (15). The department shall maintain a record of the department's decisions concerning application for use of alternate technical methods pursuant to this subsection. The record shall be made available to the public on request.

(5) Intergovernmental coordination. The department shall ensure appropriate coordination and consultation with federally recognized Indian tribes and local, state, and federal agencies to provide information on and to implement this chapter.

(6) The department shall conduct an annual review of this chapter, and modify its provisions every three years, or as necessary. Revision to this chapter shall be made pursuant to the procedures established within chapter 34.05 RCW, the Administrative Procedure Act.

(7) Review of scientific information. When evaluating this chapter for necessary revisions, the factors the department shall consider include:

(a) New or additional scientific information which is available relating surface sediment chemical quality to acute or chronic adverse effects on biological resources as defined in WAC 173-204-200 (1) and (7);

(b) New or additional scientific information which is available relating human health risk to marine, low salinity, or freshwater surface sediment chemical contaminant levels;

(c) New or additional scientific information which is available relating levels of other toxic, radioactive, biological and deleterious substances in marine, low salinity, or freshwater sediments to acute or chronic adverse effects on biological resources, or to a significant health risk to humans;

(d) New state or federal laws which have established environmental or human health protection standards applicable to surface sediment; or

(e) Scientific information which has been identified for addition, modification or deletion by a scientific review process established by the department.

(8) Public involvement and education. The goal of the department shall be to provide timely information and meaningful opportunities for participation by the public in the annual review conducted by the department under subsection ((~~(7)~~)) (6) of this section, and any modification of this chapter. To meet the intent of this subsection the department shall:

(a) Provide public notice of the department's decision regarding the results of its annual review of this chapter, including:

(i) The department's findings for the annual review factors identified in subsection (7) of this section;

(ii) The department's decision regarding the need for modification of this chapter based on its annual review; and

(iii) Identification of a time period for public opportunity to comment on the department's findings and decisions pursuant to this subsection.

(b) Provide public notice by mail or by additional procedures determined necessary by the department which may include:

(i) Newspaper publication;

(ii) Other news media;

(iii) Press releases;

(iv) Fact sheets;

(v) Publications;

(vi) Any other method as determined by the department.

(c) Conduct public meetings as determined necessary by the department to educate and inform the public regarding the department's annual review determinations and decisions.

(d) Comply with the rule making and public participation requirements of chapter 34.05 RCW, the Administrative Procedure Act, for any revisions to this chapter.

(9) Test sediments evaluated for compliance with the sediment quality standards of WAC 173-204-320 through 173-204-340 and/or the sediment impact zone maximum criteria of WAC 173-204-420 and/or the cleanup screening levels criteria of WAC 173-204-520 shall be sampled and analyzed using the Puget Sound Protocols or other methods approved by the department. Determinations made pursuant to this chapter shall be based on sediment chemical and/or biological data that were developed using an appropriate quality assurance/quality control program, as determined by the department.

(10) The statutory authority for decisions under this chapter shall be clearly stated in the decision documents prepared pursuant to this chapter. The department shall undertake enforcement actions consistent with the stated authority under which the action is taken. The process for judicial review of these decisions shall be pursuant to the statutes under which the action is being taken.

(11) When the department identifies this chapter as an applicable, or relevant and appropriate requirement for a federal cleanup action under the Comprehensive Environmental Response, Compensation and Liability Act, the department shall identify the entire contents of this chapter as the appropriate state requirement.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-200 Definitions. For the purpose of this chapter, the following definitions shall apply:

(1) "Acute" means measurements of biological effects using surface sediment bioassays conducted for time periods

that are relatively short in comparison to the life cycle of the test organism. Acute effects may include mortality, larval abnormality, or other endpoints determined appropriate by the department.

(2) "Amphipod" means crustacean of the Class Amphipoda, e.g., Rhepoxynius abronius, Ampelisca abdita, or Eohaustorius estuarius.

(3) "Appropriate biological tests" means only tests designed to measure directly, or through established predictive capability, biologically significant adverse effects to the established or potential benthic or aquatic resources at a given location, as determined by rule by the department.

(4) "Beneficial uses" means uses of waters of the state which include but are not limited to use for domestic, stock watering, industrial, commercial, agricultural, irrigation, mining, fish and wildlife maintenance and enhancement, recreation, generation of electric power, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.

(5) "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface sediments of the state. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.

(6) "Bioassay" means a test procedure that measures the response of living plants, animals, or tissues to a sediment sample.

(7) "Chronic" means measurements of biological effects using sediment bioassays conducted for, or simulating, prolonged exposure periods of not less than one complete life cycle, evaluations of indigenous field organisms for long-term effects, assessment of biological effects resulting from bioaccumulation and biomagnification, and/or extrapolated values or methods for simulating effects from prolonged exposure periods. Chronic effects may include mortality, reduced growth, impaired reproduction, histopathological abnormalities, adverse effects to birds and mammals, or other endpoints determined appropriate by the department.

(8) "Contaminated sediment" means surface sediments designated under the procedures of WAC 173-204-310 as exceeding the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(9) "Control sediment sample" means a surface sediment sample which is relatively free of contamination and is physically and chemically characteristic of the area from which bioassay test animals are collected. Control sediment sample bioassays provide information concerning a test animal's tolerance for stress due to transportation, laboratory handling, and bioassay procedures. Control sediment samples cannot exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(10) "Department" means the department of ecology.

(11) "Freshwater sediments" means surface sediments in which the sediment pore water contains less than or equal to 0.5 parts per thousand salinity.

(12) "Low salinity sediments" means surface sediments in which the sediment pore water contains greater than 0.5 parts per thousand salinity and less than 25 parts per thousand salinity.

(13) "Marine finfish rearing facilities" shall mean those private and public facilities located within Puget Sound where finfish are fed, nurtured, held, maintained, or reared to reach the size of release or for market sale.

(14) "Marine sediments" means surface sediments in which the sediment pore water contains 25 parts per thousand salinity or greater.

((~~(14)~~)) (15) "Minor adverse effects" means a level of effects that:

(a) Has been determined by rule by the department, except in cases subject to WAC 173-204-110(6); and

(b) Meets the following criteria:

(i) An acute or chronic adverse effect to biological resources as measured by a statistically and biologically significant response relative to reference in no more than one appropriate biological test as defined in WAC 173-204-200(3); or

(ii) A statistically and biologically significant response that is significantly elevated relative to reference in any appropriate biological test as defined in WAC 173-204-200(3); or

(iii) Biological effects per (b)(i) or (ii) of this subsection as predicted by exceedance of an appropriate chemical or other deleterious substance standard, except where the prediction is overridden by direct biological testing evidence pursuant to (b)(i) and (ii) of this subsection; and

(c) Does not result in significant human health risk as predicted by exceedance of an appropriate chemical, biological, or other deleterious substance standard.

((~~(15)~~)) (16) "No adverse effects" means a level of effects that:

(a) Has been determined by rule by the department, except in cases subject to WAC 173-204-110(6); and

(b) Meets the following biological criteria:

(i) No acute or chronic adverse effects to biological resources as measured by a statistically and biologically significant response relative to reference in any appropriate biological test as defined in WAC 173-204-200(3); and

(ii) No acute or chronic adverse biological effect per (b)(i) of this subsection as predicted by exceedance of an appropriate chemical or other deleterious substance standard, except where the prediction is overridden by direct biological testing evidence pursuant to (b)(i) of this subsection; and

(iii) Does not result in significant human health risk as predicted by exceedance of an appropriate chemical, biological, or other deleterious substance standard.

((~~(16)~~)) (17) "Other toxic, radioactive, biological, or deleterious substances" means contaminants which are not specifically identified in the sediment quality standards chemical criteria of WAC 173-204-320 through 173-204-340 (e.g., organic debris, tributyltin, DDT, etc.).

((~~(17)~~)) (18) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, industry, private corporation, port district, special purpose district, irrigation district, unit of local government, state government agency, federal government agency, Indian tribe, or any other entity whatsoever.

((~~(18)~~)) (19) "Practicable" means able to be completed in consideration of environmental effects, technical feasibility and cost.

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((~~(19)~~)) (20) "Puget Sound basin" or "Puget Sound" means:

(a) Puget Sound south of Admiralty Inlet, including Hood Canal and Saratoga Passage;

(b) The waters north to the Canadian border, including portions of the Strait of Georgia;

(c) The Strait of Juan de Fuca south of the Canadian border; and

(d) All the lands draining into these waters as mapped in water resources inventory areas numbers 1 through 19, set forth in water resources management program established pursuant to the Water Resources Act of 1971, chapter 173-500 WAC.

((~~(20)~~)) (21) "Puget Sound protocols" means *Puget Sound Estuary Program. 1986. Updated in 1989. Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound, U.S. Environmental Protection Agency, Region 10, Seattle, WA (looseleaf)*, as amended.

((~~(21)~~)) (22) "Reference sediment sample" means a surface sediment sample which serves as a laboratory indicator of a test animal's tolerance to important natural physical and chemical characteristics of the sediment, e.g., grain size, organic content. Reference sediment samples represent the nonanthropogenically affected background surface sediment quality of the sediment sample. Reference sediment samples cannot exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

((~~(22)~~)) (23) "Sediment impact zone" means an area where the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 are exceeded due to ongoing permitted or otherwise authorized wastewater, storm water, or nonpoint source discharges and authorized by the department within a federal or state wastewater or storm water discharge permit, or other formal department authorization.

((~~(23)~~)) (24) "Sediment recovery zone" means an area where the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 are exceeded as a result of historical discharge activities, and authorized by the department as a result of a cleanup decision made pursuant to WAC 173-204-580, Cleanup action decision.

((~~(24)~~)) (25) "Site units" means discrete subdivisions of an individual contaminated sediment site that are being evaluated for the purpose of establishing cleanup standards. Site units are based on consideration of unique locational, environmental, spatial, or other conditions determined appropriate by the department, e.g., cleanup under piers, cleanup in eelgrass beds, cleanup in navigational lanes.

((~~(25)~~)) (26) "Surface sediments" or "sediment(s)" means settled particulate matter located in the predominant biologically active aquatic zone, or exposed to the water column. Sediment(s) also includes settled particulate matter exposed by human activity (e.g., dredging) to the biologically active aquatic zone or to the water column.

((~~(26)~~)) (27) "Test sediment" means a sediment sample that is evaluated for compliance with the sediment quality standards of WAC 173-204-320 through 173-204-340 and/or the sediment impact zone maximum criteria of WAC 173-240-420 and/or the cleanup screening levels criteria of WAC 173-204-520.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-315 Confirmatory marine sediment biological tests. (1) The following five acute and chronic effects biological tests shall be used to confirm designation of Puget Sound marine sediments using the procedures described in WAC 173-204-310(2). Use of alternate biological tests shall be subject to the review and approval of the department using the procedures of WAC 173-204-130(4).

(a) Acute effects tests.

(i) Amphipod: Ten-day mortality sediment bioassay for the Amphipod, i.e., Rhepoxynius abronius, Ampelisca abdita, or Eohaustorius estuarius.

(ii) Larval: Any one of the following mortality/abnormality sediment bioassays:

(A) Crassostrea gigas, i.e., Pacific oyster;

(B) Mytilus edulis, i.e., Blue mussel;

(C) Strongylocentrotus purpuratus, i.e., Purple sea urchin; ((~~or~~))

(D) Stronglyocentrotus droebachiensis, i.e., Green sea urchin; or

(E) Dendraster excentricus, i.e., Sand dollar.

(b) Chronic effects tests.

(i) Benthic infaunal abundance: Abundance of the following major taxa: Class Crustacea, Class Polychaeta, and Phylum Mollusca.

(ii) Juvenile polychaete: Twenty-day ((~~biomass~~)) growth rate of the juvenile polychaete Neanthes arenaceodentata; or

(iii) Microtox saline extract: Decreased luminescence from the bacteria Photobacterium phosphoreum after a fifteen minute exposure.

(2) Performance standards for control and reference sediment biological test results. The biological tests of this section shall not be considered valid unless test results for the appropriate control and reference sediments meet the performance standards of (a) through (e) of this subsection. The department may reject the results of a reference sediment biological test based on unacceptably high variability.

(a) Amphipod: The control sediment shall have less than ten percent mortality over the test period. The reference sediment shall have less than twenty-five percent mortality.

(b) Larval: The seawater control sample shall have less than ((~~fifty~~)) thirty percent combined abnormality and mortality (i.e., a ((~~fifty~~)) seventy percent normal survivorship at time-final).

(c) Benthic abundance: The reference benthic macroinvertebrate assemblage shall be representative of areas of Puget Sound removed from significant sources of contaminants, and to the extent possible shall have the following characteristics:

(i) The taxonomic richness of benthic macroinvertebrates and the abundances of higher taxonomic groups shall reflect seasonality and natural physical-chemical conditions (e.g., grain size composition and salinity of sediments, water depth) in a reference area, and not be obviously depressed as a result of chemical toxicity;

(ii) Normally abundant species that are known to be sensitive to chemical contaminants shall be present;

(iii) Normally rare species that are known to become abundant only under chemically disturbed conditions shall be rare or absent; and

(iv) The abundances of normally rare species that control community structure through physical modification of the sediment shall be similar to those observed at the test sediment site.

(d) Juvenile polychaete: The control sediment shall have less than ten percent mortality and ≥ 0.72 mg/ind/day (i.e., mean individual growth). The reference sediment shall have a mean ((~~biomass~~)) individual growth rate which is at least eighty percent of the mean ((~~biomass~~)) individual growth rate found in the control sediment.

(e) Microtox: Reserved: The department shall determine performance standards on a case-by-case basis as necessary to meet the intent of this chapter.

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

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-320 Marine sediment quality standards. (1) Goal and applicability.

(a) The sediment quality standards of this section shall correspond to a sediment quality that will result in no adverse effects, including no acute or chronic adverse effects on biological resources and no significant health risk to humans.

(b) The marine sediment quality standards of this section shall apply to marine sediments located within Puget Sound as defined in WAC 173-204-200(19).

(c) Non-Puget Sound marine sediment quality standards. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(2) Chemical concentration criteria. The chemical concentrations in Table I establish the marine sediment quality standards chemical criteria for designation of sediments.

Table I

Marine Sediment Quality Standards —Chemical Criteria [1]

CHEMICAL PARAMETER	MG/KG DRY WEIGHT (PARTS PER MILLION (PPM) DRY)
ARSENIC	57
CADMIUM	5.1
CHROMIUM	260
COPPER	390
LEAD	450
MERCURY	0.41
SILVER	6.1
ZINC	410
CHEMICAL PARAMETER	**MG/KG ORGANIC CARBON (PPM CARBON)[2]**
LPAH[3]	370
NAPHTHALENE	99
ACENAPHTHYLENE	66
ACENAPHTHENE	16
FLUORENE	23
PHENANTHRENE	100
ANTHRACENE	220
2-METHYLNAPHTHALENE	38
CHEMICAL PARAMETER	**MG/KG ORGANIC CARBON (PPM CARBON)**
HPAH[4]	960
FLUORANTHENE	160
PYRENE	1000
BENZ(A)ANTHRACENE	110
CHRYSENE	110
TOTAL BENZOFLUORANTHENES[5]	230
BENZO(A)PYRENE	99
INDENO (1,2,3,-C,D) PYRENE	34
DIBENZO (A,H) ANTHRACENE	12
BENZO(G,H,I)PERYLENE	31
1,2-DICHLOROBENZENE	2.3
1,4-DICHLOROBENZENE	3.1
1,2,4-TRICHLOROBENZENE	0.81
HEXACHLOROBENZENE	0.38
DIMETHYL PHTHALATE	53
DIETHYL PHTHALATE	61
DI-N-BUTYL PHTHALATE	220
BUTYL BENZYL PHTHALATE	4.9
BIS (2-ETHYLHEXYL) PHTHALATE	47
DI-N-OCTYL PHTHALATE	58
DIBENZOFURAN	15
HEXACHLOROBUTADIENE	3.9
N-NITROSODIPHENYLAMINE	11
TOTAL PCB'S	12
CHEMICAL PARAMETER	**UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)**
PHENOL	420
2-METHYLPHENOL	63
4-METHYLPHENOL	670
2,4-DIMETHYL PHENOL	29
PENTACHLOROPHENOL	360
BENZYL ALCOHOL	57
BENZOIC ACID	650

Table I Footnotes

1 Where laboratory analysis indicates a chemical is not detected in a sediment sample, the detection limit shall be reported and shall be at or below the criteria value shown in this table. Where chemical criteria in this table represent the sum of individual compounds or isomers, and a chemical analysis identifies an undetected value for one or more individual compounds or isomers, the detection limit shall be used for calculating the sum of the respective compounds or isomers.

2 The listed chemical parameter criteria represent concentrations in parts per million, "normalized," or expressed, on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content of the sediment.

3 The LPAH criterion represents the sum of the following "low molecular weight polynuclear aromatic hydrocarbon" compounds: Naphthalene, Acenaphthylene, Acenaphthene, Fluorene, Phenanthrene, and Anthracene. The LPAH criterion is not the sum of the criteria values for the individual LPAH compounds as listed.

4 The HPAH criterion represents the sum of the following "high molecular weight polynuclear aromatic hydrocarbon" compounds: Fluoranthene, Pyrene, Benz(a)anthracene, Chrysene, Total Benzofluoranthenes, Benzo(a)pyrene, Indeno(1,2,3,-c,d)pyrene, Dibenzo(a,h)anthracene, and Benzo(g,h,i)perylene. The HPAH criterion is not the sum of the criteria values for the individual HPAH compounds as listed.

5 The TOTAL BENZOFLUORANTHENES criterion represents the sum of the concentrations of the "B," "J," and "K" isomers.

(3) Biological effects criteria. For designation of sediments pursuant to WAC 173-204-310(2), sediments are determined to have adverse effects on biological resources when any one of the confirmatory marine sediment biologi-

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cal tests of WAC 173-204-315(1) demonstrate the following results:

(a) Amphipod: The test sediment has a higher (statistically significant, t test, $p \leq 0.05$) mean mortality than the reference sediment and the test sediment mean mortality exceeds twenty-five percent, on an absolute basis.

(b) Larval: The test sediment has a mean survivorship of normal larvae that is less (statistically significant, t test, $p \leq 0.05$) than the mean normal survivorship in the reference sediment and the test sediment mean normal survivorship is less than eighty-five percent of the mean normal survivorship in the reference sediment (i.e., the test sediment has a mean combined abnormality and mortality that is greater than fifteen percent relative to time-final in the reference sediment).

(c) Benthic abundance: The test sediment has less than fifty percent of the reference sediment mean abundance of any one of the following major taxa: Class Crustacea, Phylum Mollusca or Class Polychaeta, and the test sediment abundance is statistically different (t test, $p \leq 0.05$) from the reference sediment abundance.

(d) Juvenile polychaete: The test sediment has a mean ((~~biomass~~)) individual growth rate of less than seventy percent of the reference sediment mean ((~~biomass~~)) individual growth rate and the test sediment ((~~biomass~~)) mean individual growth rate is statistically different (t test, $p \leq 0.05$) from the reference sediment ((~~biomass~~)) mean individual growth rate.

(e) Microtox: The mean light output of the highest concentration of the test sediment is less than eighty percent of the mean light output of the reference sediment, and the two means are statistically different from each other (t test, $p \leq 0.05$).

(4) Marine sediment human health criteria. Reserved: The department may determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(5) Marine sediment other toxic, radioactive, biological, or deleterious substances criteria. Other toxic, radioactive, biological or deleterious substances in, or on, sediments shall be at or below levels which cause no adverse effects in marine biological resources, and below levels which correspond to a significant health risk to humans, as determined by the department. The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter pursuant to WAC 173-204-310(3).

(6) Nonanthropogenically affected sediment quality criteria. Whenever the nonanthropogenically affected sediment quality is of a lower quality (i.e., higher chemical concentrations, higher levels of adverse biological response, or posing a greater health threat to humans) than the applicable sediment quality standards assigned for said sediments by this chapter, the existing sediment chemical and biological quality shall be identified on an area-wide basis as determined by the department, and used in place of the sediment quality standards of WAC 173-204-320.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-400 General considerations. (1) The standards of WAC 173-204-400 through 173-204-420 specify a process for managing sources of sediment contamination. These procedures include:

(a) Evaluating the potential for a waste discharge to create a sediment impact;

(b) Requiring application for a sediment impact zone authorization;

(c) Verifying whether a discharge has received all known, available and reasonable methods of prevention, control, and treatment prior to discharge, and/or application of best management practices;

(d) Analysis and verification of the potential sediment impact;

(e) Determining whether the sediment impact zone would meet maximum allowable contamination requirements;

(f) Evaluating the proposed sediment impact zone in consideration of locational criteria;

(g) Design and/or constrain the sediment impact zone to be as small, and with the least contamination, as practicable;

(h) Public review of the proposed sediment impact zone authorization;

(i) Issuance of the sediment impact zone authorization with provisions for maintenance and closure; and

(j) Reducing and eventually eliminating the sediment impact zone via renewals and modifications of a sediment impact zone authorization.

(2) Permits and other authorizations of wastewater, storm water, and nonpoint source discharges to surface waters of the state of Washington under authority of chapter 90.48 RCW shall be conditioned so that the discharge receives all known, available and reasonable methods of prevention, control, and treatment, and best management practices prior to discharge, as required by chapters 90.48, 90.52, and 90.54 RCW. The department shall provide consistent guidance on the collection, analysis and evaluation of wastewater, receiving-water, and sediment samples to meet the intent of this section using consideration of pertinent sections of the *Department of Ecology Permit Writers' Manual,* as amended, and other guidance approved by the department.

(3) As determined necessary, the department shall require any person who proposes a new discharge to evaluate the potential for the proposed discharge to cause a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(4) As determined necessary, the department shall require existing permitted discharges to evaluate the potential for the permitted discharge to cause a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(5) Within permits authorizing existing discharges to surface waters of the state of Washington, the department may specify appropriate locations and methodologies for the collection and analysis of representative samples of wastewater, receiving-water, and sediments to evaluate the potential for the discharge to cause a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(6) In establishing the need for, and the appropriate, individual permit monitoring conditions, the department shall consider multiple factors relating to the potential for a discharge to cause a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 including but not limited to:

(a) Discharge particulate characteristics;

(b) Discharge contaminant concentrations, flow, and loading rate;

(c) Sediment chemical concentration and biological effects levels;

(d) Receiving water characteristics;

(e) The geomorphology of sediments;

(f) Cost mitigating factors such as the available resources of the discharger; and

(g) Other factors determined necessary by the department.

(7) As determined necessary to ensure the wastewater discharge does not cause a violation of the applicable standards of WAC 173-204-320 through 173-204-340, except as authorized by the department under WAC 173-204-415, Sediment impact zones, the department shall stipulate permit terms and conditions which include wastewater discharge average and maximum mass loading per unit time, and wastewater discharge average and maximum chemical concentrations within new and existing facility permits authorizing wastewater discharges to surface waters of the state of Washington.

(8) As determined necessary, the department shall modify wastewater discharge permits whenever it appears the discharge causes a violation, or creates a substantial potential to cause a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, as authorized by RCW 90.48.520.

(9) To meet the intent of this section, the sediment quality standards of WAC 173-204-320 through 173-204-340 and the sediment impact zone standards of WAC 173-204-415 through 173-204-420 are not considered to be federal discharge permit effluent limits subject to antibacksliding requirements of the federal Clean Water Act. Discharge permit sediment monitoring and sediment impact zone compliance requirements may be used to establish effluent limits sufficient to meet the standards of this chapter.

(10) As determined necessary, the department shall use issuance of administrative actions under authority of chapters 90.48 or 70.105D RCW to implement this chapter.

(11) Wastewater dilution zones. Water quality mixing zones authorized by the department pursuant to chapter ((~~173-201~~)) 173-201A WAC, Water quality standards for surface waters of the state of Washington, do not satisfy the standards of WAC 173-204-415, Sediment impact zones.

(12) For the sediment source control standards of WAC 173-204-400 through 173-204-420, any and all references to violation of, potential to violate, exceedance of, or potential to exceed the applicable standards of WAC 173-204-320 through 173-204-340 shall also apply to the antidegradation and designated use policies of WAC 173-204-120. Any exceedances or potential exceedances of the antidegradation or designated use policies of WAC 173-204-120 shall meet the applicable requirements of WAC 173-204-400 through 173-204-420.

(13) Under no circumstances shall the provisions of sediment source control standards WAC 173-204-400 through 173-204-420 be construed as providing for the relaxation of discharge permit requirements under other authorities including, but not limited to, chapter 90.48 RCW, the Water Pollution Control Act, chapter 90.54 RCW, the Water Resources Act of 1971, and the Federal Water Pollution Control Act of 1972 and amendments.

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AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-410 Sediment quality goal and sediment impact zone applicability. (1) Goal and policies.

(a) It is the established goal of the department to manage source control activities to reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from sediment contamination.

(b) The stated policy of the department shall be to only authorize sediment impact zones so as to minimize the number, size, and adverse effects of all zones, with the intent to eliminate the existence of all such zones whenever practicable. The department shall consider the relationship between environmental effects, technical feasibility and cost in determining whether it is practicable to minimize and/or eliminate sediment impact zones.

(c) The department shall implement the standards of WAC 173-204-400 through 173-204-420 so as to prevent the creation of new contaminated sediment cleanup sites identified under WAC 173-204-530(4).

(2) A sediment impact zone authorization issued by the department under the authority of chapter 90.48 RCW does not constitute authorization to trespass on lands not owned by the applicant. These standards do not address and in no way alter the legal rights, responsibilities, or liabilities of the permittee or landowner of the sediment impact zone for any applicable requirements of proprietary, real estate, tort, and/or other laws not directly expressed as a requirement of this chapter.

(3) Except as identified in subsection (6)(d) of this section, any person may apply for a sediment impact zone under the following conditions:

(a) The person's discharge is provided with all known, available and reasonable methods of prevention, control, and treatment, and meets best management practices as stipulated by the department; and

(b) The person's discharge activity exposes or resuspends sediments which exceed, or otherwise cause or potentially cause sediments to exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, or the antidegradation policy standards of WAC 173-204-120 (1)(a) and (c) within a period of ten years from the later date of either the department's formal approval of the application for a sediment impact zone authorization or the starting date of the discharge.

(4) The department shall only authorize sediment impact zones for permitted wastewater and storm water discharges, and other discharges authorized by the department. The department shall authorize all sediment impact zones via discharge permits or other formal administrative actions.

(5) The department shall not limit the application, establishment, maintenance, or closure of an authorized sediment impact zone via consideration of sediment contamination determined by the department to be the result of unknown, unpermitted or historic discharge sources.

(6) As determined necessary by the department, any person with a permitted discharge shall be required to meet the standards of WAC 173-204-400 through 173-204-420, as follows:

(a) Any person with a new or existing permitted wastewater discharge shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(b) Any person with a new or existing permitted industrial storm water discharge, regulated as process wastewater in National Pollutant Discharge Elimination System or state discharge permits, shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(c) Any person with a new or existing permitted storm water or nonpoint source discharge, which fully uses all known, available and reasonable methods of prevention, control, and treatment, and best management practices as stipulated by the department at the time of the person's application for a sediment impact zone, shall be required to meet the standards of WAC 173-204-400 through 173-204-420;

(d) Any person with a storm water discharge, existing prior to the adoption of this chapter, and determined by the department to not be fully using best management practices stipulated by the department at the time of the person's application for a permit from the department, shall be eligible for a sediment impact zone as follows:

(i) The department shall issue sediment impact zone authorizations with requirements for application of best management practices stipulated by the department on an approved time schedule. ((~~The sediment impact zone maximum criteria of WAC 173-204-420 shall not be applicable during the approved time schedule authorized by the department.~~))

(ii) Sediment impact zones authorized by the department for permitted storm water discharges under the applicability provisions of subsection (6)(d) of this section shall be subject to cleanup action determinations made by the department pursuant to WAC 173-204-500 through 173-204-590 when the sediment impact zone maximum criteria of WAC 173-204-420 are exceeded within the authorized sediment impact zone.

(iii) The department shall identify and include best management practices required to meet the sediment impact zone design standards of WAC 173-204-415(4) as soon as practicable within sediment impact zone authorizations established for storm water discharges per WAC 173-204-410 (6)(d).

(7) Dredged material and fill discharge activities subject to authorization under Section 401 of the federal Clean Water Act via chapter 90.48 RCW and chapter 173-225 WAC, establishment of implementation procedures of application for certification, are not subject to the standards of WAC 173-204-415 but are subject to the standards of WAC 173-204-400 through 173-204-410 and 173-204-420 as follows:

(a) Requirements for dredging activities and disposal sites shall be established by the department using best available dredged material management guidelines and applicable federal and state rules. These guidelines shall include the Puget Sound dredged disposal analysis (PSDDA) dredged material testing and disposal requirements cited in:

(i) *Management Plan Report - Unconfined Open-Water Disposal Of Dredged Material, Phase I, (Central Puget Sound), June 1988, or as amended;*

(ii) *Management Plan Report - Unconfined Open-Water Disposal Of Dredged Material, Phase II, (North And South Puget Sound), September 1989, or as amended;* and

(iii) *Users Manual For Dredged Material Management In Puget Sound, November 1990, or as amended.*

(b) In coordination with other applicable federal and state and local dredged material management programs, the department may issue administrative orders to establish approved disposal sites, to specify disposal site use conditions, and to specify disposal site monitoring requirements.

(c) The department may authorize sediment impact zones for dredged material disposal via federal Clean Water Act Section 401 certification actions.

(d) As determined necessary by the department, the department may authorize sediment impact zones for dredged material disposal via administrative orders issued under authority of chapter 90.48 RCW. The department shall authorize sediment impact zones for all Puget Sound dredged disposal analysis disposal sites via administrative orders issued under authority of chapter 90.48 RCW.

(e) Administrative orders and certifications establishing sediment impact zones for dredged material disposal sites shall describe establishment, maintenance, and closure requirements for the authorized site, consistent with the requirements described in (a) of this subsection.

(8) The source control standards of WAC 173-204-400 through 173-204-420 are applicable in cases where the sediment quality standards of WAC 173-204-320 through 173-204-340 are reserved.

NEW SECTION

WAC 173-204-412 Marine finfish rearing facilities. (1) Purpose. This section sets forth the applicability of this chapter to marine finfish rearing facilities only. This section also identifies marine finfish rearing facility siting, operation, closure and monitoring requirements to meet the intent of this chapter, as applicable.

(2) Applicability. Marine finfish rearing facilities and their associated discharges are not subject to the authority and purpose standards of WAC 173-204-100 (3) and (7), and the marine sediment quality standards of WAC 173-204-320 and the sediment impact zone maximum criteria of WAC 173-204-420, within a distance of one hundred feet from the physical boundary of the rearing facility. Marine finfish rearing facilities are not subject to the sediment impact zone standards of WAC 173-204-415.

(3) Sediment monitoring. Sediment quality compliance and monitoring requirements for marine finfish rearing facilities shall be addressed through National Pollutant Discharge Elimination System or other permits issued by the department for facility operation. Marine finfish rearing facilities shall meet the following sediment quality monitoring requirements:

(a) Any person with a new facility shall identify a baseline sediment quality prior to facility operation for benthic infaunal abundance, total organic carbon and grain size in the location of the proposed operation and downcurrent areas that may be potentially impacted by the facility discharge;

(b) Any person with an existing operating facility shall monitor sediment quality for total organic carbon levels and identify the location of any sediments in the area of the facility statistically different (t test, $p \leq 0.05$) from the total organic carbon levels identified as facility baseline levels and/or statistically different from the total organic carbon levels defined by the applicable sediment grain size value as identified in Table 2A:

TABLE 2A - % Puget Sound Reference TOC Values

% Fines Categories	%/TOC
0-20	0.5
20-50	1.7
50-80	3.2
80-100	2.6

(c) The locations and frequency of monitoring for total organic carbon, benthic infaunal abundance and other parameters shall be determined by the department and identified in the applicable National Pollutant Discharge Elimination System permit;

(d) Antibiotics. Reserved: The department shall determine on a case-by-case basis the methods, procedure, locations, and frequency for monitoring antibiotics associated with the discharge from a marine finfish rearing facility;

(e) Closure. All permitted marine finfish rearing facilities shall monitor sediments impacted during facility operation to document recovery of sediment quality to background levels. The department shall determine on a case-by-case basis the methods, procedure, locations, and frequency for monitoring sediments after facility closure.

(4) Sediment impact zones. Marine finfish rearing facilities and their associated discharges that are permitted under a National Pollutant Discharge Elimination System permit are hereby provided a sediment impact zone by rule for any sediment quality impacts and biological effects within a distance of one hundred feet from the physical boundary of the rearing facility.

(a) The department may authorize an individual marine finfish rearing facility sediment impact zone for any sediments beyond a distance of one hundred feet from the facility perimeter via National Pollutant Discharge Elimination System permits or administrative actions. The authorized sediment impact zone shall meet the benthic infaunal abundance requirements of the sediment impact zone maximum criteria, WAC 173-204-420 (3)(c)(iii). Marine finfish rearing facilities that exceed the sediment quality conditions of subsection (3)(b) of this section beyond a distance of one hundred feet from the facility perimeter shall:

(i) Begin an enhanced sediment quality monitoring program to include benthic infaunal abundance consistent with the requirements of the National Pollutant Discharge Elimination System permit;

(ii) Consistent with the sediment source control general considerations of WAC 173-204-400 and the sediment quality goal and sediment impact zone applicability requirements of WAC 173-204-410, apply for a sediment impact zone as determined necessary by the department.

(b) Administrative orders or permits establishing sediment impact zones for marine finfish rearing facilities shall describe establishment, maintenance, and closure requirements as determined necessary by the department.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-415 Sediment impact zones. The purpose of this section is to set forth the standards for establishment, maintenance, and closure of sediment impact zones to meet the intent of sediment quality dilution zones authorized pursuant to RCW 90.48.520, except for sediment impact zones authorized under WAC 173-204-410(7). The department shall authorize all sediment impact zones via discharge permits or other formal administrative actions.

(1) General requirements. Authorization, modification and renewal of a sediment impact zone by the department shall require compliance with the following general requirements:

(a) Permits authorizing wastewater discharges to surface waters of the state of Washington under authority of chapter 90.48 RCW shall be conditioned so that the discharge receives:

(i) All known, available and reasonable methods of prevention, control, and treatment prior to discharge, as required by chapters 90.48, 90.52, and 90.54 RCW; and

(ii) Best management practices as stipulated by the department.

(b) The maximum area, and maximum chemical contaminant concentration and/or allowable maximum biological effect level within sediments assigned to a sediment impact zone shall be as authorized by the department, in accordance with the standards of this section.

(c) The department shall determine that the person's activity generating effluent discharges which require authorization of a sediment impact zone is in the public interest.

(d) The department shall determine that any person's activity generating effluent discharges which require authorization of a sediment impact zone has adequately addressed alternative waste reduction, recycling, and disposal options through application of all known, available and reasonable methods of prevention, control, and treatment to minimize as best practicable the volume and concentration of waste contaminants in the discharge.

(e) The area boundaries of the sediment impact zone established by the department shall include the minimum practicable surface area, not to exceed the surface area allowed under subsection (4) of this section.

(f) Adverse effects to biological resources within an authorized sediment impact zone shall be maintained at the minimum chemical contamination and biological effects levels practicable at all times. The department shall consider the relationship between environmental effects, technical feasibility and cost in determining the minimum practicable chemical contamination and biological effects levels. Adverse effects to biological resources within an authorized sediment impact zone shall not exceed a minor adverse

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effects level as a result of the discharge, as determined by the procedures of subsection (((~~5~~))) (4) of this section.

(g) The operational terms and conditions for the sediment impact zone shall be maintained at all times.

(h) Final closure of the sediment impact zone shall be conducted in strict accordance with the department's sediment impact zone authorization.

(i) Documents authorizing a sediment impact zone shall require that the permitted discharge not result in a violation of the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, outside the area limits of the established zone.

(j) All applications to the department for sediment impact zone authorizations shall be subject to public notice, comment and hearing procedures defined but not limited to the applicable discharge permit or other formal administrative action requirements of chapter 43.21C RCW, the State Environmental Policy Act, chapter 197-11 WAC, SEPA rules, chapter 90.48 RCW, chapter 163-216 WAC, the State waste discharge permit program, and chapter 173-220 WAC, National Pollutant Discharge Elimination System Permit Program prior to issuance of the authorization. In determining the need for, location, and/or design of any sediment impact zone authorization, the department shall give consideration to all comments received during public review of the proposed sediment impact zone application.

(2) Application requirements.

(a) Whenever, in the opinion of the department, as a result of an ongoing or proposed effluent discharge, a person violates, shall violate, or creates a substantial potential to violate the sediment quality standards of WAC 173-204-320 through 173-204-340 as applicable within a period of ten years from the later date of either the department's evaluation of the ongoing discharge or the starting date of the proposed discharge, the department may require application for a sediment impact zone authorization under authority of chapter 90.48 RCW.

(b) Any person with a proposed or permitted effluent discharge shall apply to the department for authorization of a sediment impact zone when:

(i) The department requires the sediment impact zone application by written notification; or

(ii) The person independently identifies that the ongoing or proposed effluent discharge violates, shall violate, or creates a substantial potential to violate the applicable sediment quality standards of WAC 173-204-320 through 173-204-340 within a period of ten years from the later date of the person's evaluation of the ongoing discharge or the starting date of the proposed discharge, using the procedures of this section.

(c) As necessary, the department may require any person to submit a sediment impact zone application in multiple steps concurrent with its ongoing review and determination concerning the adequacy of the application. The application shall provide the sediment impact zone design information required in subsection (4) of this section and other such information the department determines necessary. The application shall also provide the legal location and landowner(s) of property proposed for use as, or potentially affected by, a sediment impact zone, and shall be accompanied by such other relevant information as the department may require. The department shall issue a written approval of the complete sediment impact zone application prior to or concurrent with authorizing a sediment impact zone.

(d) Submittal of an application to the department for authorization of a sediment impact zone under the terms and conditions of this section shall establish the applicant's interim compliance with requirements of chapter 90.48 RCW and this chapter, as determined by the department. The department may authorize an interim compliance period within a valid discharge permit or administrative order to ensure ultimate compliance with chapter 90.48 RCW and this chapter. The interim compliance period shall not continue beyond the date of issuance of a sediment impact zone authorization within a valid discharge permit issued by the department.

(e) Prior to authorization, the department shall make a reasonable effort to identify and notify all landowners, adjacent landowners, and lessees affected by the proposed sediment impact zone. The department shall issue a sediment impact zone notification letter to any person it believes to be a potentially affected landowner and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide:

(i) The name of the person the department believes to be the affected landowner;

(ii) The names and addresses of other affected landowners to whom the department has sent a proposed sediment impact zone notification letter;

(iii) The name and address of the sediment impact zone applicant;

(iv) A general description of the location, size, and contamination level proposed for the sediment impact zone;

(v) The intention of the department to release all specific sediment impact zone application information to the public upon written request to the department;

(vi) The determination of the department concerning whether the proposed sediment impact zone application meets the standards of this section;

(vii) The intention of the department whether to authorize the proposed sediment impact zone; and

(viii) Notification that the affected landowners, adjacent landowners, and lessees may comment on the proposed sediment impact zone. Any comments on the proposed sediment impact zone authorization shall be submitted in writing to the department within thirty days from the date of receipt of the notification letter, unless the department provides an extension.

(f) Prior to authorization, the department shall issue a sediment impact zone notification letter to affected port districts, the Washington state department of natural resources marine lands division, the U.S. Army Corps of Engineers, and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide the information required under (e) of this subsection.

(3) Locational considerations. The department shall require any person applying for a sediment impact zone to submit information concerning potential location considerations of the zone. The location of an authorized sediment impact zone shall avoid whenever possible and minimize

adverse impacts to areas of special importance. Prior to authorization of a sediment impact zone, the department shall consider all pertinent information from the applicant, all affected parties, local, state and federal agencies, federally recognized Indian tribes, and the public concerning locational considerations, including but not limited to:

(a) Spawning areas;

(b) Nursery areas;

(c) Waterfowl feeding areas;

(d) Shellfish harvest areas;

(e) Areas used by species of economic importance;

(f) Tribal areas of significance;

(g) Areas determined to be ecologically unique;

(h) Water supply intake areas;

(i) Areas used for primary contact public recreation;

(j) High quality waters that constitute an outstanding national resource; and

(k) Areas where sediment quality is substantially better than levels necessary for protection of biological resources and human health.

(4) Design requirements. The location, areal limitations, and degree of effects allowed within an authorized sediment impact zone shall be determined by application of the department's sediment impact zone computer models "CORMIX," "PLUMES," and/or "WASP ((4))," or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), as limited by the standards of this section and the department's best professional judgment. The models shall be used by the department or by the discharger as required by the department, to estimate the impact of any person's wastewater or storm water discharge on the receiving water and sediment quality for a period of ten years from the later date of either the department's formal approval of the application for a sediment impact zone authorization or the starting date of the discharge.

(a) Data requirements. The discharger shall submit the following information to determine requirements for establishment and authorization of a sediment impact zone, as required by the department:

(i) Data reports and analyses results for all samples of wastewater or storm water, receiving water, and sediments collected by the discharger or other parties relating to evaluation of the potential effects of the permitted discharge, as required by WAC 173-204-400.

(ii) Data reports and analyses results determined necessary to:

(A) Apply discharge modeling to the permitted discharge; and

(B) To identify and evaluate potential alternative chemical and biological effects of the discharge on the receiving water and sediments; and

(C) To identify and evaluate potential alternatives to define the areal size and location of a sediment impact zone needed by the discharge.

(iii) Data reports and analyses results from the discharger's application of the "CORMIX," "PLUMES," and/or "WASP ((4))" or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), to the permitted discharge to identify and evaluate:

(A) Potential alternative chemical and biological effects of the discharge on the receiving water and sediments; and

(B) Potential alternatives for the areal distribution and location of a potential sediment impact zone required by the discharge.

(iv) Preferred alternative for closure of the potential sediment impact zone by active removal and/or natural recovery, and identified costs of the preferred closure method.

(b) Overlapping sediment impact zones. Overlapping sediment impact zones, as predicted by the "CORMIX," "PLUMES," and/or "WASP ((4))" models or an alternate sediment impact zone model(s) approved by the department under WAC 173-204-130(4), and the department's best professional judgment, shall be authorized only as follows:

(i) The applicable sediment impact zone maximum criteria of WAC 173-204-420 shall not be exceeded as a result of the multiple discharge sediment impact zones overlap; and

(ii) If the department determines that the applicable chemical contaminant concentration and biological effects restrictions of WAC 173-204-420 would be exceeded as a result of the overlap of multiple discharge sediment impact zones, the department may authorize the sediment impact zones after:

(A) Application of a waste load allocation process to the individual permitted discharges to identify individual permit effluent limitations necessary to meet:

(I) The applicable chemical contaminant concentration and biological effects restrictions for sediment impact zones required by this section; and/or

(II) Storm water best management practices required by the department; and

(B) Establishment of individual permit compliance schedules for the multiple permitted discharges to ensure compliance with:

(I) The permit effluent limitations established by the department using the waste load allocation process and best professional judgment; and

(II) The standards of WAC 173-204-400 through 173-204-420.

(5) Maintenance requirements.

(a) The department shall review sediment impact zone monitoring conducted by the discharger to evaluate compliance with the department's sediment impact zone authorization and the standards of WAC 173-204-400 through 173-204-420. The department may require additional sediment impact zone monitoring when the department determines that any sediment sampling station within an authorized sediment impact zone exceeds the sediment impact zone maximum criteria of WAC 173-204-420 or violates the sediment impact zone authorization as a result of the discharge.

(b) Whenever the department can clearly demonstrate that, as a result of an effluent discharge, a discharger violates, shall violate, or creates a substantial potential to violate the department's sediment impact zone authorization, or the sediment impact zone maximum criteria of WAC 173-204-420, the department shall:

(i) Provide written notification and supporting documentation of the department's clear demonstration determination to the affected discharger;

(ii) Establish a reasonable time frame for the affected discharger to either submit a written statement and supporting documentation rebutting the department's clear demon-

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stration determination, or accept the department's determination. The discharger may use the clear demonstration methods identified in (c) of this subsection for rebuttal of the department's clear demonstration; and

(iii) Provide written notification of the department's determination concerning approval or denial of the submitted clear demonstration rebuttal to the discharger.

(c) For the purpose of this section, a clear demonstration shall consist of:

(i) Use of the sediment impact zone model(s) "CORMIX," "PLUMES," and/or "WASP ((4))" or other model(s) to demonstrate a discharge(s) is the source of the violation or potential violation; and

(ii) Use of one or more of the following methods to demonstrate a violation of the sediment impact zone authorization or the sediment impact zone maximum criteria of WAC 173-204-420:

(A) Direct sediment sampling. A violation of the sediment impact zone authorization and/or the sediment impact zone maximum criteria of WAC 173-204-420 is demonstrated when:

(I) The average chemical concentration for three stations within the sediment impact zone exceeds the sediment impact zone maximum criteria of WAC 173-204-420 due to the discharge source. This concentration average shall not include stations for which complete biological testing information shows that the biological effects requirements of WAC 173-204-420, or the authorized sediment impact zone if applicable, are met; or

(II) The biological effects at each of any three stations within the sediment impact zone exceed the sediment impact zone maximum biological effects criteria of WAC 173-204-420 or the authorized sediment impact zone as applicable, due to the discharge source; or

(B) Monitoring data which demonstrates a chemical contaminant concentration gradient toward the discharge source exists in sediments which violates the sediment impact zone authorization or the standards of WAC 173-204-420; or

(C) A trend analysis of the effluent chemical discharge quality and inplace sediment monitoring data which statistically demonstrates an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420; or

(D) Field depositional (e.g., sediment traps) and/or effluent particulate (e.g., centrifuge analysis) data which demonstrate an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420; or

(E) Mathematical or computer modeling which demonstrates an ongoing violation or substantial potential to violate the sediment impact zone authorization or the standards of WAC 173-204-420.

(d) The department's response to a clear demonstration of a violation or potential violation shall be to require maintenance activities in the following order:

(i) Require reanalysis of whether the discharger's effluent treatment complies with all known, available and reasonable methods of prevention, control, and treatment and best management practices based on the data used to establish the clear demonstration;

(ii) Alter the authorized sediment impact zone size and/or degree of effects consistent with the standards of this section and the results of direct sediment sampling;

(iii) Reduce impacts of the existing or potential violation by requiring additional discharge controls or additional sediment impact zone maintenance activities which can include, but are not limited to:

(A) Dredging and removal of sediments, solely for sediment impact zone maintenance needs or coordinated with maintenance dredging of commercially important areas, e.g., navigational lanes or ship berthing areas;

(B) Dredging, treatment, and replacement of sediments within the sediment impact zone; and/or

(C) Capping of sediments within the sediment impact zone;

(iv) Limit the quantity and/or quality of the existing permitted discharge; and/or

(v) Withdraw the department's sediment impact zone authorization and require final closure of the zone.

(e) All sediment impact zone maintenance actions conducted under this chapter shall provide for landowner review of the maintenance action plans prior to implementation of the action. In cases where the discharger is not able to secure access to lands subject to the sediment impact zone maintenance actions of this subsection, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access shall be submitted to the department in writing by the responsible discharger.

(6) Closure planning and requirements.

(a) The discharger shall select and identify a preferred method for closure of a sediment impact zone in the application required by WAC 173-204-415(2). Closure methods can include either active cleanup and/or natural recovery and monitoring. The department shall incorporate the discharger's identified closure method in the sediment impact zone authorization.

(b) The department may require closure of authorized sediment impact zones when the department determines that:

(i) The discharger has violated the sediment impact zone maintenance standards of subsection (5) of this section; or

(ii) The department determines that:

(A) The wastewater or storm water discharge quality will not violate the applicable sediment quality standards of WAC 173-204-320 through 173-204-340; or

(B) A sediment impact zone is no longer needed or eligible under the standards of WAC 173-204-410 through 173-204-415.

(7) Modification of sediment impact zones. The department may modify sediment impact zone authorization requirements where the nature of a person's activity which generates, transports, disposes, prevents, controls, or treats effluent discharges has substantially changed and been demonstrated to the department's satisfaction. The modification may occur after consideration of the following:

(a) Reduction of effects. Assessment of the discharge activities and treatment methods shall be conducted by the discharger to demonstrate to the satisfaction of the department that:

(i) Elimination of the sediment impact zone is not practicable; and

(ii) Further reduction in any existing or proposed sediment impact zone area size and/or level of contamination or effects is not practicable in consideration of discharge requirements for all known, available and reasonable methods of prevention, control, and treatment, best management practices, and applicable waste reduction and recycling provisions.

(b) Alterations. There are substantial alterations or additions to the person's activity generating effluent discharges which require authorization of a sediment impact zone which occur after permit issuance and justify application of permit conditions different from, or absent in, the existing permit.

(c) New information. Sediment impact zones may be modified when new information is received by the department that was not available at the time of permit issuance that would have justified the application of different sediment impact zone authorization conditions.

(d) New regulations. The standards or regulations on which the permit was based have changed by amended standards, criteria, or by judicial decision after the permit was issued.

(e) Changes in technology. Advances in waste control technology that qualify as "all known, available and reasonable methods of prevention, control, and treatment" and "best management practices" shall be adopted as permit requirements, as appropriate, in all permits reissued by the department.

(8) Renewal of previously authorized sediment impact zones. Renewal of sediment impact zones previously authorized under the standards of WAC 173-204-410 and this section shall be allowed under the following conditions:

(a) The department determines the discharge activities and treatment methods meet all known, available and reasonable methods of prevention, control, and treatment and best management practices as stipulated by the department; and

(b) The discharger demonstrates to the department's satisfaction that the discharge activities comply with the standards of WAC 173-204-400 through 173-204-420 and with the existing sediment impact zone authorization; and

(c) Reduction of effects. The discharger conducts an assessment of the permitted discharge activities and treatment methods and demonstrates to the department's satisfaction that:

(i) Elimination of the sediment impact zone is not practicable; and

(ii) A further reduction in any existing or proposed sediment impact zone area size and/or level of contamination is not practicable in consideration of discharge requirements for all known, available and reasonable methods of prevention, control, and treatment, best management practices, and applicable waste reduction and recycling provisions.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-420 Sediment impact zone maximum criteria. This section establishes minor adverse effects as the maximum chemical contaminant concentration, maximum health risk to humans, maximum biological effects level, maximum other toxic, radioactive, biological, or deleterious substance level, and maximum nonanthropogenically affected sediment quality level allowed within authorized sediment impact zones due to an existing or proposed discharge. If the department determines that the standards of this section are or will be exceeded as a result of an existing or proposed discharge(s), the department shall authorize a sediment impact zone or modify a sediment impact zone authorization consistent with the standards of WAC 173-204-400 through 173-204-420 such that individual permit effluent limitations, requirements, and compliance time periods are sufficient to meet the standards of this section as applicable.

(1) Applicability.

(a) The marine sediment impact zone maximum chemical criteria, and the marine sediment biological effects criteria, and the marine sediment human health criteria, and the marine sediment other toxic, radioactive, biological or deleterious substance criteria and the marine sediment nonanthropogenically affected sediment criteria of this section shall apply to marine sediments within Puget Sound.

(b) Non-Puget Sound marine sediment impact zone maximum criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(c) Low salinity sediment impact zone maximum criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(d) Freshwater sediment impact zone maximum criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(2) Puget Sound marine sediment impact zone maximum chemical criteria. The maximum chemical concentration levels that may be allowed within an authorized sediment impact zone due to a permitted or otherwise authorized discharge shall be at or below the chemical levels stipulated in Table II, Sediment Impact Zone Maximum Chemical Criteria, except as provided for by the marine sediment biological effects restrictions of subsection (3) of this section, and any compliance time periods established under WAC 173-204-410 (6)(d) and 173-204-415.

Table II

Puget Sound Marine Sediment Impact Zones
Maximum Chemical Criteria[1]

CHEMICAL PARAMETER	MG/KG DRY WEIGHT (PARTS PER MILLION (PPM) DRY)
ARSENIC	93
CADMIUM	6.7
CHROMIUM	270
COPPER	390
LEAD	530
MERCURY	0.59
SILVER	6.1
ZINC	960
CHEMICAL PARAMETER	**MG/KG ORGANIC CARBON (PPM CARBON)[2]**
LPAH[3]	780
NAPHTHALENE	170
ACENAPHTHYLENE	66
ACENAPHTHENE	57
FLUORENE	79

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PHENANTHRENE	480
ANTHRACENE	1200
2-METHYLNAPHTHALENE	64

CHEMICAL PARAMETER	MG/KG ORGANIC CARBON (PPM CARBON)
HPAH[4]	5300
FLUORANTHENE	1200
PYRENE	1400
BENZ(A)ANTHRACENE	270
CHRYSENE	460
TOTAL BENZOFLUORANTHENES[5]	450
BENZO(A)PYRENE	210
INDENO (1,2,3,-C,D) PYRENE	88
DIBENZO (A,H) ANTHRACENE	33
BENZO(G,H,I)PERYLENE	78
1,2-DICHLOROBENZENE	2.3
1,4-DICHLOROBENZENE	9
1,2,4-TRICHLOROBENZENE	1.8
HEXACHLOROBENZENE	2.3
DIMETHYL PHTHALATE	53
DIETHYL PHTHALATE	110
DI-N-BUTYL PHTHALATE	1700
BUTYL BENZYL PHTHALATE	64
BIS (2-ETHYLHEXYL) PHTHALATE	78
DI-N-OCTYL PHTHALATE	4500
DIBENZOFURAN	58
HEXACHLOROBUTADIENE	6.2
N-NITROSODIPHENYLAMINE	11
TOTAL PCB'S	65

CHEMICAL PARAMETER	UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)
PHENOL	1200
2-METHYLPHENOL	63
4-METHYLPHENOL	670
2,4-DIMETHYL PHENOL	29
PENTACHLOROPHENOL	690
BENZYL ALCOHOL	73
BENZOIC ACID	650

Table II Footnotes

1 Where laboratory analysis indicates a chemical is not detected in a sediment sample, the detection limit shall be reported and shall be at or below the criteria value shown in this table. Where chemical criteria in this table represent the sum of individual compounds or isomers, and a chemical analysis identifies an undetected value for one or more individual compounds or isomers, the detection limit shall be used for calculating the sum of the respective compounds or isomers.

2 The listed chemical parameter criteria represent concentrations in parts per million, "normalized," or expressed, on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content of the sediment.

3 The LPAH criterion represents the sum of the following "low molecular weight polynuclear aromatic hydrocarbon" compounds: Naphthalene, Acenaphthylene, Acenaphthene, Fluorene, Phenanthrene, and Anthracene. The LPAH criterion is not the sum of the criteria values for the individual LPAH compounds as listed.

4 The HPAH criterion represents the sum of the following "high molecular weight polynuclear aromatic hydrocarbon" compounds: Fluoranthene, Pyrene, Benz(a)anthracene, Chrysene, Total Benzofluoranthenes, Benzo(a)pyrene, Indeno(1,2,3,-c,d)pyrene, Dibenzo(a,h)anthracene, and Benzo(g,h,i)perylene. The HPAH criterion is not the sum of the criteria values for the individual HPAH compounds as listed.

5 The TOTAL BENZOFLUORANTHENES criterion represents the sum of the concentrations of the "B," "J," and "K" isomers.

(3) Puget Sound marine sediment impact zone maximum biological effects criteria. The maximum biological effects level that may be allowed within an authorized sediment impact zone shall be at or below a minor adverse biological effects level. The acute and chronic effects biological tests of WAC 173-204-315(1) may be used to determine compliance with the minor adverse biological effects restriction within an authorized sediment impact zone as follows:

(a) When using biological testing to determine compliance with the maximum biological effects criteria within a sediment impact zone, a person shall select and conduct any two acute effects tests and any one chronic effects test.

(b) The biological tests shall not be considered valid unless test results for the appropriate control and reference sediment samples meet the performance standards described in WAC 173-204-315(2).

(c) The sediment impact zone maximum biological effects level is established as that level below which any two of the biological tests in any combination exceed the criteria of WAC 173-204-320(3), or one of the following biological test determinations is made:

(i) Amphipod: The test sediment has a higher (statistically significant, t test, $p \leq 0.05$) mean mortality than the reference sediment and the test sediment mean mortality is ((~~more than thirty percent higher~~)) greater than a value represented by the reference sediment mean mortality((~~, on an absolute basis~~)) plus thirty percent; or

(ii) Larval: The test sediment has a mean survivorship of normal larvae that is less (statistically significant, t test, $p \leq 0.05$) than the mean normal survivorship in the reference sediment sample and the test sediment mean normal survivorship is less than seventy percent of the mean normal survivorship in the reference sediment (i.e., the test sediment has a mean combined abnormality and mortality that is greater than thirty percent relative to time-final in the reference sediment); or

(iii) Benthic abundance: The test sediment has less than fifty percent of the reference sediment mean abundance of any two of the following major taxa: Class Crustacea, Phylum Mollusca or Class Polychaeta and the test sediment abundances are statistically different (t test, $p \leq 0.05$) from the reference sediment abundances; or

(iv) Juvenile polychaete: The test sediment has a mean ((~~biomass~~)) individual growth rate of less than fifty percent of the reference sediment mean ((~~biomass~~)) individual growth rate and the test sediment ((~~biomass~~)) mean individual growth rate is statistically different (t test, $p \leq 0.05$) from the reference sediment ((~~biomass~~)) mean individual growth rate.

(4) Puget Sound marine sediment impact zone maximum human health criteria. Reserved: The department may determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(5) Puget Sound marine sediment impact zone maximum other toxic, radioactive, biological, or deleterious substances criteria. Other toxic, radioactive, biological or deleterious substances in, or on, sediments shall be below levels which cause minor adverse effects in marine biological resources, or which correspond to a significant health risk to humans, as determined by the department. The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(6) Puget Sound marine sediment impact zone maximum nonanthropogenically affected sediment criteria. Whenever the nonanthropogenically affected sediment quality is of a

lower quality (i.e., higher chemical concentrations, higher levels of adverse biological response, or posing a higher threat to human health) than the applicable sediment impact zone maximum criteria established under this section, the existing sediment chemical and biological quality shall be identified on an area-wide basis as determined by the department, and used in place of the standards of WAC 173-204-420.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-510 Screening sediment station clusters of potential concern. (1) Using the sediment quality standards inventory of WAC 173-204-350, the department shall analyze the sediment sampling data to identify station clusters of potential concern and station clusters of low concern per the standards of this section. Station clusters of potential concern shall be further evaluated using the hazard assessment standards of WAC 173-204-530. Station clusters of low concern shall remain on the inventory and no further cleanup action determinations shall be taken by the department until the stations are reexamined per subsection (5) of this section.

(2) A station cluster is defined as any number of stations from the inventory of WAC 173-204-350 that are determined to be ((~~contiguous~~)) spatially and chemically similar. For the purpose of identifying a station cluster of potential concern per the procedures of this subsection, three stations with the highest contaminant concentration for any particular contaminant or the highest degree of biological effects as identified in WAC 173-204-520 are selected from a station cluster. This procedure may be repeated for multiple chemicals identified in WAC 173-204-520, recognizing that the three stations with the highest concentration for each particular contaminant may be different and the respective areas for all chemicals may overlap. The department shall review the inventory of WAC 173-204-350 to identify station clusters of potential concern via the following process:

(a) Identify if available, the three stations within a station cluster with the highest concentration of each chemical contaminant identified in WAC 173-204-520, Cleanup screening levels criteria; and

(b) For each contaminant identified in (a) of this subsection, determine the average concentration for the contaminant at the three stations identified in (a) of this subsection; and

(c) Identify if available, three stations within the station cluster with the highest level of biological effects for the biological tests identified in WAC 173-204-315(1); and

(d) If the average contaminant concentration for any three stations identified in (a) of this subsection, exceeds the applicable cleanup screening level in WAC 173-204-520, then the station cluster is defined as a station cluster of potential concern; and

(e) If the biological effects at each of the three stations from (c) of this subsection exceeds the cleanup screening level in WAC 173-204-520, then the station cluster is defined as a station cluster of potential concern; and

(f) If neither of the conditions of (d) or (e) of this subsection apply, then the station cluster is defined as a station cluster of low concern; and

(g) If the department determines that any three stations within a station cluster exceed the sediment cleanup screening levels human health criteria or the other toxic, radioactive, biological, or deleterious substances criteria or the nonanthropogenically affected criteria of WAC 173-204-520, then the station cluster is defined as a station cluster of potential concern.

(3) Notification. When a station cluster of potential concern has been identified, the department shall issue notification to the landowners, lessees, onsite dischargers, adjacent dischargers, and other persons determined appropriate by the department prior to the department's conducting a hazard assessment as defined in WAC 173-204-530.

(4) No further cleanup action determinations shall be taken with station clusters of low concern until the inventory of WAC 173-204-350 is updated and the stations reexamined per subsection (5) of this section. Station clusters of low concern shall receive no further consideration for active cleanup, unless new information indicates an increase of chemical contamination at the stations in question. Station clusters of low concern shall be evaluated by the department for improved source control and/or monitoring requirements of this chapter.

(5) The department may at any time reexamine a station or group of stations to reevaluate and identify station clusters of potential concern following the procedures of subsection (2) of this section when new information demonstrates to the department's satisfaction that reexamination actions are necessary to fulfill the purposes of WAC 173-204-500 through 173-204-590.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-520 Cleanup screening levels criteria. (1) Applicability.

(a) The marine sediment cleanup screening levels chemical criteria, and the marine sediment biological effects criteria, and the marine sediment other toxic, radioactive, biological, or deleterious substance criteria, and the marine sediment nonanthropogenically affected criteria of this section shall apply to marine sediments within Puget Sound. The cleanup screening levels establish minor adverse effects as the level above which station clusters of potential concern are defined, and at or below which station clusters of low concern are defined, per the procedures identified in WAC 173-204-510(2). The cleanup screening levels also establish the levels above which station clusters of potential concern are defined as cleanup sites, per the procedures identified in WAC 173-204-530, Hazard assessment. The criteria in Table III and this section also establish minor adverse effects as the Puget Sound marine sediment minimum cleanup level to be used in evaluation of cleanup alternatives per the procedures of WAC 173-204-560, and selection of a site cleanup standard(s) per the procedures of WAC 173-204-570.

(b) Non-Puget Sound marine sediment cleanup screening levels and minimum cleanup levels criteria. Reserved: The department shall determine on a case-by-case basis the

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criteria, methods, and procedures necessary to meet the intent of this chapter.

(c) Low salinity sediment cleanup screening levels and minimum cleanup levels criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(d) Freshwater sediment cleanup screening levels and minimum cleanup levels criteria. Reserved: The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(2) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels chemical criteria. The chemical concentration criteria in Table III establish the Puget Sound marine sediment cleanup screening levels and minimum cleanup levels chemical criteria.

Table III

Puget Sound Marine Sediment Cleanup Screening Levels and Minimum Cleanup Levels—Chemical Criteria[1]

CHEMICAL PARAMETER	MG/KG DRY WEIGHT (PARTS PER MILLION (PPM) DRY)
ARSENIC	93
CADMIUM	6.7
CHROMIUM	270
COPPER	390
LEAD	530
MERCURY	0.59
SILVER	6.1
ZINC	960
CHEMICAL PARAMETER	**MG/KG ORGANIC CARBON (PPM CARBON)[2]**
LPAH[3]	780
NAPHTHALENE	170
ACENAPHTHYLENE	66
ACENAPHTHENE	57
FLUORENE	79
PHENANTHRENE	480
ANTHRACENE	1200
2-METHYLNAPHTHALENE	64
CHEMICAL PARAMETER	**MG/KG ORGANIC CARBON (PPM CARBON)**
HPAH[4]	5300
FLUORANTHENE	1200
PYRENE	1400
BENZ(A)ANTHRACENE	270
CHRYSENE	460
TOTAL BENZOFLUORANTHENES[5]	450
BENZO(A)PYRENE	210
INDENO (1,2,3,-C,D) PYRENE	88
DIBENZO (A,H) ANTHRACENE	33
BENZO(G,H,I)PERYLENE	78
1,2-DICHLOROBENZENE	2.3
1,4-DICHLOROBENZENE	9
1,2,4-TRICHLOROBENZENE	1.8
HEXACHLOROBENZENE	2.3
DIMETHYL PHTHALATE	53
DIETHYL PHTHALATE	110
DI-N-BUTYL PHTHALATE	1700
BUTYL BENZYL PHTHALATE	64
BIS (2-ETHYLHEXYL) PHTHALATE	78
DI-N-OCTYL PHTHALATE	4500
DIBENZOFURAN	58
HEXACHLOROBUTADIENE	6.2
N-NITROSODIPHENYLAMINE	11
TOTAL PCB'S	65
CHEMICAL PARAMETER	**UG/KG DRY WEIGHT (PARTS PER BILLION (PPB) DRY)**
PHENOL	1200
2-METHYLPHENOL	63
4-METHYLPHENOL	670
2,4-DIMETHYL PHENOL	29
PENTACHLOROPHENOL	690
BENZYL ALCOHOL	73
BENZOIC ACID	650

Table III Footnotes

1 Where laboratory analysis indicates a chemical is not detected in a sediment sample, the detection limit shall be reported and shall be at or below the criteria value shown in this table. Where chemical criteria in this table represent the sum of individual compounds or isomers, and a chemical analysis identifies an undetected value for one or more individual compounds or isomers, the detection limit shall be used for calculating the sum of the respective compounds or isomers.

2 The listed chemical parameter criteria represent concentrations in parts per million, "normalized," or expressed, on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content of the sediment.

3 The LPAH criterion represents the sum of the following "low molecular weight polynuclear aromatic hydrocarbon" compounds: Naphthalene, Acenaphthylene, Acenaphthene, Fluorene, Phenanthrene, and Anthracene. The LPAH criterion is not the sum of the criteria values for the individual LPAH compounds as listed.

4 The HPAH criterion represents the sum of the following "high molecular weight polynuclear aromatic hydrocarbon" compounds: Fluoranthene, Pyrene, Benz(a)anthracene, Chrysene, Total Benzofluoranthenes, Benzo(a)pyrene, Indeno(1,2,3,-c,d)pyrene, Dibenzo(a,h)anthracene, and Benzo(g,h,i)perylene. The HPAH criterion is not the sum of the criteria values for the individual HPAH compounds as listed.

5 The TOTAL BENZOFLUORANTHENES criterion represents the sum of the concentrations of the "B," "J," and "K" isomers.

(3) Puget Sound marine sediment cleanup screening levels and minimum cleanup level biological criteria. The biological effects criteria of this subsection establish the Puget Sound marine sediment cleanup screening level, and the Puget Sound marine sediment minimum cleanup level criteria.

(a) The acute and chronic effects biological tests of WAC 173-204-315(1) shall be used to:

(i) Identify the Puget Sound marine sediment cleanup screening level for the purpose of screening sediment station clusters of potential concern using the procedures of WAC 173-204-510(2); and

(ii) Identify the Puget Sound marine sediment cleanup screening level for the purpose of identifying station clusters of low concern and/or cleanup sites using the hazard assessment procedures of WAC 173-204-530(4); and/or

(iii) Identify the Puget Sound marine sediment minimum cleanup level to confirm minimum cleanup level determinations using the procedures of WAC 173-204-570(3).

(b) When using biological testing to determine if station clusters exceed the cleanup screening level or to identify the minimum cleanup level for a contaminated site, test results from at least two acute effects tests and one chronic effects test shall be evaluated.

(c) The biological tests shall not be considered valid unless test results for the appropriate control and reference sediment samples meet the performance standards described in WAC 173-204-315(2).

(d) The cleanup screening level and minimum cleanup level is exceeded when any two of the biological tests exceed the criteria of WAC 173-204-320(3); or one of the following test determinations is made:

(i) Amphipod: The test sediment has a higher (statistically significant, t test, p≤0.05) mean mortality than the reference sediment and the test sediment mean mortality is ((~~more than thirty percent higher~~)) greater than a value represented by the reference sediment mean mortality((~~, on an absolute basis~~)) plus thirty percent.

(ii) Larval: The test sediment has a mean survivorship of normal larvae that is less (statistically significant, t test, p≤0.05) than the mean normal survivorship in the reference sediment and the test sediment mean normal survivorship is less than seventy percent of the mean normal survivorship in the reference sediment (i.e., the test sediment has a mean combined abnormality and mortality that is greater than thirty percent relative to time-final in the reference sediment).

(iii) Benthic abundance: The test sediment has less than fifty percent of the reference sediment mean abundance of any two of the following major taxa: Class Crustacea, Phylum Mollusca or Class Polychaeta and the test sample abundances are statistically different (t test, p≤0.05) from the reference abundances.

(iv) Juvenile polychaete: The test sediment has a mean ((~~biomass~~)) individual growth rate of less than fifty percent of the reference sediment mean ((~~biomass~~)) individual growth rate and the test sediment ((~~biomass~~)) mean individual growth rate is statistically different (t test, p≤0.05) from the reference sediment ((~~biomass~~)) mean individual growth rate.

(4) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels human health criteria. Reserved: The department may determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(5) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels other toxic, radioactive, biological, or deleterious substances criteria. Other toxic, radioactive, biological, or deleterious substances in, or on, sediments shall be at or below levels which cause minor adverse effects in marine biological resources, or which correspond to a significant health risk to humans, as determined by the department. The department shall determine on a case-by-case basis the criteria, methods, and procedures necessary to meet the intent of this chapter.

(6) Puget Sound marine sediment cleanup screening levels and minimum cleanup levels nonanthropogenically affected sediment criteria. Whenever the nonanthropogenically affected sediment quality is of a lower quality (i.e., higher chemical concentrations, higher levels of adverse biological response, or posing a higher threat to human health) than the applicable cleanup screening levels or minimum cleanup levels criteria established under this section, the existing sediment chemical and biological quality shall be identified on an area-wide basis as determined by the department, and used in place of the standards of WAC 173-204-520.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-530 Hazard assessment and site identification. (1) Purpose. A hazard assessment shall be performed to gather existing and available information to further characterize each station cluster of potential concern identified per WAC 173-204-510.

(2) Hazard assessment requirements. Onsite dischargers, lessees, landowners, and adjacent dischargers shall submit, upon the department's request, all existing and available information that would enable the department to:

(a) Determine the concentration and/or areal extent and depth of sediment contamination at the station cluster of potential concern by:

(i) Identifying the contaminants exceeding the applicable sediment quality standards of WAC 173-204-320 through 173-204-340;

(ii) Identifying individual stations within the station cluster of potential concern which exceed the sediment cleanup screening levels criteria of WAC 173-204-520;

(iii) Identifying the level of toxicity to the applicable biological test organisms of WAC 173-204-320 through 173-204-340;

(iv) Determining where the applicable sediment quality standards of WAC 173-204-320 through 173-204-340, for any given contaminant, is met;

(v) Determining if concentrations of chemicals exist that potentially present a significant threat to human health;

(vi) Defining the location where the minimum cleanup level as defined in WAC 173-204-570 is met.

(b) ((~~Identifying and characterizing~~)) Identify and characterize the present and historic source or sources of the contamination.

(c) ((~~Identifying~~)) Identify the location of sediment impact zones authorized under WAC 173-204-415.

(d) ((~~Identifying~~)) Identify sensitive resources in the vicinity of the station cluster of potential concern.

(e) ((~~Providing~~)) Provide other information as determined necessary by the department for ranking sites under WAC 173-204-540.

(3) The department shall also compile existing and available information from other federal, state, and local governments that pertain to the topics in subsection (2) of this section.

(4) To identify cleanup sites, the department shall use all available information of acceptable quality gathered from the hazard assessment to evaluate station clusters of potential concern identified pursuant to WAC 173-204-510(2). For the purpose of identifying a cleanup site per the procedures of this subsection, three stations with the highest contaminant concentration for any particular contaminant or the highest degree of biological effects as identified in WAC 173-204-520 are selected from a station cluster of potential concern. This procedure may be repeated for multiple chemicals identified in WAC 173-204-520, recognizing that the three stations with the highest concentration for each particular contaminant may be different and the respective areas for all chemicals may overlap. The department shall review the list

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of station clusters of potential concern to identify cleanup sites via the following process:

(a) Identify if available, three stations within the station cluster of potential concern with the highest level of biological effects for the biological tests identified in WAC 173-204-315(1).

(b) Station clusters of potential concern where the level of biological effects for any three stations within the station cluster of potential concern exceeds the cleanup screening levels of WAC 173-204-520(3) shall be defined as cleanup sites.

(c) Identify if available, the three stations within a station cluster of potential concern with the highest concentration of each chemical contaminant identified in WAC 173-204-520, Cleanup screening levels criteria. For the purpose of identifying a cleanup site per the procedures of this subsection, stations that meet the biological standards of WAC 173-204-520(3) shall not be included in the evaluation of chemical contaminant concentrations.

(d) For each contaminant identified in (c) of this subsection, determine the average concentration for the contaminant at the three stations identified in (c) of this subsection.

(e) Station clusters of potential concern for which any average chemical concentration identified in (d) of this subsection exceeds the cleanup screening level chemical criteria of Table III shall be defined as cleanup sites.

(f) After completion of the hazard assessment, if neither of the conditions of (b) or (e) of this subsection apply, then the station cluster is defined as a station cluster of low concern.

(g) Station clusters of potential concern where the department determines that any three stations within the station cluster of potential concern exceed the sediment cleanup screening levels human health criteria or the other toxic, radioactive, biological, or deleterious substances criteria or the nonanthropogenically affected criteria of WAC 173-204-520, shall be defined as cleanup sites.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-560 Cleanup study. (1) Purpose. This section describes cleanup study plan and report standards which meet the intent of cleanup actions required under authority of chapter 90.48 and/or 70.105D RCW, and/or this chapter. Cleanup actions required under authority of chapter 70.105D RCW shall also meet all standards of chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation. The cleanup study plan and report standards in this chapter include activities to collect, develop, and evaluate sufficient information to enable consideration of cleanup alternatives and selection of a site-specific sediment cleanup standard prior to making a cleanup decision. Each person performing a cleanup action to meet the intent of this chapter shall submit a cleanup study plan and cleanup study report to the department for review and written approval prior to implementation of the cleanup action. The department may approve the cleanup study plan as submitted, may approve the cleanup study plan with appropriate changes or additions, or may require preparation of a new cleanup study plan.

(2) Scope of cleanup study plan. The scope of a cleanup study plan shall depend on the specific site informational needs, the site hazard, the type of cleanup action proposed, and the authority cited by the department to require cleanup. In establishing the necessary scope of the cleanup study plan, the department may consider cost mitigation factors, such as the financial resources of the person(s) responsible for the cleanup action. In all cases sufficient information must be collected, developed, and evaluated to enable the appropriate selection of a cleanup standard under WAC 173-204-570 and a cleanup action decision under WAC 173-204-580. The sediment cleanup study plan shall address:

(a) Public information/education;

(b) Site investigation and cleanup alternatives evaluation;

(c) Sampling plan and recordkeeping; and

(d) Site safety.

(3) Cleanup study plan public information/education requirements. The cleanup study plan shall encourage coordinated and effective public involvement commensurate with the nature of the proposed cleanup action, the level of public concern, and the existence of, or potential for adverse effects on biological resources and/or a threat to human health. The cleanup study plan shall address proposed activities for the following subjects:

(a) When public notice will occur, the length of the comment periods accompanying each notice, the potentially affected vicinity, and any other areas to be provided notice;

(b) Where public information repositories will be located to provide site information to the public;

(c) Methods for identifying the public's concerns, e.g., interviews, questionnaires, community group meetings, etc.;

(d) Methods for providing information to the public, e.g., press releases, public meetings, fact sheets, etc.;

(e) Coordination of public participation requirements mandated by other federal, state, or local laws;

(f) Amendments to the planned public involvement activities; and

(g) Any other elements that the department determines to be appropriate for inclusion in the cleanup study plan.

(4) Cleanup study plan site investigation and cleanup alternatives evaluation requirements. The content of the cleanup study plan for the site investigation and cleanup alternatives evaluation is determined by the type of cleanup action selected as defined under WAC 173-204-550. As determined by the department, the cleanup study plan shall address the following subjects:

(a) General site information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the cleanup site; area and volume dimensions of the site; present owners and operators of contaminant source discharges to site; chronological listing of past owners and operators of contaminant source discharges to the site and their respective operational history; and other pertinent information determined by the department.

(b) Site conditions map. An existing site conditions map which illustrates site features as follows:

(i) Property boundaries.

(ii) The site boundary defined by the individual contaminants exceeding the applicable sediment quality standards of

WAC 173-204-320 through 173-204-340 at the point where the concentration of the contaminant would meet the:

(A) Cleanup objective; and

(B) Minimum cleanup level; and

(C) Recommended cleanup standards.

(iii) Surface and subsurface topography.

(iv) Surface and subsurface structures.

(v) Utility lines.

(vi) Navigation lanes.

(vii) Current and ongoing sediment sources.

(viii) Other pertinent information determined by the department.

(c) Site investigation. Sufficient investigation to characterize the distribution of sediment contamination present at the site, and the threat or potential threat to human health and the environment. Where applicable to the site, these investigations shall address the following:

(i) Surface water and sediments. Investigations of surface water hydrodynamics and sediment transport mechanisms to characterize significant hydrologic features such as: Site surface water drainage patterns, quantities and flow rates, areas of sediment erosion and deposition including estimates of sedimentation rates, and actual or potential contaminant migration routes to and from the site and within the site. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution and concentrations of contaminants. ((~~Properties~~)) Recontamination potential of sediments which are likely to influence the type and rate of contaminant migration, or are likely to affect the ability to implement alternative cleanup actions shall be characterized;

(ii) Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the physical properties and distribution of sediment types, and the characteristics of ground water flow rate, ground water gradient, ground water discharge areas, and ground water quality data which may affect site cleanup alternatives evaluations;

(iii) Climate. Information regarding local and regional climatological characteristics which are likely to affect surface water hydrodynamics, ground water flow characteristics, and migration of sediment contaminants such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; prevailing wind direction and velocity;

(iv) Land use. Information characterizing human populations exposed or potentially exposed to sediment contaminants released from the site and present and proposed uses and zoning for shoreline areas contiguous with the site; and

(v) Natural resources and ecology. Information to determine the impact or potential impact of sediment contaminants from the site on natural resources and ecology of the area such as: Sensitive environment, local and regional habitat, plant and animal species, and other environmental receptors.

(d) Sediment contaminant sources. A description of the location, quantity, areal and vertical extent, concentration and sources of active and inactive waste disposal and other sediment contaminant discharge sources which affect or potentially affect the site. Where determined relevant by the department, the following information shall be obtained by the department from the responsible discharger:

(i) The physical and chemical characteristics, and the biological effects of site sediment contaminant sources;

(ii) The status of source control actions for permitted and unpermitted site sediment contaminant sources; and

(iii) A recommended compliance time frame for known permitted and unpermitted site sediment contaminant sources which affect or potentially affect implementation of the timing and scope of the site cleanup action alternatives.

(e) Human health risk assessment. The current and potential threats to human health that may be posed by sediment site contamination shall be evaluated using a risk assessment procedure approved by the department.

(f) Cleanup action alternatives. Each cleanup study plan shall include an evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the site.

(i) The proposed site cleanup alternatives may include establishment of site units, as defined in WAC 173-204-200(24), with individual cleanup standards within the range required by WAC 173-204-570, based on site physical characteristics and complexity, and cleanup standard alternatives established on consideration of cost, technical feasibility, and net environmental impact.

(ii) The proposed site cleanup alternatives may include establishment of a sediment recovery zone as authorized under WAC 173-204-590, Sediment recovery zones. Establishment or expansion of a sediment recovery zone shall not be used as a substitute for active cleanup actions, when such actions are practicable and meet the standards of WAC 173-204-580. The cleanup study plan shall include the following information for evaluation of sediment recovery zone alternatives:

(A) The time period during which a sediment recovery zone is projected to be necessary based on source loading and net environmental recovery processes determined by application of the department's sediment recovery zone computer models "CORMIX," "PLUMES," and/or "WASP," or an alternate sediment recovery zone model(s) approved by the department under WAC 173-204-130(4) as limited by the standards of this section and the department's best professional judgment;

(B) The legal location and landowner(s) of property proposed as a sediment recovery zone;

(C) Operational terms and conditions including, but not limited to proposed confirmational monitoring actions for discharge effluent and/or receiving water column and/or sediment chemical monitoring studies and/or bioassays to evaluate ongoing water quality, sediment quality, and biological conditions within and adjacent to the proposed or authorized sediment recovery zone to confirm source loading and recovery rates in the proposed sediment recovery zone.

(D) Potential risks posed by the proposed sediment recovery zone to human health and the environment;

(E) The technical practicability of elimination or reduction of the size and/or degree of chemical contamination and/or level of biological effects within the proposed sediment recovery zone; and

PROPOSED

(F) Current and potential use of the sediment recovery zone, surrounding areas, and associated resources that are, or may be, affected by releases from the zone.

(G) The need for institutional controls or other site use restrictions to reduce site contamination risks to human health.

(iii) A phased approach for evaluation of alternatives may be required for certain sites, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action alternatives that pass the initial screening shall consider the following factors:

(A) Overall protection of human health and the environment, time required to attain the cleanup standard(s), and on-site and off-site environmental impacts and risks to human health resulting from implementing the cleanup alternatives;

(B) Attainment of the cleanup standard(s) and compliance with applicable federal, state, and local laws;

(C) Short-term effectiveness, including protection of human health and the environment during construction and implementation of the alternative; and

(D) Long-term effectiveness, including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual, biological and human health risk, and effectiveness of controls for ongoing discharges and/or controls required to manage treatment residues or remaining wastes cleanup and/or disposal site risks;

(g) Ability to be implemented. The ability to be implemented including the potential for landowner cooperation, consideration of technical feasibility, availability of needed off-site facilities, services and materials, administrative and regulatory requirements, scheduling, monitoring requirements, access for construction, operations and monitoring, and integration with existing facility operations and other current or potential cleanup actions;

(h) Cost, including consideration of present and future direct and indirect capital, operation, and maintenance costs and other foreseeable costs;

(i) The degree to which community concerns are addressed;

(j) The degree to which recycling, reuse, and waste minimization are employed; and

(k) Environmental impact. Sufficient information shall be provided to fulfill the requirements of chapter 43.21C RCW, the State Environmental Policy Act. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated shall be included.

(5) Cleanup study plan — sampling plan and recordkeeping requirements. The cleanup study plan shall address proposed sampling and recordkeeping activities to meet the standards of WAC 173-204-600, Sampling and testing plan standards, and WAC 173-204-610, Records management, and the standards of this section.

(6) Cleanup study plan site safety requirements. The cleanup study plan shall address proposed activities to meet the requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto. These requirements are subject to enforcement by the designated federal and state agencies. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(7) Cleanup study report. Each person performing a cleanup action to meet the intent of this chapter shall submit a cleanup study report to the department for review and written approval of a cleanup decision prior to implementation of the cleanup action. The sediment cleanup study report shall include the results of cleanup study site investigations conducted pursuant to subsection (4) of this section, and preferred and alternate cleanup action proposals based on the results of the approved cleanup study plan.

(8) Sampling access. In cases where the person(s) responsible for cleanup is not able to secure access to sample sediments on lands subject to a cleanup study plan approved by the department, the department may facilitate negotiations or other proceedings to secure access to the lands. Requests for department facilitation of land access for sampling shall be submitted to the department in writing by the person(s) responsible for the cleanup action study plan.

AMENDATORY SECTION (Amending Order 90-41, filed 3/27/91, effective 4/27/91)

WAC 173-204-590 Sediment recovery zones. (1) The purpose of this section is to set forth the requirements for establishment and monitoring of sediment recovery zones to meet the intent of sediment quality dilution zones authorized pursuant to RCW 90.48.520. The standards of this section are applicable to cleanup action decisions made pursuant to WAC 173-204-580 where selected actions leave in place marine, low salinity, or freshwater sediments that exceed the applicable sediment quality standards of WAC 173-204-320 through 173-204-340.

(2) General requirements. Authorization of a sediment recovery zone by the department shall require compliance with the following general requirements:

(a) The sediment recovery zone shall be determined by application of the department's sediment recovery zone computer models "CORMIX," "PLUMES," and/or "WASP," or an alternate sediment recovery zone model(s) approved by the department under WAC 173-204-130(4) as limited by the standards of this section and the department's best professional judgment.

(b) The department shall provide specific authorization for a sediment recovery zone within the written approval of the cleanup study report and cleanup decision required under WAC 173-204-580.

((~~(b)~~)) (c) The time period during which a sediment recovery zone is authorized by the department shall be so stated in the department's written approval of the cleanup study report and cleanup decision.

((~~(c)~~)) (d) The department's written sediment recovery zone authorization shall identify the legal location and landowners of property proposed as a sediment recovery zone.

((~~(d)~~)) (e) Operational terms and conditions for the authorized sediment recovery zone pursuant to subsection (5) of this section shall be maintained at all times.

(((~~e~~))) (f) Where cleanup is not practicable pursuant to the analysis under WAC 173-204-570(4), sediment recovery zones may be authorized for periods in excess of ten years.

(3) A sediment recovery zone authorization issued by the department under the authority of chapter 90.48 or 70.105D RCW, or other administrative means available to the department, does not constitute authorization to trespass on lands not owned by the applicant. These requirements do not address, and in no way alter, the legal rights, responsibilities, or liabilities of the permittee or landowner of the sediment recovery zone for any applicable requirements of proprietary, real estate, tort, and/or other laws not directly expressed as a requirement of this chapter.

(4) Prior to authorization, the department shall make a reasonable effort to identify and notify all landowners affected by the proposed sediment recovery zone. The department shall issue a sediment recovery zone notification letter to any person it believes to be a potentially affected landowner and other parties determined appropriate by the department. The notification letter shall be sent by certified mail, return receipt requested, or by personal service. The notification letter shall provide:

(a) The name of the person the department believes to be the affected landowner; and

(b) The names of other affected landowners to whom the department has sent a proposed sediment recovery zone notification letter; and

(c) The name of the sediment recovery zone applicant; and

(d) A general description of the proposed sediment recovery zone including the chemical(s) of concern by name and concentration, and the area of affected sediment; and

(e) The determination of the department concerning whether the proposed sediment recovery zone application meets the standards of this section; and

(f) The intention of the department whether to authorize the proposed sediment recovery zone; and

(g) Notification that the affected landowner may comment on the proposed sediment recovery zone. Any landowner comments shall be submitted in writing to the department within thirty days from the date of receipt of the notification letter, unless the department provides an extension.

(5) As determined necessary by the department, operational terms and conditions for the sediment recovery zone may include completion and submittal to the department of discharge effluent and/or receiving water column and/or sediment chemical monitoring studies and/or bioassays to evaluate ongoing water quality, sediment quality, and biological conditions within and adjacent to the proposed or authorized sediment recovery zone.

(6) The department shall review all data or studies conducted in accordance with a sediment recovery zone authorization to ensure compliance with the terms and conditions of the authorization and the standards of this section. Whenever, in the opinion of the department, the operational terms and conditions of a sediment recovery zone or the standards of this section are violated or there is a potential to violate the sediment recovery zone authorization or the standards of this section, or new information or a reexamination of existing information indicates the sediment recovery zone is no longer appropriate, the department may at its discretion:

(a) Require additional chemical or biological monitoring as necessary;

(b) Revise the sediment recovery zone authorization as necessary to meet the standards of this section;

(c) Require active contaminated sediment maintenance actions including additional cleanup in accordance with the standards of WAC 173-204-500 through 173-204-580; and/or

(d) Withdraw the department's authorization of the sediment recovery zone.

PROPOSED

WSR 95-16-027
PROPOSED RULES
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
[Filed July 21, 1995, 1:35 p.m.]

Original Notice.

Title of Rule: WAC 326-30-041 Annual goals.

Purpose: To implement RCW 39.19.030(4) and encourage MWBE participation in state contracting and procurement.

Statutory Authority for Adoption: RCW 39.19.030(7).

Statute Being Implemented: RCW 39.19.030(4).

Summary: This proposal maintains the goals at the same level for three classes of contract and sets comparable levels for the fourth and fifth classes. The state will continue to administer this rule flexibly.

Reasons Supporting Proposal: The office's review of reasonably obtainable information indicates that current goal levels are consistent with the statutory mandate. The separation of goods from purchased services will facilitate better goal setting on individual contracts.

Name of Agency Personnel Responsible for Drafting: Juan Huey-Ray, 406 South Water, 586-1228; Implementation and Enforcement: James A. Medina, 406 South Water, 753-9697.

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: This rule implements chapter 39.19 RCW by establishing target levels for minority and women's business participation in state contracting and procurement. Overall annual goals are established to be administered on a contract by contract basis. Progress, levels, and availability of certified firms are continually reviewed. The anticipated effect is increased opportunities for minority and women's business enterprises to participate in state contracts and procurements.

Proposal Changes the Following Existing Rules: The current class of contract entitled goods and services is split into two separate classes entitled purchased goods and purchased services. The goals for purchased goods are the same as before. The goals for purchased services are the same as those for other services. The other consultant class of contract is renamed professional services. The proposal also repeals an obsolete section.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule affects small business, as it is designed to assist small businesses seeking contracting opportunities with state agencies. However, any impact will be negligible, because the goals proposed for 1995-96 are the same as those implemented during 1994-95. Analysis is inappropriate under RCW 19.85.040, because the Office of Minority and Women's Business Enterprises does not have data from which to make comparison of costs, and because the effect, if any, is negligible.

Hearing Location: Office of Minority and Women's Business Enterprises, 406 South Water Street, Olympia, WA 98504-1160, on September 5, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Tammi Hazlitt by August 28, 1995, (360) 753-9691.

Submit Written Comments to: Juan Huey-Ray, FAX (360) 586-7079, by September 1, 1995.

Date of Intended Adoption: September 6, 1995.

July 20, 1995
James A. Medina
Director

AMENDATORY SECTION (Amending WSR 95-10-086, filed 5/3/95, effective 6/3/95)

WAC 326-30-041 Annual goals. The annual overall goals for participation by certified firms in the public works, other contracting, and procurement of each state agency and educational institution, subject to this chapter, shall be as follows:

July 1, ((~~1994~~)) 1995, through June 30, ((~~1995~~)) 1996,

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods ((~~and Services~~))	8% MBE	4% WBE
Purchased Services ((~~Other Consultants~~))	10% MBE	4% WBE
Professional Services	10% MBE	4% WBE

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 326-30-03904 Goals for 1991-92.

WSR 95-16-029
PROPOSED RULES
INSURANCE COMMISSIONER'S OFFICE
[Filed July 21, 1995, 2:25 p.m.]

Original Notice.

Title of Rule: Life and disability reinsurance agreements regulation.

Purpose: To establish minimum standards for agreements for life and disability reinsurance, as a prerequisite to allowing the reinsurance to be reflected on the company's financial statements; required for NAIC accreditation.

Other Identifying Information: Insurance Commissioner Matter No. R 95-4.

Statutory Authority for Adoption: RCW 48.02.060, 48.05.250, 48.05.400.

Statute Being Implemented: RCW 48.05.250, 48.05.300, 48.05.400, 48.12.160.

Summary: Credit for reinsurance on the company's financial statement must meet standards specified by the commissioner. These standards are substantially identical to the NAIC model regulation on life and health reinsurance agreements.

Reasons Supporting Proposal: This regulation is required for NAIC accreditation and will be used to measure the transfer of risk on which the life and disability reinsurance agreements are based and will facilitate the financial examination of life and disability insurers by the commissioner.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, Olympia, Washington, (360) 586-3574; Implementation and Enforcement: John Woodall, Olympia, Washington, (360) 753-7303.

Name of Proponent: Insurance Commissioner Deborah Senn, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Credit for reinsurance on the company's financial statement must meet standards specified by the commissioner. These standards are substantially identical to the NAIC model regulation on life and health reinsurance agreements. This regulation is required for NAIC accreditation and will be used to measure the transfer of risk on which the life and disability reinsurance agreements are based and will facilitate the financial examination of life and disability insurers by the commissioner.

Proposal Changes the Following Existing Rules: The current rules are updated to reflect changes to the NAIC model regulation.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 664-3790, or FAX (360) 586-3574.

Written comments may also be submitted electronically at 73303.700@compuserve.com.

Hearing Location: Conference Room, 2nd Floor, Insurance Commissioner's Office, Insurance Building, 14th and Water Streets, Olympia, Washington, on Tuesday, September 5, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Lori Malabed by August 28, 1995, TDD (360) 586-0691.

Submit Written Comments to: Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, FAX (360) 586-3535, by August 28, 1995.

Date of Intended Adoption: September 8, 1995.

July 20, 1994 [1995]
Krishna Fells
Chief of Staff

NEW SECTION

WAC 284-13-850 Scope. (1) The insurance commissioner recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus. It is improper, however, for an authorized insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival.

(2) This regulation (WAC 284-13-850 through 284-13-863) applies to all domestic life and disability insurers and to all other licensed life and disability insurers which are not subject to a similar regulation in their domiciliary state. This regulation also applies to the disability insurance policies issued by authorized property and casualty insurers. This regulation does not apply to assumption reinsurance, yearly renewable term reinsurance or nonproportional reinsurance (such as stop loss or catastrophe reinsurance).

NEW SECTION

WAC 284-13-855 Accounting requirements. (1) No insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, one or more of the following conditions exist:

(a) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Such expenses include commissions, premium taxes and direct expenses including, but not limited to billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

(f) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies, for a representative sampling of the products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

(i) Morbidity.

(ii) Mortality.

(iii) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(iv) Credit Quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(v) Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

\+ - Significant 0 - Insignificant

RISK CATEGORY

	i	ii	iii	iv	v	vi
Disability - other than LTC/LTD*	+	0	+	0	0	0
Disability - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

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*LTC = Long Term Care Insurance
LTD = Long Term Disability Insurance

(g)(i) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subsection (1)(g)(ii) of this section) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(ii) Notwithstanding (g)(i) of this subsection, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of such assets:

- Health Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2\,(I + CG)}{X + Y - I - CG}$$

Where: I is net investment income (Exhibit 2, Line 16, Column 7)

CG is capital gains less capital losses (Exhibit 4, Line 10, Column 6)

X is the current year cash and invested assets (Page 2, Line 10A, Column 1) plus investment income due and accrued (Page 2, Line 16, Column 1) less borrowed money (Page 3, Line 22, Column 1)

Y is the same as X but for the prior year

(iii) Line references are for the commissioner's 1992 annual statement form. Because annual statement line references may change from year to year references should be updated, when appropriate.

(h) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety days of the settlement date.

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(k) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding subsection (1) of this section, an insurer subject to this regulation may, with the prior approval of the commissioner, take such reserve credit or establish such asset, including actuarial interpretations or standards adopted by the commissioner.

(3)(a) Every agreement entered into after the effective date of this regulation which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within thirty days after its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary shall maintain adequate documentation and be prepared to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this regulation.

(b) Any increase in surplus net of federal income tax resulting from arrangements described in (a) of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4 of the annual statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line, page 4 of the annual statement as earnings emerge from the business reinsured.

For example: On the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "aggregate write-ins for gains and losses in surplus" line in the capital and surplus account. $6.8 million (34% of $20 million) is reported as income on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations. At the end of year N+1 the business has earned $4 million. ABC has paid $.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement would report $1.65 million (66% of ($4 million - $1 million - $.5 million)) up to a maximum of $13.2 million on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations, and - $1.65 million on the "aggregate write-ins for gains and losses in surplus" line of the capital and surplus account. The experience refund would be reported separately as a miscellaneous income item in the summary of operations.

NEW SECTION

WAC 284-13-860 Written agreements. (1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment, or a binding letter of intent has been executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement shall contain provisions which provide that:

(a) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(b) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by the parties.

NEW SECTION

WAC 284-13-863 Existing agreements. Insurers subject to this regulation shall reduce to zero by December 31, 1996, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation which under the provisions of this regulation would not be entitled to recognition of the reserve credits or assets; provided however that: The reinsurance agreements are in compliance with laws or regulations in existence immediately preceding the effective date of this regulation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-13-110	Purpose.
WAC 284-13-120	Scope.
WAC 284-13-130	Accounting requirements.
WAC 284-13-140	Written agreements.
WAC 284-13-150	Existing agreements.

WSR 95-16-032
PROPOSED RULES
STATE TREASURER
[Filed July 21, 1995, 3:45 p.m.]

Original Notice.

Title of Rule: WAC 474-02-010 through 474-02-020.

Purpose: To provide procedures to facilitate the borrowing and repayment of money from the municipal sales and use tax equalization account by newly incorporated cities and towns.

Statutory Authority for Adoption: RCW 35.02.135.

Statute Being Implemented: RCW 35.02.135.

Summary: The regulation establishes procedures to accomplish the intent of RCW 35.02.135 that new cities and towns be able to borrow money from the municipal sales and use tax equalization account and be subject to reasonable and equitable repayment provisions.

Reasons Supporting Proposal: The legislature authorized the State Treasurer to adopt by rule procedures to facilitate new cities and towns borrowing and repaying money from the municipal sales and use tax equalization account subject to reasonable and equitable repayment provisions.

Name of Agency Personnel Responsible for Drafting: Scott Jarvis, Legal Counsel, P.O. Box 40200, Olympia, WA 98504-0200, (360) 586-7293; Implementation and Enforcement: Elaine Emans, Deputy Treasurer, P.O. Box 40200, Olympia, WA 98504-0200, (360) 902-8900.

Name of Proponent: State Treasurer, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Newly incorporated cities or towns may borrow money from the municipal sales and use tax equalization account, up to one hundred thousand dollars or five dollars per capita based on the population estimate required by RCW 35.02.030, whichever is less. The loan authorized by RCW 35.02.135 shall be repaid over a three-year period. The regulation establishes standards for borrowing consistent with RCW 35.02.135, terms for repayment, including interest, and the manner by which the treasurer shall obtain repayment of the loan: The regulation includes a sample intergovernmental agreement in an appendix.

Proposal Changes the Following Existing Rules: At present, there are no rules implementing RCW 35.02.135.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This regulation applies to newly incorporated cities or towns only. It does not regulate private industry. Therefore, the regulation will impose no economic impact on private industry.

Hearing Location: Office of the State Treasurer, Legislative Building, 2nd Floor, Olympia, Washington, on September 11, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Wendy Weeks by August 28, 1995, TDD (360) 902-8963.

Submit Written Comments to: Scott Jarvis, Legal Counsel, Office of State Treasurer, P.O. Box 40200, Olympia, 98504-0200, FAX (360) 586-6147, by August 28, 1995.

Date of Intended Adoption: September 11, 1995.

July 21, 1995
Scott Jarvis
Legal Counsel

Chapter 474-02 WAC
NEWLY INCORPORATED CITY OR TOWN—PROCEDURES FOR REIMBURSEMENT OF MONEYS BORROWED FROM MUNICIPAL SALES AND USE TAX EQUALIZATION ACCOUNT

NEW SECTION

WAC 474-02-010 New cities and towns—Standards for borrowing from municipal sales and use tax equalization account. (1) To borrow money from the municipal sales and use tax equalization account a new city or town must furnish a copy of the governing board's resolution establishing the official date of incorporation, declaring the population of the city or town, and stating the amount to be borrowed.

(2) Loans shall be repaid with interest, according to the terms of a loan agreement acceptable to the state treasurer, over a maximum period of three years. Each loan shall bear

PROPOSED

interest for the duration of the loan at the closing offering yield of the then current three-year treasury note, as quoted by the *Wall Street Journal,* on the day prior to loan disbursement.

(3) Loans shall be repayable by the treasurer withholding moneys from the funds otherwise payable to the borrowing city or town, either from the municipal sales and use tax equalization account or from sales and use tax entitlements otherwise distributable to the borrowing city or town, so that the municipal sales and use tax equalization account is fully reimbursed over the period of the loan. Payments are to be made monthly until the borrowing city or town has paid all of the principal and interest owed under the loan agreement.

NEW SECTION

WAC 474-02-020 Appendix to WAC 474-02-010—Sample intergovernmental agreement.

INTERGOVERNMENTAL AGREEMENT

The _____ of (City/Town) has submitted a request to the Washington State Treasurer (Treasurer) to borrow _____ from the Municipal Sales and Use Tax Equalization Account pursuant to RCW 35.02.135.

The City/Town and Treasurer have entered into this agreement, by which the City, as authorized by legally sufficient resolution of its governing body, shall borrow from the municipal sales and use tax equalization account the sum stated below and shall repay said sum according to the repayment terms and conditions stated herein:

1. Amount of loan _____.

2. Interest. Interest will be charged on unpaid principal until the full amount has been paid. Interest will be calculated on the average daily loan balance and will accrue monthly. The loan shall bear interest for the duration of the loan at the closing offering yield of the then current three-year Treasury Note, as quoted by the *Wall Street Journal,* on the day prior to loan disbursement repayable as set forth in Section 3.

3. Repayment.

(A) Time of Payments.

City/Town will pay principal and interest by the Treasurer withholding moneys from the funds otherwise payable to City/Town, either from the municipal sales and use tax equalization account or from sales and use tax entitlements otherwise distributable to City/Town, so that the municipal sales and use tax equalization account is fully reimbursed over the period of the loan. Payments will be due on the last business day of each month beginning on _____. Payments will be made monthly until the City/Town has paid all of the principal and interest owed under this loan agreement. Monthly payments will be applied to interest before principal. Final payment of principal and interest owed is due on _____.

(B) Amount of City's/Town's Monthly Payments.

Each of City's/Town's monthly payments will be in the amount of _____, except for the last payment, due on _____, which will be in the amount of U.S. _____.

4. City's/Town's Right to Prepay.

City/Town has the right to make payments of principal at any time before they are due. City/Town may make a full prepayment or partial prepayments without paying any prepayment charge. Treasurer will use all of City's/Town's prepayments to reduce the amount of principal City/Town owes under this intergovernmental agreement. If City/Town makes a partial prepayment, there will be no changes in the due dates of City's/Town's monthly payments unless Treasurer agrees in writing to those changes. City's/Town's partial prepayments may reduce the amount of its monthly payments beginning with the first payment date following its partial prepayment.

5. Treasurer's Authority to Withdraw Moneys.

The City/Town acknowledges and agrees that Treasurer is authorized by the City/Town pursuant to RCW 35.02.135 and this agreement to withdraw from future tax distributions to the City/Town on the basis stated above. City/Town also agrees not to challenge or contest Treasurer's authority to withdraw moneys for the purposes of this loan.

6. Impact of Rules.

City/Town agrees that the terms and conditions of this agreement are subject to rules adopted by Treasurer pursuant to RCW 35.02,135, and that this agreement may be modified to reflect any changes to such rules effective following the execution of this intergovernmental agreement.

7. Scope of Agreement.

This agreement comprises the entire agreement of the parties with respect to the matters covered herein, and no agreement, statement, or promise made by any party which is not included herein shall be binding or valid.

8. Modification.

This agreement may be modified or amended only pursuant to Section 6 of this agreement or by a written agreement duly executed by all parties hereto.

9. Applicable Law.

This agreement shall be governed by the laws of the State of Washington, and any questions arising under this agreement shall be construed or determined according to such law. City/Town consents to the venue of any action brought under this agreement in any superior court in Thurston County, Washington.

The undersigned persons do hereby stipulate to the following:

I have the authority to sign this intergovernmental agreement, on behalf of the City/Town and the Treasurer.

For the City/Town:

_____

Name Title Date

For the Treasurer:

_____

Name Title Date

WSR 95-16-033
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed July 21, 1995, 4:20 p.m.]

Original Notice.

Title of Rule: Natural gas pipeline safety, increasing state penalty provisions to the level of existing federal penalties. Commission Docket No. UG-950625.

Purpose: To implement chapter 247, Laws of 1995, and to comply with federal requirements for participation in the federal pipeline safety program, by increasing penalties to the level of federal penalties.

Statutory Authority for Adoption: RCW 80.01.040, 80.28.210, chapter 247, Laws of 1995.

Statute Being Implemented: Chapter 247, Laws of 1995.

Reasons Supporting Proposal: An update of penalties is required to retain state certification under the federal pipeline safety program under the Natural Gas Pipeline Safety Law, 49 U.S.C. § 60605. This proposal would increase penalties for violations of state safety provisions to the level of federal penalties. It exempts from the increase certain violations of reporting requirements, maintaining the existing penalty level for those violations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, (206) 753-6451.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

Rule is necessary because of federal law, 49 U.S.C. § 60605.

Explanation of Rule, its Purpose, and Anticipated Effects: Washington state must comply with federal requirements in order to retain its certification under the Natural Gas Pipeline Safety Law, 49 U.S.C. Sec. 60105 [60605] to participate in the federal pipeline safety program. The commission has been out of compliance because the penalties provided for violations are substantially lower than comparable penalties under federal regulation. Chapter 247, Laws of 1995, allows the commission to set such penalties at levels not exceeding the level of comparable federal penalties as of the date the statute becomes effective. This proceeding is initiated to increase the penalties for gas safety violations to the comparable federal level, under the statutory authority. The commission also intends to incorporate by reference the existing penalty levels in chapter 80.28 RCW for certain reporting violations.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The change is specifically authorized by state statute and is required or authorized by federal law for continued participation in the federal pipeline safety program. Because of commission and industry emphasis on voluntary compliance, no penalties have been assessed within the past five years.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on September 13, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Schlenker by September 1, 1995, TTY (360) 586-8203, or (360) 753-6447.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by September 1, 1995.

Date of Intended Adoption: September 13, 1995.

July 21, 1995
Terrence Stapleton
for Steve McLellan
Secretary

PROPOSED

NEW SECTION

WAC 480-93-223 Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder-maximum amount. (1) Any gas company which violates any public safety provision of RCW 80.28.210 or regulation issued thereunder is subject to a civil penalty not to exceed twenty-five thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is five hundred thousand dollars. This subsection applies to violations of public safety requirements including WAC 480-90-101 and including chapter 480-93 WAC except for section 480-93-160 and subsection 480-93-200 (1)(e).

(2) Any gas company violating any other provision of RCW 80.28.210 or regulations promulgated thereunder, including sections 480-93-160 and 480-93-200 (1)(e) WAC, shall be subject to a civil penalty not to exceed one thousand dollars for each violation for each day that the violation persists, but the maximum civil penalty shall not exceed two hundred thousand dollars for a related series of violations.

(3) The commission may compromise any civil penalty pursuant to RCW 80.28.210.

WSR 95-16-034
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 21, 1995, 4:37 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-53-010 Declaration of purpose, 458-53-020 Definitions, 458-53-030 Stratification of assessment rolls—Real property, 458-53-050 Land use code—Abstract report, and 458-53-070 Sales studies; and repealing WAC 458-53-040 Land use code—Ratio study and 458-53-051 Ratio determination by land use class.

Purpose: WAC 458-53-010 is slightly amended for purposes of clarity and preciseness. WAC 458-53-020 is amended to insert some new definitions and delete some existing definitions, to apply to the entire chapter. WAC 458-53-030 is amended to provide the criteria that will be used in establishing stratification and sets out the two digit land use code to be used by the counties and the department. WAC 458-53-050 is amended to delete one of the categories as required by recent legislation and for purposes of clarification. WAC 458-53-070 is reworded for purposes of clarification and simplicity.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.075.

PROPOSED

Statute Being Implemented: RCW 84.48.075.

Summary: These rules set forth the processes to be used by both the department and the counties in establishing the indicated real and personal property ratios for purposes of state valued property and the state property tax levy.

Reasons Supporting Proposal: Some of the existing rules are not in compliance with recent legislative changes. Other rules are redundant and unclear. The proposed rules are needed to define, clarify and simplify the ratio process.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-4283; Implementation and Enforcement: William N. Rice, 6004 Capitol Boulevard, Tumwater, WA, (360) 753-5503.

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: WAC 458-53-010 is amended only slightly to add the words "real and personal" relative to the indicated ratios. WAC 458-53-020 is the definition section of the chapter pertaining to the ratio process, and adds some new definitions and clarifies existing definitions to provide more preciseness to the ratio process. WAC 458-53-030 is reworded to explain the stratification process and remove redundancies. The strata classifications are replaced with general criteria that the department will use to notify counties of strata, using land use classifications and value classes. WAC 458-53-050 deletes the reference to "reforestation" pursuant to recent legislation. WAC 458-53-070 explains the procedures used in the study of real property sales, extending the time period for gathering data to five months prior to January 1 and five months subsequent to that date. The rule is intended to clarify the process and describe what sales of real property are used in the ratio study.

Proposal Changes the Following Existing Rules: WAC 458-53-010, 458-53-020, 458-53-030, 458-53-050, and 458-53-070 are amended (see description above). WAC 458-53-040 and 458-53-051 are repealed in their entirety.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. (1) The changes to these rules are made to conform to mandates of the legislature and the department is given no discretionary latitude to change any of the requirements set forth in state law. (2) The department is not aware of any new or additional administrative responsibilities placed on a business as a result of the revision of the rules in this chapter.

Hearing Location: Department of Revenue Information Systems Conference Room, Floor Exchange Building, 6300 Linderson Way, Tumwater, WA, on September 14, 1995, at 10:00 a.m. Street parking only. Use south tower entrance and elevator to second floor information systems receptionist.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request a copy of the information in an alternate format contact Sandra Yuen by September 7, 1995, TTY 1-800-451-7985, (360) 753-3217.

Submit Written Comments to: James A. Winterstein, Counsel, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 14, 1995.

Date of Intended Adoption: October 4, 1995.

July 21, 1995
Claire Hesselholt
Policy Counsel

REPEALER

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

WAC 458-53-040	Land use code—Ratio study
WAC 458-53-051	Ratio determination by land use class

AMENDATORY SECTION (Amending Order PT 79-3, filed 10/11/79)

WAC 458-53-010 Declaration of purpose. This chapter is promulgated by the department of revenue in compliance with RCW 84.48.075 to describe procedures for determination of indicated ratios of real and personal property for each county, so as to accomplish the equalization of property values required by RCW 84.12.350, 84.16.110, 84.48.080 and 84.52.065. The procedures ((~~described~~)) in this chapter ((~~for~~)) describing the department's annual ratio study are designed to ensure uniformity and equity in property taxation throughout the state to the maximum extent possible.

AMENDATORY SECTION (Amending Order PT 89-5, filed 4/12/89)

WAC 458-53-020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Account" means a listing of personal property as shown on the county assessment record.

(((~~(1)~~))) (2) "Advisory value((~~s~~))" means ((~~the true and fair value~~)) a valuation determination((~~s~~)) by the department, ((~~appraisers or auditors~~)) made at the request of ((~~the~~)) a county assessor.

(((~~(2)~~))) (3) "Appraisal" means the determination of the ((~~true and fair~~)) market value of real property ((~~by department appraisers or county appraisers certified under RCW 36.21.015~~)), or for real property classified under chapter 84.34 RCW, the determination of the current use value.

(((~~(3)~~))) (4) "Assessed value" means the value of real or personal property determined by an assessor.

(5) "Audit" means the determination of ((~~true and fair~~)) the market value of ((~~taxable~~)) personal property ((~~through examination of the records of the property owner by department auditors or county auditors of the assessor's staff who are qualified by training and experience in making such examinations~~)).

(((~~(4)~~))) (6) "Average assessed value" is the total ((~~county~~)) assessed value of a sample group((~~ing or classification~~)) of real or personal property divided by the number of properties in the sample group.

(((~~(5)~~))) (7) "Average ((~~true and fair~~)) personal property market value" is the total value of a sample group((~~ing or~~

~~classification~~)) as determined from personal property audits divided by the number of audits in the sample group.

(((~~6~~))) (8) "Average real property market value" is the total sales price, less one percent, of a sample group((~~ing or classification~~)) of real property divided by the number of properties in the sample group, or the total appraised value of a sample group((~~ing or classification~~)) of real property divided by the number of appraisals in the same group.

(((~~7~~))) (9) "Department" means the department of revenue.

(((~~8) "Director" means the director of revenue.~~

~~(9)~~))) (10) "Land Use Code" ((~~as designated by the department~~)) means the identification of each real property parcel by numerical digits as representations of the ((~~actual~~)) major use of the property. Th((~~is~~))e Land Use Code is derived from the Standard Land Use Coding Manual as prepared by the Federal Bureau of Public Roads and includes use classifications specified by state law.

(11) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

(((~~10~~))) (12) "Personal property" ((~~for the purpose of the ratio rules~~)) means ((~~the items of personal property as identified on the county assessment roll, and it shall include~~)) all taxable personal property required by law to be reported by ((~~the~~)) a taxpayer ((~~under RCW 84.40.185, but excluding property owned by and assessed to another taxpayer~~)).

(((~~11~~))) (13) "Ratio" is the percentage relationship of the assessed value of real or personal property ((~~assessed value~~)) to the ((~~true and fair~~)) market value of real or personal property ((~~as determined by real property sales, by department appraisals, or by department approved county appraisals; or the percentage relationship of personal property assessed value to the true and fair value of personal property as determined from department audits or from department approved county audits~~)).

(((~~12~~))) (14) "Ratio study" is the department's annual comparison of the relationship between the county assessed values of real and personal property with the ((~~true and fair~~)) market value of that property as determined by the department's analysis of sales, appraisals, and/or audits or the comparison of the relationship between the county assessed values of real property classified under chapter 84.34 RCW (current use) with the current use value of that property as determined by the department.

(15) "Real property" means all parcels of taxable real property as shown on the county assessment record.

(((~~13~~))) (16) "Sales study" is the comparison of the assessed value of real property with the selling price of the same property.

(17) "Strata" refer to classes of property grouped by assessed value and/or use categories.

(((~~14~~))) (18) "Stratification" means the grouping of the real or personal property assessment records into specific assessed value ((~~classes~~)) and/or use ((~~code classes~~)) categories for ((~~measurement~~)) ratio sampling and calculation purposes.

(((~~15~~))) (19) "Stratum" refers to a ((~~single class~~)) grouping of property with a given range of assessed values and/or having the same use ((~~code~~)) category.

(((~~16) "Strata" refer to classes of property grouped by assessed value and/or use codes.~~

~~(17) "Taxable real property parcels" means all real property parcels shown as subject to taxation on the county assessment record.~~

~~(18) "Trending" consists of adjusting the sales price of a property or the appraisal value from the time of sale or appraisal to a specific point in time which is the January 1 assessment date of the study. Trending will be for time only and developed from market data only.~~

~~(19) "True and fair value" means market value and has the same meaning as defined by WAC 458-12-300.~~))

(20) "Valid sale(s)" means a sale of real property that occurs between August 1 preceding January of the current assessment year and May 31 of the current assessment year, and the transfer document is a warranty deed or real estate contract, and the sale is not a type listed in WAC 458-53-080(2).

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

AMENDATORY SECTION (Amending WSR 91-01-008, filed 12/6/90)

WAC 458-53-030 Stratification of assessment rolls—Real property. (((~~1) The stratification process is the grouping of data into meaningful classifications for informational or analytical purposes. Stratification is used in determining the number of appraisals or audits needed for ratio study purposes and also is used in actual ratio computation. The latest available official county assessment roll values are used in ratio study stratification procedures.~~

~~Assessed valuation presently forms the basis for stratification of assessment rolls and is used because the nature of most assessors' records provides a state-wide uniformity for this characteristic. Also, the values in this classification generally are indicative of property types. By not later than the 1982 assessment year a land use classification system will replace the value stratification as assessors' records uniformly reflect properties according to their use.~~))

(1) **Stratification-uses for ratio study.** The stratification process is the grouping of real property within each county into homogeneous classifications based upon certain criteria in order to obtain representative samples. Stratification is used in determining the number of appraisals to be included in the ratio study and also for ratio calculation. The county's most current certified assessment rolls are used for stratification. Counties shall stratify rolls using a land use code stratification system as prescribed by the department. (See RCW 36.21.100).

(2) **Stratification-parcel count and total value-exclusions.** The stratification of the real property assessment rolls ((~~will~~)) shall include a parcel count and a total value of the taxable real property parcels ((~~less~~)) in each stratum excluding the following:

PROPOSED

PROPOSED

(a) Classified and designated forest lands and timberland classified under chapter 84.34 RCW (see RCW 84.34.060)((,));

(b) State owned game lands as defined in RCW 77.12.203(2);

(c) Current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-((~~110(4),~~))095(3); and

(d) State assessed properties.

(3) **Stratification-by county.** For the real property ratio study, the assessment roll ((~~will~~)) shall be stratified for individual counties according to ((~~the following assessed value strata, including an upper limit stratum containing a representative number of parcels.~~

~~0 — $ — 19,999~~
~~20,000 — 39,999~~
~~40,000 — 59,999~~
~~60,000 — 99,999~~
~~100,000 — 199,999~~
~~200,000 — and over~~

~~Upper value strata:~~

~~$ 40,000 and over — Columbia, Ferry, Garfield, Pend Oreille, Wahkiakum.~~
~~$ 60,000 and over — Asotin, Lincoln, Pacific, Skamania.~~
~~$ 100,000 and over — Adams, Douglas, Island, Jefferson, Kittitas, Klickitat, Mason, Okanogan, Stevens, Whitman.~~
~~$ 200,000 and over — Benton, Chelan, Clallam, Cowlitz, Franklin, Grant, Grays Harbor, Lewis, San Juan, Skagit, Thurston, Walla Walla.~~

~~The strata listed below will apply to those counties indicated.~~

~~0 — $ — 19,999~~
~~20,000 — 39,999~~
~~40,000 — 59,999~~
~~60,000 — 99,999~~
~~100,000 — 299,999~~
~~300,000 — and over~~

~~Clark, Kitsap, Whatcom, Yakima~~

~~0 — $ — 19,999~~
~~20,000 — 39,999~~
~~40,000 — 59,999~~
~~60,000 — 99,999~~
~~100,000 — 199,999~~
~~200,000 — 999,999~~
~~1,000,000 — and over~~

~~King, Pierce, Snohomish, Spokane~~

~~(3) In counties with the ability to stratify by land use classification under standards set by the department, the assessed value strata will be $0 and over for each type of property summarized in WAC 458-53-050, excluding forest lands, current use properties and state assessed properties.~~

~~(4) The stratification process will be performed by the department or by the county with data processing capability adequate to meet the standards as provided by the department.~~

~~(5) A count of taxable real property parcels, less forest lands, current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-110(4), and state assessed properties, in each value stratification is necessary for computation of the county ratio. Multiplying an average sample sales value, an average sample appraisal value, or an average assessed value by the number of taxable parcels in the county produces an estimated total market value or total estimated assessed value used in ratio computation.~~

~~(6) In the stratification of county taxable real property parcels to be used in the ratio study, the count of these parcels shall exclude designated and classified timber or forest lands, open space (current use) lands and improvements in those counties where a separate study is conducted pursuant to WAC 458-53-110(4). These are deleted from use in the sales study and will be considered separately and included in ratio determinations after computations of sales data have been completed.~~)) land use categories and substratified by value classes as determined by the department. Stratification shall be reviewed at least every other year by the department to determine if changes need to be made to improve sampling criteria. After the strata have been determined, the department shall notify the counties of the strata limits and each county shall provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample,

(ii) The assessed value for each sample, and;

(iii) The actual number of samples;

(b) The total number of real property parcels in each stratum; and

(c) The total assessed value in each stratum.

(4) **Counties to provide information timely.** The stratification information described in subsection (3) of this section shall be provided by the counties to the department in a timely manner to enable the department to certify the preliminary ratios in accordance with WAC 458-53-200(1). Failure to provide the information in a timely manner will result in the department using its best estimate of stratum values to calculate the real property ratio.

(5) **Standard two digit land use code.** The following two digit land use code shall be used as the standard to identify the actual use of the land. Counties may elect to use a more detailed land use code system using additional digits, however, no county land use code system may use fewer than the standard two digits.

RESIDENTIAL

11 Household, single family units
12 Household, 2-4 units
13 Household, multi-units (5 or more)
14 Residential hotels - condominiums
15 Mobile home parks or courts
16 Hotels/motels
17 Institutional lodging
18 All other residential not elsewhere coded
19 Vacation and cabin

MANUFACTURING

21 Food and kindred products
22 Textile mill products
23 Apparel and other finished products made from fabrics, leather, and similar materials
24 Lumber and wood products (except furniture)
25 Furniture and fixtures
26 Paper and allied products

27 Printing and publishing
28 Chemicals
29 Petroleum refining and related industries
30 Rubber and miscellaneous plastic products
31 Leather and leather products
32 Stone, clay and glass products
33 Primary metal industries
34 Fabricated metal products
35 Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing
36 Not presently assigned
37 Not presently assigned
38 Not presently assigned
39 Miscellaneous manufacturing

TRANSPORTATION, COMMUNICATION, AND UTILITIES

41 Railroad/transit transportation
42 Motor vehicle transportation
43 Aircraft transportation
44 Marine craft transportation
45 Highway and street right of way
46 Automobile parking
47 Communication
48 Utilities
49 Other transportation, communication, and utilities not classified elsewhere

TRADE

51 Wholesale trade
52 Retail trade - building materials, hardware, and farm equipment
53 Retail trade - general merchandise
54 Retail trade - food
55 Retail trade - automotive, marine craft, aircraft, and accessories
56 Retail trade - apparel and accessories
57 Retail trade - furniture, home furnishings and equipment
58 Retail trade - eating and drinking
59 Other retail trade

SERVICES

61 Finance, insurance, and real estate services
62 Personal services
63 Business services
64 Repair services
65 Professional services
66 Contract construction services
67 Governmental services
68 Educational services
69 Miscellaneous services

CULTURAL, ENTERTAINMENT AND RECREATIONAL

71 Cultural activities and nature exhibitions
72 Public assembly
73 Amusements
74 Recreational activities
75 Resorts and group camps
76 Parks
77 Not presently assigned
78 Not presently assigned
79 Other cultural, entertainment, and recreational

RESOURCE PRODUCTION AND EXTRACTION

81 Agriculture (not classified under current use law)
82 Agriculture related activities
83 Agriculture classified under current use chapter 84.34 RCW
84 Fishing activities and related services
85 Mining activities and related services
86 Not presently assigned
87 Classified forest land chapter 84.33 RCW
88 Designated forest land chapter 84.33 RCW
89 Other resource production

UNDEVELOPED LAND AND WATER AREAS

91 Undeveloped land
92 Noncommercial forest
93 Water areas
94 Open space land classified under chapter 84.34 RCW
95 Timberland classified under chapter 84.34 RCW
96 Not presently assigned
97 Not presently assigned
98 Not presently assigned
99 Other undeveloped land

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

AMENDATORY SECTION (Amending Order PT 79-3, filed 10/11/79)

WAC 458-53-050 Land use ((~~code—Abstract~~)) stratification, sales summary and abstract report. Stratification of the assessment rolls, ((~~and~~)) the annual sales summary, and the abstract report to the department for real property will be ((~~made~~)) based on the following abstract categories:

	ABSTRACT CATEGORY	LAND USE CODE
1.	Single family residence	11, 18, 19
2.	Multiple family residence	12, 13, 14
3.	Manufacturing	21 through 39
4.	Commercial	15, 16, 17, 41-49, 51-59, 61-69, 71-79
5.	Agricultural	81
6.	Agricultural (current use law)	83
7.	Forest lands (chapter 84.33 RCW)	87, 88
8.	((~~Reforestation (chapter 84.28 RCW)~~	~~86~~
~~9.~~))	Open space (current use law)	94
((~~10.~~)) (9)	Timberland (current use law)	95
((~~11.~~))		
(10)	Other	82, 84, 85, 89, 91, 92, 93, 96-99

AMENDATORY SECTION (Amending Order PT 89-5, filed 4/12/89)

WAC 458-53-070 Real property sales studies. ((~~(1) Real property sales data obtained from the real estate excise tax sales affidavits will form the basis of the sales study in each county. Validation of these sales as arms length transactions will follow department criteria as provided in WAC 458-53-080.~~

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~~(2) The department's sales study will be used as the basis for the real property ratios. In addition, the department will supplement the sales study results with appraisals in any assessed value stratum or Land Use Code classification where sales are judged to be insufficient to represent all properties in that stratum or land use class according to criteria set out in these rules.~~

~~(3) One percent will be deducted from the sales price shown on the affidavit on all valid real property sales as an adjustment for values transferred that are not assessable as real property.~~

~~(4) Sales not deemed representative for use in the study, as defined by the deletion list in WAC 458-53-080 will be eliminated from consideration in ratio computation. Sales used in the study will include only those which occurred over an eight month period between August 1 preceding January 1 of the assessment year and March 31 of the assessment year.~~

~~(5) Individual valid sales having a resultant assessment sales ratio under twenty five percent or over one hundred seventy five percent shall be excluded from consideration in the study: *Provided*, That this subsection shall not apply if the number of sales meeting this criteria exceeds ten percent of the total number of sales that would be used in the study subject to the provisions of this subsection: *Provided further*, That this subsection shall not apply to any type of property not properly valued and subject to the provisions of WAC 458-53-165.)~~ (1) **Sales study data.** The basis of the real property ratio study is data obtained from real estate excise tax affidavits from each county. The department will supplement the sales study with appraisals when it is determined that the sales are insufficient to represent the level of assessment. The appraisals will be selected according to criteria set forth in WAC 458-53-130.

(2) **Time period for data used.** The sales study will only use sales occurring in the ten month period between August 1 preceding January of the current assessment year and May 31 of the current assessment year.

(3) **Deduction from sale price.** One percent will be deducted from the sale price shown on all valid real estate excise tax affidavits as an adjustment for values transferred that are not assessable as real property.

(4) **Sales not included in the study-assessment rolls using other than market value-new construction.** Individual valid sales that show a sale price to assessed value ratio of under twenty-five percent, or over one hundred seventy-five percent shall be excluded from consideration in the study. However, if the number of individual valid sales meeting either of these criteria exceeds five percent of the total number of valid sales for a county, then these sales shall be considered in the study.

(a) The exclusion of valid sales in accordance with this subsection shall not apply in situations where other than market value of a particular type of property is being listed on the assessment rolls of the county, as disclosed in any examination by the department. If other than market value is being listed on the assessment rolls for a particular type of real or personal property and, after notification by the department, is not corrected, the department shall adjust the ratio of that type of property, which adjustment shall be used in determining the county's indicated personal or real property ratio. When a particular type of property is found to be at other than market value, that type of property shall be separated from the other properties in the computation of the ratio. The department shall compile the total assessed value and total market value for that type of property, and it shall be included in the ratio as provided in WAC 458-53-135(3) and 458-53-160(3).

(b) The exclusion of valid sales in accordance with this subsection shall not apply to sales of property on which there is new construction value that has not yet been placed on the county assessment roll.

WSR 95-16-035
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 21, 1995, 4:40 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-53-140 Personal property audit studies, 458-53-160 Indicated personal property ratio—Computation, 458-53-200 Certification of county preliminary and indicated ratios—Review and 458-53-210 Appeals; new section WAC 458-53-135 Indicated real property ratio—Computation; and repealing WAC 458-53-141 Personal property audit selection, 458-53-142 Personal property audit studies—Date of valuation, 458-53-150 Indicated real property ratio—Computation, 458-53-163 Mobile homes—Use in study, 458-53-165 Property not properly valued—Use in study, and 458-53-180 Use of indicated ratios.

Purpose: WAC 458-53-140 is amended to clarify the process for determining strata for the personal property ratio study. WAC 458-53-160 is amended to clarify the process for calculating the personal property ratio. WAC 458-53-200 is amended to comply with recent legislative changes and to clarify the review process available to various parties. WAC 458-53-210 explains the appeal process for appeals to the state board of tax appeals. The new section, WAC 458-53-135, takes the place of repealed WAC 458-53-150. The other repealed rules, WAC 458-53-141, 458-53-142, 458-53-163, 458-53-165, and 458-53-180 have generally been incorporated into other rules in the chapter.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.075.

Statute Being Implemented: RCW 84.48.075.

Summary: These rules set forth the processes to be used by both the department and the counties in establishing the indicated real and personal property ratios for purposes of state valued property and the state property tax levy.

Reasons Supporting Proposal: Some of the existing rules are not in compliance with recent legislative changes. Other rules are redundant and unclear. The proposed rules are needed to define, clarify and simplify the ratio process.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-4283; Implementation and Enforcement: William N. Rice, 6004 Capitol Boulevard, Tumwater, WA, (360) 753-5503.

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: WAC 458-53-140 sets out the selection process for a county's personal property ratio study and what information needs to be provided to the department. WAC 458-53-160 describes the process for calculating the indicated personal property ratio for the county, with an example of the calculation. WAC 458-53-200 contains some changes in dates pursuant to recent legislative changes and has been revised somewhat to clarify the language. WAC 458-53-210 also is amended to comply with the statutes relative to appeals to the state board of tax appeals. The new section, WAC 458-53-135, takes the place of repealed WAC 458-53-150 and has been revised to eliminate redundancies and to clarify the process for calculating the real property indicated ratio. The other repealed rules, WAC 458-53-141, 458-53-142, 458-53-163, 458-53-165, and 458-53-180 have generally been incorporated into other rules in the chapter and repositioned in a manner that should make the reading of the rules easier and more understandable.

Proposal Changes the Following Existing Rules: WAC 458-53-140, 458-53-160, 458-53-200, and 458-53-210 are amended (see description above). WAC 458-53-135 is a new section. WAC 458-53-141, 458-53-142, 458-53-150, 458-53-163, 458-53-165, and 458-53-180 are each repealed in their entirety.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. (1) The changes to these rules are made to conform to mandates of the legislature and the department is given no discretionary latitude to change any of the requirements set forth in state law. (2) The department is not aware of any new or additional administrative responsibilities placed on a business as a result of the revision of the rules in this chapter.

Hearing Location: Department of Revenue Information Systems Conference Room, Floor Exchange Building, 6300 Linderson Way, Tumwater, WA, on September 14, 1995, at 10:00 a.m. Street parking only. Use south tower entrance and elevator to second floor information systems receptionist.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request a copy of the information in an alternate format contact Sandra Yuen by September 7, 1995, TTY 1-800-451-7985, or (360) 753-3217.

Submit Written Comments to: James A. Winterstein, Counsel, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 14, 1995.

Date of Intended Adoption: October 4, 1995.

July 21, 1995
Claire Hesselholt
Policy Counsel

REPEALER

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

WAC 458-53-141	Personal property audit selection
WAC 458-53-142	Personal property audit studies—Date of valuation
WAC 458-53-150	Indicated real property ratio—Computation
WAC 458-53-163	Mobile homes—Use in study
WAC 458-53-165	Property not properly valued—Use in study
WAC 458-53-180	Use of indicated ratios

NEW SECTION

WAC 458-53-135 Indicated real property ratio—Computation. (1) **Determination of ratio for assessed value strata.** For each real property stratum, average assessed value and average market value shall be determined from the results of selected sales and appraisal studies. The average assessed value of the samples for each stratum divided by the average market value of the samples determines the ratio for each assessed value stratum.

(2) **Determination of indicated market value.** The actual total assessed value for each stratum divided by the ratio for each assessed value stratum, as determined by using the calculation set forth in subsection (1) of this section, determines the indicated market value of each stratum for the county.

(3) **Addition of county assessed values for current use and forest land-assessor's certification of values.** The county assessed values of current use land and improvements (chapter 84.34 RCW) and forest land (chapter 84.33 RCW) as indicated on the current certification provided by the assessor to the county board of equalization are added to the actual total assessed value for the county. Ratios for current use land and improvements and for forest land are applied to the county assessed values to determine indicated market values.

(a) A copy of the assessor's certification to the board of equalization shall be filed with the department by July 15th, or when the rolls for the current assessment year are completed, whichever is later. The certification form shall be properly completed with all required information.

(b) If a copy of the assessor's certification is not received from an assessor prior to September 1, the assessor's abstract of assessed values for the current year may be used, when available. If not available, the assessed values from the abstract of the previous year may be used.

(4) **Determination of county indicated ratio.** The sum total of the county assessed values is divided by the sum of the indicated market values to determine the county indicated real property ratio.

(5) **Example.** The following illustration, using simulated values and ratios, indicates simplified ratio study computation procedures for real property.

PROPOSED

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STEP 1
STRATUM AVERAGE VALUE & RATIO COMPUTATIONS

Type of Land Use	Stratum	Number of Samples	Average Assessed Value of Samples	Average Market Value of Samples	Stratum Ratio
SINGLE FAMILY RESIDENCE	0 - 75,000	400	$ 35,000	45,000	77.8
	75,000 - 150,000	400	100,000	125,000	80.0
	150,000 - +	100	195,000	230,000	84.8
MULTI-FAMILY RESIDENCE	0 - 125,000	40	50,000	60,000	83.3
	125,000 - +	15	225,000	265,000	84.9
COMMERCIAL\ MANUFACTURING	0 - 500,000	40	140,000	165,000	84.8
	500,000 - +	25	2,000,000	2,350,000	85.1
AGRICULTURAL	0 - 125,000	35	60,000	65,000	92.3
	125,000 - +	35	300,000	330,000	90.9
OTHER	0 - 100,000	75	30,000	36,000	84.0
	100,000 - +	40	250,000	290,000	86.2

STEP 2
APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Type of Land Use	Stratum	(1) Actual County Real Property Assessed Value	(2) Ratio	(3) County Market Value Related to Actual Assessed Value Col. 1 ÷ Col. 2
SINGLE FAMILY RESIDENCE	0 - 74,999	$500,000,000	77.8	$642,673,522
	75,000 - 149,999	250,000,000	80.0	312,500,000
	150,000 - +	250,000,000	84.8	294,811,321
MULTI-FAMILY RESIDENCE	0 - 124,999	85,000,000	83.3	102,040,816
	125,000 - +	65,000,000	84.9	76,560,660
COMMERCIAL\ MANUFACTURING	0 - 499,999	245,000,000	84.8	288,915,094
	500,000 - +	200,000,000	85.1	235,017,626
AGRICULTURAL	0 - 124,999	110,000,000	92.3	119,176,598
	125,000 - +	95,000,000	90.9	104,510,451
OTHER	0 - 99,999	90,000,000	84.0	107,142,857
	100,000 - +	75,000,000	86.2	87,006,961
CURRENT USE LAND (84.34)		125,500,000	95.2	131,827,731
CURRENT USE IMP (84.34)		50,000,000	84.0	59,523,810
FOREST LAND (84.33)		2,950,000	100.0	2,950,000
		$2,143,450,000		$2,564,657,447 = 83.6

(6) **Department may consider general trends in property values.** The department may consider the relationship between the market value trends of real property and the assessed value increases or decreases made by the assessor during the year in each county as checks of the validity of the results of the sales and appraisal studies. The assistant director of the property tax division of the depart-

ment may authorize modification of the results of the sales and appraisal study in any county where there is a demonstrable showing by an assessor to the assistant director that the sales and appraisal study is inconclusive or does not result in a reasonable and factual determination of the relationship of assessed values to market value such that a significant variation results from the previous year not deemed by the assistant director to conform with general trends in property values.

AMENDATORY SECTION (Amending Order PT 84-2, filed 6/29/84)

WAC 458-53-140 Personal property ((~~audit studies~~)) ratio study. ((~~(1) Personal property audits will be performed on those accounts selected at random within each use class or assessed value stratum used in the ratio study for each county. These audits will be the basis of the county's personal property ratio as provided in WAC 458-53-160.~~

~~The department may use county audit results as ratio study audits when department accepted audit procedures are used on accounts selected as sample audits and audited by the county audit staff as of the assessment date used in the department's ratio study.~~

~~(2) The general procedures for audits are similar to those followed in the appraisal assessment study in that sample audits of personal property accounts will be used as the basis for determining total assessed value and estimated total true and fair value of personal property. The relationship of the total estimated assessed value to the total estimated true and fair value of personal property will indicate the personal property ratio.~~

~~(a) Stratification of rolls - the program is initiated by stratification of the personal property roll in the counties being audited. From this process is obtained: A count of the number of listings in each use class or assessed valuation class, an estimation of the total assessed value in each class, and a pool of samples in each class from which the ultimate listings to be audited are selected. The strata or assessed valuation classes have different limits than those used in the appraisal assessment study. A listing of assessed value strata normally used is as follows:~~

~~0~~	~~$ 9,999~~
~~10,000~~	~~39,999~~
~~40,000~~	~~79,999~~
~~80,000~~	~~199,999~~
~~200,000~~	~~499,999~~
~~500,000~~	~~999,999~~
~~1,000,000~~	~~1,999,999~~
~~2,000,000~~	~~and over~~

~~The largest valuation stratum designated for each county will depend on the number of large value accounts in the county.~~

~~In counties for which personal property high value strata, as listed above, do not number at least two hundred, an appropriate upper limit ($40,000 and over, $80,000 and over) which will accommodate at least two hundred personal property accounts, will be determined.~~

~~The stratification process will be performed by the department or by the county according to the standards as provided in this section.~~

~~(b) Personal property sample audit selection - the number of audits to be performed is derived in the same general manner as in the appraisal assessment procedure in that statistical determination is applied to county previous year's ratio study results to obtain a representative number of samples on which to base a county ratio.~~

~~Stratification procedures which determine the number of personal property audits needed for the current ratio study begin in the summer months of the calendar year immediately preceding the currently designated ratio study year.~~

~~The audits are conducted through July of the designated ratio study year.~~

~~(3) The sample accounts to be audited in each use or valuation classification are randomly chosen using accepted statistical methods such as stated numerical sequence or random number tables to provide each personal property account in a universe of personal property accounts an equal opportunity to be selected as a representative sample of that universe. Names and addresses of taxpayers for these accounts and copies of assessment detail sheets are obtained from county records.~~

~~Letters of intent to audit are mailed to each taxpayer selected.~~

~~(4) The personal property audits which are conducted to derive the true and fair value figures are made from an examination of the taxpayer's books and records. In valuation procedures, the department's auditors utilize the manuals and schedules which the department prepares and distributes to all assessors. The technique is generally one of trending forward historical cost data and the application of depreciation percentages to arrive at current worth or value.~~

~~(5) When the audits have been completed in a county, they are reviewed with the assessor and his staff. The primary emphasis at this meeting is to make sure that the property covered by the audit is comparable to the property covered by the assessment. The completion of the review and adjustments, if any, mark the audit data as valid for use in the computation of the personal property portion of the total indicated ratio.~~

~~(6) In a manner similar to that used for real property, sample personal property assessed values and true and fair values for each stratum are derived from audit results, the weighted sums of which are the basis for determining the personal property indicated ratio.~~

~~(7) If omitted property is discovered in a county, the results of the department's audit shall be placed in the strata indicated by the audit.~~)) (1) **Random selection of accounts.** The basis for a county's personal property ratio shall be accounts selected at random from the preceding year's assessment rolls.

(2) **Stratification of rolls.** Determination of strata for each county shall be made by the department to ensure the selection of a representative audit sample and will be reviewed periodically. After the strata have been determined, the department shall notify the counties of the strata limits and each county shall provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample, and (ii) The assessed value for each sample;

(b) The number of personal property listings in each stratum; and

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(c) The total assessed value in each stratum.

(3) **Omitted property.** If the department discovers omitted property in a county, the results of the department's audit shall be included in the ratio study.

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.

PROPOSED

AMENDATORY SECTION (Amending WSR 94-05-064, filed 2/11/94)

WAC 458-53-160 Indicated personal property ratio-Computation. (1) **Determination of ratio for assessed value strata.** For each personal property assessed value stratum, excluding properties identified in WAC 458-53-((~~110(7) and 458-53-165~~))070 (4)(a), an average ((~~sample~~)) assessed value, and an average ((~~sample true and fair~~)) market value ((~~will~~)) shall be determined from the results of selected audit studies. The average ((~~sample~~)) assessed value for each stratum divided by the average ((~~sample true and fair~~)) market value determines the ratio for each assessed value stratum.

(2) **Determination of indicated market value.** The actual total assessed value of the county for each stratum divided by the ratio for each assessed value stratum, as determined by using the calculation set forth in subsection (1) of this section, determines the indicated ((~~true and fair~~)) market value of each stratum for the county.

(3) **Additional categories.** (a) The actual county total assessed values of properties identified in WAC 458-53-((~~110(7) and 458-53-165~~)) 070 (4)(a) are added as a separate categor((~~ies~~))y to the total county assessed value ((~~stratum~~)). ((~~Ratios~~)) A ratio determined for these properties ((~~are~~)) is applied against the total assessed value((~~s~~)) for the category to determine the ((~~related~~)) indicated total ((~~true and fair~~)) market value((~~s~~)) for the category.

(b) If ten percent or more of the total personal property assessed value of a county consists of publicly owned timber sold by competitive bid to private purchasers, the assessed value of the timber is added as a separate category to the total county assessed value. A ratio determined for this property is applied against the total assessed value for this category to determine the indicated total market value for this category.

(4) **Determination of county indicated ratio.** The sum of the actual total county assessed values ((~~will be~~)) is divided by the sum of the ((~~related true and fair~~)) indicated market values to determine the ((~~overall~~)) county indicated personal property ratio.

(5) **Example.** The following illustration, using simulated values and ratios, indicates the ratio computation procedures for personal property.

PROPOSED

STEP 1 - STRATUM AVERAGE VALUE AND RATIO COMPUTATIONS

Stratum	(1) Number of Samples	(2) Average Assessed Value of Samples	(3) Average Market Value of Samples	(4) Stratum Ratio (Col. 2 ÷ Col. 3)
~~$ 0 - 9,999~~	~~20~~	~~$ 6,000~~	~~$ 7,800~~	~~.769~~
~~10,000 - 39,999~~	~~20~~	~~20,000~~	~~38,000~~	~~.526~~
~~Over 40,000~~	~~20~~	~~80,000~~	~~90,000~~	~~.889~~

STEP 2 - APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Stratum	(1) Actual County Personal Property Assessed Values	(2) Ratio	(3) County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
~~$ 0 - 9,999~~	~~$12,500,000~~	~~.769~~	~~$ 16,254,876~~
~~10,000 - 39,999~~	~~33,000,000~~	~~.526~~	~~62,737,643~~
~~Over 40,000~~	~~90,000,000~~	~~.889~~	~~101,237,345~~
~~WAC 458-53-110(7) or 458-53-165 Properties~~	~~0~~		~~0~~
~~Totals~~	~~$135,500,000~~	~~:~~	~~$180,229,864 = .752~~
~~County Indicated Personal Property Ratio~~			~~75.2%~~

STEP 1 - STRATUM AVERAGE VALUE AND RATIO COMPUTATIONS

Stratum	(1) Number of Samples	(2) Average Assessed Value of Samples	(3) Average Market Value of Samples	(4) Stratum Ratio (Col. 2 ÷ Col. 3)
$ 0 - 74,999	25	$ 17,000	$ 22,000	.773
75,000 - 249,999	15	124,000	235,000	.528
Over - 250,000	10	850,000	960,000	.885

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STEP 2 - APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Stratum	(1) Actual County Personal Property Assessed Values	(2) Ratio	(3) County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
$ 0 - 74,999	$21,500,000	.773	$ 27,813.713
75,000 - 249,999	23,000,000	.528	43,560,606
Over - 250,000	50,000,000	.885	56,497,175
WAC 458-53-070 (4)(a) Properties	0		0
Totals	$94,500,000	÷	$127,871,499 = 73.9
County Indicated Personal Property Ratio			73.9%

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.

AMENDATORY SECTION (Amending Order PT 84-2, filed 6/29/84)

WAC 458-53-200 Certification of county preliminary and indicated ratios—Review. (1) **Preliminary ratio certified to assessor.** The department ((~~will~~)) shall annually determine the real property and personal property preliminary ratios for each county and ((~~will~~)) shall certify these ratios to the county assessor on or before the first Monday in ((~~August~~)) September.

(2) **Request for review.** Upon request of the assessor, a landowner, or an owner of an intercounty public utility or private car company, the department shall review the county's preliminary ratio with the ((~~assessor, a landowner, or an intercounty public utility or private car company, if requested to do so by said county, person, or company, between the first and third Mondays of August,~~)) requesting party and may make any changes indicated by such review((~~: *Provided,* That if~~)). This review shall take place between the first and third Mondays of September. If the department does not certify the preliminary ratios as required by subsection (1) of this section, the review period shall extend for two weeks from the date of certification.

(3) **Certification of indicated ratios.** Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of ((~~August~~)) September, the department shall certify to each county assessor the indicated real and personal property ratios for that county.

AMENDATORY SECTION (Amending Order PT 84-2, filed 6/29/84)

WAC 458-53-210 Appeals. If an assessor, landowner, or owner of an intercounty utility or private car company has reviewed the ratio study as provided in WAC 458-53-200, that person or company may appeal the department's indicated ratio determination, as certified for that county, to the state board of tax appeals pursuant to RCW 82.03.130 (5)((~~(a)~~)). The appeal to the state board of tax appeals must be filed not later than fifteen days after the date of mailing of the certification.

WSR 95-16-036
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 21, 1995, 4:42 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-53-080 Sales sample, 458-53-090 Sales samples—Assessed valuation, 458-53-100 Use of county sales studies, and 458-53-130 Real property appraisal studies; new sections WAC 458-53-095 Property values used in the ratio study and 458-53-105 Review procedures for county studies; and repealing WAC 458-53-110 Property values used in the ratio study and 458-53-120 Review procedures for county studies.

Purpose: WAC 458-53-080 explains the criteria for selection of real property sales and which sales are excluded. WAC 458-53-090 explains the procedure regarding how the department will gather the data for sales studies in certain counties that are unable to generate their own study. WAC 458-53-100 describes the reports submitted by counties for the sales studies. This rule has been substantially rewritten in order to eliminate redundancies and to clarify the procedures. WAC 458-53-130 is amended to more succinctly describe the process to be used by the department in selecting properties to be appraised. The new sections, WAC 458-53-095 and 458-53-105 have been substituted for the repealed sections WAC 458-53-110 and 458-53-120 respectively, and have been placed in a different order and rewritten for clarity.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.075.

Statute Being Implemented: RCW 84.48.075.

Summary: These rules set forth the processes to be used by both the department and the counties in establishing

the indicated real and personal property ratios for purposes of state valued property and the state property tax levy.

Reasons Supporting Proposal: Some of the existing rules are not in compliance with recent legislative changes. Other rules are redundant and unclear. The proposed rules are needed to define, clarify and simplify the ratio process.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 586-4283; Implementation and Enforcement: William N. Rice, 6004 Capitol Boulevard, Tumwater, WA, (360) 753-5503.

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: WAC 458-53-080 describes which sales will be included in the ratio study and which sales will be excluded. WAC 458-53-090 describes the process to be used by the department when a sales study is generated by the department in those counties unable to provide computer generated sales studies of their own. WAC 458-53-100 describes the contents of the reports to be submitted by those counties that do their own sales studies. The revised language of the rule should be easier to understand and easier to comply with. WAC 458-53-130 explains how the department will select properties for appraisal and how the appraisals will be conducted and reviewed with the county. The new sections, WAC 458-53-095 and 458-53-105 take the place of the repealed rules, WAC 458-53-110 and 458-53-120, respectively. The rules have been placed in a different sequence and have been somewhat rewritten for purposes of clarity. The language changes and placement changes should make the entire chapter easier to follow.

Proposal Changes the Following Existing Rules: WAC 458-53-080, 458-53-090, 458-53-100, and 458-53-130 are amended (see description above). WAC 458-53-095 and 458-53-105 are new sections. WAC 458-53-110 and 458-53-120 are each repealed in their entirety.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. (1) The changes to these rules are made to conform to mandates of the legislature and the department is given no discretionary latitude to change any of the requirements set forth in state law. (2) The department is not aware of any new or additional administrative responsibilities placed on a business as a result of the revision of the rules in this chapter.

Hearing Location: Department of Revenue Information Systems Conference Room, Floor Exchange Building, 6300 Linderson Way, Tumwater, WA, on September 14, 1995, at 10:00 a.m. Street parking only. Use south tower entrance and elevator to second floor information systems receptionist.

Assistance for Persons with Disabilities: Accommodations or assistance for persons with disabilities or to request of copy of the information in an alternate format contact Sandra Yuen by September 7, 1995, TTY 1-800-451-7985, or (360) 753-3217.

Submit Written Comments to: James A. Winterstein, Counsel, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by September 14, 1995.

Date of Intended Adoption: October 4, 1995.

July 21, 1995
Claire Hesselholt
Policy Counsel

PROPOSED

REPEALER

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

WAC 458-53-110	Property values used in the ratio study
WAC 458-53-120	Review procedures for county studies

AMENDATORY SECTION (Amending Order PT 84-2, filed 6/29/84)

WAC 458-53-080 Real property sales sample selection. (((~~(1) The starting point for the sales studies will be a sampling of the real estate excise tax sales affidavits each month. Samples used in a current study will be sales during the last five months of the calendar year immediately preceding the current study assessment year and the first three months of the study assessment year.~~

~~A sampling plan will be developed by the department of revenue each year based on each county's previous year sales volume. The sampling will be conducted considering sales transferring via warranty deed or contract instruments as initially subject for inclusion in the study. All sales represented by other instruments such as tax deeds, quitclaim deeds, etc., will be excluded from consideration. Sales of timber and current use lands classified under chapters 84.28, 84.33 and 84.34 RCW will also be excluded from consideration. There are numerous reasons why a warranty deed or contract sale may also be excluded from the study. Conditions such as a sale between relatives, a forced sale or a sale to a nonprofit organization, for example, are sufficient to mark these transactions as being other than "arms-length" and therefore, not a valid indicator of full "true and fair" value. A listing of such reasons and other conditions that will cause a sale to be excluded are shown on the deletion list contained in subsection (2) of this section.~~)) (1) **Sales included.** Except as provided in subsection (2) of this section, the sales study shall consider all transactions involving a warranty deed or a real estate contract that occurred during the ten month period described in WAC 458-53-070(2). Sales of mobile homes shall also be included in the real property ratio study when the mobile home meets the definition of real property as defined in RCW 84.04.090. In the case of a county generated sales study (see WAC 458-53-100), the county may use a representative sample of all such transactions with the prior written approval of the department.

(2) **Sales excluded.** Sales or transfers of real property involving instruments other than a warranty deed or real estate contract shall not be considered in the sales study. The following types of sales transactions are examples of sales to be excluded from the sales ((~~studies~~)) study, regardless of the type of sale instrument used. ((~~Deviations~~)) Differences from the numerical coding designations set forth in this example may be used ((~~as agreed to~~)) by individual counties ((~~and the~~)) with prior approval from the department.

PROPOSED

NUMERICAL CODE	TYPE OF TRANSACTION
1	Family - a sale between relatives.
2	Transfers within a corporation by its affiliates or subsidiaries.
3	Administrator, guardian or executor of an estate.
4	Receiver or trustee in bankruptcy or equity.
5	Sheriff or bailee.
6	Tax deed.
7	Properties exempt from taxation (nonprofit, government, etc.).
8	Individual sales with assessment-to-sales ratios of less than twenty-five percent or greater than one hundred seventy-five percent except as provided in WAC 458-53-((~~100(4), 458-53-070(5) and 458-53-165~~))070.
9	Quitclaim deed.
10	Gift deed((,)); love and affection deed.
11	Seller's or purchaser's assignment of contract or deed - transfer of interest.
12	Correction deed.
13	Trade - exchange of property between same parties.
14	Deeds involving partial interest in property, such as one-third or one-half interest. (If transfer involves total interest i.e., one hundred percent of the property, sale is valid.)
15	Forced sales - transfers in lieu of imminent foreclosure, condemnation or liquidation.
16	Easement or right of way.
17	Deed in fulfillment of contract (on a current transaction, a contract with a fulfillment deed is a valid sale).
18	Property physically improved after sale.
19	Timber or forest land.
20	((~~Platted within last year, bare lots only~~)) Bare lots platted within the ten month time period described in WAC 458-53-070(2), ((-)) with less than twenty percent sold.
21	Plottage - ((~~where an adjoining property is sold at a price significantly different than for property of a similar type when a larger unit is being assembled~~)) when a larger unit of land is being assembled and an adjoining property is sold at a price significantly different from the price of property of a similar type.
22	$1,000 sale or under.
23	Lease - assignment, option, leasehold.
24	((~~Designated open space~~)) Classified as "current use" under chapter 84.34 RCW ((~~)~~))as of date of sale((~~)~~)).
25	Change of use where rezoning takes place.
26	Current year segregations that have not been appraised.
27	Other - necessary to identify reason((~~, i.e., inclusion of personal property not separately identified, liquor license, etc~~)).

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

AMENDATORY SECTION (Amending Order PT 84-2, filed 6/29/84)

WAC 458-53-090 ((~~**Sales samples—Assessed valuation**~~)) **Department generated sales studies.** (((~~(1) After the sampling of sales has been completed in Olympia, the assessed valuations of the properties remaining in the sample will be obtained by the department's sales analysts from official records retained by county officials. The assessed valuation total recorded will be the official figure as of January 1, the current ratio year assessment date. At this point, attention also will be given to factors which would indicate that a particular transaction is not suitable for inclusion in the study and any other factors which can be ascertained at this time are used to analyze whether sales may be deleted from the study as not being an indicator of full "true and fair" value.~~

~~The relationship of the assessed value for a real property parcel to a corresponding valid sale of this property within the time period established for the annual ratio sales study indicates the individual ratio for the property. The stratum averages for all such valid sales values and related assessed values in a county, when multiplied by the number of listings in the strata, determine the established real property totals on which the indicated real property ratio is based.~~

~~(2) In counties for which the department conducts the sales analysis and ratio studies a sales prelist will be provided to each assessor. These prelists will identify valid sale properties to be used in computation of each county's real property ratio. Department personnel will review these prelists with assessors or their staffs to verify the validity of the sale properties identified and the values indicated.~~

~~Properties designated in the department approved county revaluation plan relative to the current ratio study year, and properties on which new construction may be completed during a ratio study year, will be included in that year's ratio study. For these properties the available current county assessed valuation will be used. Assessors have until August 31st of each assessment year to place new construction values on such properties and these values in a corresponding ratio study are included after the close of the assessors' rolls on May 31st.~~

~~(3) Certain properties have limited exemptions in assessed value granted by law to persons owning those properties (senior citizens exemptions). In computing a ratio relative to the sale of such property, the full assessed value for the property, before exemption, must be used to determine a proper assessment to sales relationship.~~

~~(4) Average sample real property assessed values and true and fair values for each value or land use stratum in a county will be derived from sales and appraisal study results. These average values, as provided in WAC 458-53-150, will aid in determining the county real property indicated ratio.~~)) (1) **Department to gather data for certain counties.** For those counties that are unable to provide the department with a computer generated sales study in accordance with the provisions of WAC 458-53-100, the department will gather the data necessary for the ratio sales study.

(2) **Assessed value.** The assessed value attributed to those sales used in the ratio study will be the assessed value on the county assessment roll for the current assessment year. The assessed value attributed to those sales of property used in the ratio study on which there is new construction value that has not yet been placed on the county assessment roll will be the assessed value on the assessment roll for the current assessment year.

(3) **Sales prelist.** After the sales data has been gathered, the department shall provide a sales prelist to the assessor of each county for which the department is gathering data. The prelist will identify valid sale properties to be used in the sales study. The department will subsequently review the prelist with the assessor or the assessor's staff to verify the validity of the sales and the values indicated.

NEW SECTION

WAC 458-53-095 Property values used in the ratio study. The following property values shall be included in the ratio study:

(1) **Assessed values.** Values determined by county assessors according to the provisions of chapters 84.40 RCW (Listing of property) and 84.41 RCW (Revaluation of property).

(2) **Forest land values.** Values of forest land classified or designated under chapter 84.33 RCW and values of timber land classified under chapter 84.34 RCW.

(3) **Current use values.** Values of land (except timber land) and improvements classified under chapter 84.34 RCW (current use assessment). Values of land (except timber land) and improvements classified under chapter 84.34 RCW shall be included as a separate class for counties when those values equal or exceed fifteen percent of the total assessed value of locally assessed real property in the county.

(4) **Advisory values.** Advisory values supplied to the assessor by the department but only if the property falls within the sales study provided for in WAC 458-53-070 or 458-53-100 or is selected in the appraisal or audit study in accordance with WAC 458-53-130 and 458-53-140.

AMENDATORY SECTION (Amending Order PT 89-5, filed 4/12/89)

WAC 458-53-100 ((~~Use of county sales studies~~)) County generated sales studies. ((~~(1) If agreed upon by the department and the assessor, the department will use a county sales study, providing it is made according to the standards specified in these rules. Any such agreement shall provide that counties generating their own sales studies will use all or an agreed upon percentage of sales validated by department standards, and that the county shall furnish the department with data from sales deemed invalid as well as those deemed valid and give the reason for deeming invalid any particular sale. All such county studies shall be subject to department audit.~~

~~(2) The county generated sales study will include the following:~~

~~(a) All agreed to real property transactions occurring in a county shall be used in the study and shall be for a period of eight consecutive months. Sales transactions used will include only those which occur between August 1 preceding January 1 of the assessment year and March 31 of the assessment year.~~

~~(b) Sales of properties identified on the published department of revenue deletion list (WAC 458-53-080) will be removed from the sales analysis study and separately will be produced on a data processing machine listing. This listing will display for each deleted sale an appropriate parcel identification, the sales price, the assessed value, and a numerical code or narrative designation of the reason for deletion of the property from the study. The numerical code used shall coincide with the department of revenue published deletion list (WAC 458-53-080) unless an agreement has been made with the department to use another code. Any numerical code 27 (miscellaneous) shall be accompanied by a narrative reason for deletion.~~

~~(c) Sales remaining in the sales analysis study will be stratified and printed by assessed value strata. Necessary data for each sale property remaining in the study will be:~~

~~(i) Excise tax sales affidavit number, parcel number, or other file identification number.~~

~~(ii) The sales price of the transaction, lowered one percent to ninety nine percent of its original value.~~

~~(iii) The current assessed value on the assessors' rolls for the property described on the sales affidavit.~~

~~(iv) A computed ratio based on the percent that the assessed valuation is to the adjusted sales price figure.~~

~~(3) As soon as practicable following the close of the assessors' rolls on May 31st, and prior to July 1st, the county sales assessment ratio study shall be submitted to the department of revenue. Adjustments for new construction will be made following the August 31st deadline for adding new construction values to the assessment rolls. This will allow time for departmental analysis, field review, and insertion of appraisal data, where appropriate, for preliminary ratio determination by the first Monday in August.~~

~~(4) Individual valid sales having a resultant assessment sales ratio under twenty five percent or over one hundred seventy five percent shall be excluded from consideration in the study: *Provided*, That this subsection shall not apply if the number of sales meeting this criteria exceeds ten percent of the total number of sales that would be used in the study subject to the provisions of this subsection: *Provided further*, That this subsection shall not apply to any type of property not properly valued and subject to the provisions of WAC 458-53-165.~~)) (1) **Sales data provided by county.** When sales data is provided to the department by counties in accordance with these rules and subject to audit by the department, the data shall be used by the department to determine the indicated real property ratio. The data provided shall be in the form of two reports, a report consisting of data from valid sales, and a report listing those sales deemed to be invalid.

(2) **Report of valid sales.** The county generated sales report consisting of data from valid sales shall include the following information for each valid sale:

(a) The real estate excise tax affidavit number.

(b) The parcel number(s), or other file identification number(s).

(c) The date of sale.

(d) The sale price of the transaction.

(e) The sale price of the transaction reduced by one percent.

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(f) The current assessed value on the county's assessment roll for the sale property.

(g) A ratio determined by dividing the assessed value by the adjusted sale price (the adjusted sale price is the amount determined in subsection (2)(e) of this subsection).

(3) **Summary of valid sales data.** The county generated sales report shall also contain a summary of the sales information arranged according to assessed value strata designated by the department for each county. The summaries for each stratum shall include:

(a) The total number of sales;

(b) The total assessed value of all sale property;

(c) The total adjusted sale price for all sales;

(d) The total average assessed value; and

(e) The total average adjusted sale price.

(4) **Report of invalid sales.** The county generated sales report consisting of data from invalid sales shall include the following information for each invalid sale:

(a) The real estate excise tax affidavit number.

(b) The parcel number(s), or other file identification number(s).

(c) The sale price of the transaction.

(d) The current assessed value on the county's assessment roll for the sale property.

(e) The appropriate numerical code (see WAC 458-53-080) or the matching description of the reason for determining that the sale was invalid. If numerical code number 27 is used, there shall be a description of the reason for determining that the sale was invalid.

(5) **Sales report-when submitted.** The county generated sales report shall be submitted as soon as possible following the close of the assessment rolls on May 31st.

NEW SECTION

WAC 458-53-105 Review procedures for county studies. (1) **Department to monitor compliance.** The department shall review a sales-assessment study produced by a county in order to monitor compliance with the rules in this chapter.

(2) **Elements to be verified.** Elements of the county sales study that may be verified include, but are not limited to:

(a) Property identification;

(b) Properties reported on real estate excise tax affidavits that were transferred using a warranty deed or real estate contract;

(c) Sales month identification;

(d) Deletion practices and identification;

(e) Computation procedures, including whether the sales value used was 100% or whether the sales value was reduced by one percent;

(f) Sales and assessment values; and

(g) Revaluation assessment practices.

(3) **Findings to be discussed with assessor.** Ratio study review findings will be discussed with the individual county assessor and/or the assessor's staff upon completion of the department's review. Any errors in data or procedure discovered shall be corrected for the current and future year's studies.

AMENDATORY SECTION (Amending Order PT 86-6, filed 10/2/86)

WAC 458-53-130 Real property appraisal studies. ~~((~~~~(1) The department will review a county's prior year's sales studies to determine which assessed value stratum or land use class may not have sufficient sales to produce a valid measurement of the level of assessment of the properties in that stratum or use class. Department appraisers then will appraise selected properties in those strata. The selection of properties to be appraised will be on a random basis. Random selection will use accepted statistical methods such as stated numerical sequence or random number tables to provide each parcel of real property in a universe of real property parcels an equal opportunity to be selected as a representative sample of that universe. The appraisal date will coincide with the assessment date of the ratio study.~~

~~(2) The appraisal study is started with a stratified sample of real property parcels. The stratification process will be done using either the assessed value of the real property roll broken into assessed value strata or land use codes as of the current January 1 assessment date. Land use stratification will be used exclusively in those counties possessing the necessary data processing capabilities. For counties not possessing data processing capabilities manual stratification by department of revenue staff involves the following: (a) Examination of each property listing and tallying it (by placing a mark in the appropriate value class or stratum) according to the magnitude of its assessed valuation, (b) random selection of properties from each class to be placed in a pool from which the ultimate selection of properties for appraisal will be made, and (c) recording on a take-off sheet, the assessed value and identification (account number, page, and line number, etc.) for the selected samples. The completed stratification provides a count of the listings on the roll by valuation class.~~

~~(3) The number of appraisals deemed necessary for each county value or land use stratum will be determined by application of statistical determination to the previous year county ratio study results.~~

~~Once the number of appraisals to be conducted in each value classification has been determined, the identification of each of the randomly selected appraisal samples to be used in the study will be obtained from county records. When the names, addresses, legal descriptions and other information necessary to conduct the appraisals are known, letters will be forwarded to the taxpayers involved. These letters will notify them of the impending visit by an appraiser from the department of revenue property tax division.~~

~~(4) The actual physical appraisals conducted by department personnel use the same tools that are available to the county assessors (state manuals, private publications, etc.). The department's appraisers do not, however, use the so-called "mass appraisal" technique which is, of necessity, practiced by the various counties; but perform complete appraisals regardless of the amount of time required in order to assure that the most valid estimate of market value is reached.~~

~~Three approaches to value are considered; namely, cost, market and income. The cost approach utilizes an approved cost manual. When properly used, this manual gives an~~

~~estimation of reproduction cost of the improvements to the property. The reproduction cost then is depreciated, taking into consideration all physical depreciation, functional and economic obsolescence. The end result is the depreciated value of the improvements. To this value is added the value of the land, resulting in the market value of the real property. The market approach uses sales of comparable properties for an indication of value. The income approach uses a capitalization rate developed from a comparison of typical income and the sale price of comparable properties.~~

~~This capitalization rate then is divided into the net income of the subject properties for a value indication of that property.~~

~~(5) When the appraisals in a county have been completed and reviewed by the supervisory staff of the department, they are reviewed individually with the assessor and his staff. At this time, changes may be made stemming from such factors as errors in the mathematical calculations, changes in use from the date of assessment to the date of the appraisal, the inclusion of items in the appraisal that are not included in the assessment (mainly personal property), etc. When the review process is completed and changes, if any are made, the appraisal data are considered as completely valid and ready for inclusion in the computation of the total real property ratio.~~

~~(6) When the department's sample appraisals fall within a county's current revaluation area and the assessor's appraisals, upon audit, are found to be a supportable estimate of market value, the department will accept the county's appraised values on those properties randomly selected for appraisal in the county.~~

~~(7) Department appraisals, required for assessment ratio determination, will be performed as indicated by department statistical determinations. Appraisals will complement sales to provide an adequate number of samples on which to base a ratio computation.~~

~~(8) When properties, classified by the department as industrial properties, are selected for inclusion in real or personal property ratio studies, the department's property audits and appraisals will be made on the total property, using department valuation procedures. Allocation of total industrial value for ratio purposes will be determined using each assessor's method of classifying real and personal property. Audit determinations for personal property will not include properties classified as real property by the assessor. Appraisal determinations for real property will not include properties classified as personal property by the assessor.~~))

(1) **Review of prior year's sales.** In order to determine which strata do not have sufficient sales to produce a sales sample representative of the level of assessment, the department shall review a county's prior year's sales studies. This review will determine the number of appraisals necessary to be added to the sales sample.

(2) **Selection of properties for appraisal.** The properties to be appraised by the department shall be selected on a statistically accepted random basis such as stated numerical sequence or random number tables.

(3) **Department appraisals.** Appraisals conducted by the department shall include a physical appraisal of the subject property in order to assure that the most accurate estimate of market value is determined, and shall not be conducted on the basis of mass appraisal techniques. The value determined will be the value as of January 1 of the assessment year.

(4) **Review with county.** The department shall review completed appraisals with the assessor and/or the assessor's staff. After the review is complete, the appraisals shall be included with the sales data for computation of the real property ratio.

(5) **Allocation of real and personal property values.** Allocation of value between real and personal property of the total value of appraised property for purposes of the ratio study will be determined using each assessor's method of classifying real and personal property.

PROPOSED

WSR 95-16-042
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 21, 1995, 4:59 p.m.]

Original Notice.

Title of Rule: WAC 388-215-1130 Living in the home of a relative of specified degree—Notification to parent of AFDC authorization, 388-215-1140 Living in the home of a relative of specified degree—Request for address disclosure by child's parent, 388-215-1150 Living in the home of a relative of specified degree—Requirements for submitting a request for disclosure of a child's address, 388-215-1160 Living in the home of a relative of specified degree—Notifying the caretaker relative of a request for disclosure of a child's address, and 388-215-1170 Living in the home of a relative of specified degree—Responding to a request for disclosure of a child's address.

Purpose: The new rules affect the AFDC program and are intended to meet the requirements of ESSB 5244 which adds a new section to chapter 74.12 RCW. This law requires the Department of Social and Health Services to notify parents when AFDC has been approved for their child when the child is living with a nonparental relative and to inform them of the provisions of the Family Reconciliation Act under chapter 13.34A RCW. The law also requires the Department of Social and Health Services to release the child's address and location to the parent upon the parent's request unless there is a current investigation or pending case involving child abuse or neglect by the address requesting parent.

Statutory Authority for Adoption: RCW 74.08.090 and ESSB 5244.

Statute Being Implemented: RCW 74.08.090 and ESSB 5244.

Summary: Provides the Department of Social and Health Services staff, clients and other interested parties with rules on when the parent with whom the child most recently resided is to be informed that a child who is living with a nonparental relative is receiving AFDC, what other information must be provided to the child's parent, when the child's address may be provided to the parent, and how a caretaker relative can prevent address disclosure where there is a likelihood of harm to the relative or child.

Reasons Supporting Proposal: Establishes when AFDC is approved on behalf of a child living with a nonparental

relative, the Department of Social and Health Services must make reasonable efforts to inform the parent with whom the child most recently lived of the AFDC authorization and advise them of provisions of the Family Reconciliation Act (chapter 13.34A RCW) and how to request the address and location of the child or safeguard same.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Everett, Division of Income Assistance, 438-8264.

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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. A small business economic statement has not been prepared under chapter 19.85 RCW because this rule only affects aid to families with dependent children (AFDC) recipients and has no impact on small business. Approximately ten to fifteen percent of AFDC eligible children live with nonparental relatives. These rules require the Department of Social and Health Services to contact the parents of those children to inform them that the children are on AFDC. The notice to parents will also tell them now [how] to access family reconciliation services provided by the Department of Social and Health Services and also how they may contact the Department of Social and Health Services to learn the address and location of their children. These rules also provide safeguards to protect children from being harmed by abusive parents. Because these rules apply only to the Department of Social and Health Services services to children receiving AFDC and their parents, there is no economic impact on any industrial operations on small business.

Hearing Location: OB-2 Auditorium, 14th and Jefferson, Olympia, Washington, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by August 22, 1995, TDD (206) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, 14th Avenue and Jefferson Street, Olympia, Washington 98504, Please Identify WAC Numbers, FAX (206) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 6, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

NEW SECTION

WAC 388-215-1130 Living in the home of a relative of specified degree—Notification to parent of AFDC authorization. When AFDC has been authorized on behalf of a dependent child who is living with a nonparental relative of specified degree, the department shall make reasonable efforts to notify the parent with whom the child most recently resided that an application for AFDC on behalf of the child has been approved unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(1) The department shall notify the parent as soon as reasonably possible but no later than seven calendar days after the date of AFDC approval.

(2) The notification shall advise the parent of:

(a) The provisions of the family reconciliation act under chapter 13.34A RCW; and

(b) The right of the parent to be notified of the address and location of the child as provided under WAC 388-215-1140.

NEW SECTION

WAC 388-215-1140 Living in the home of a relative of specified degree—Request for address disclosure by child's parent. When AFDC has been approved for a child who is living with a nonparental caretaker relative, the address and location of the child may be given to the parent with whom the child most recently resided if the parent has legal custody of the child or a court has granted the parent visitation rights or residential time with the child.

(1) The department shall not release the address if:

(a) The department has determined, under WAC 388-215-1410, that the nonparental caretaker relative has good cause for refusing to cooperate with the department's child support agency in regard to enforcing the address requesting parent's child support obligation;

(b) A court order exists which restricts or limits the address requesting parent's right to contact or visit the child or the nonparental caretaker relative by imposing conditions to protect the caretaker relative or the child from harm;

(c) There is a current investigation or pending case involving abuse or neglect of any child by the address requesting parent under chapter 13.34 RCW; or

(d) There is a substantiated claim that the address requesting parent has abused or neglected any child.

(2) The department shall apply the following additional conditions with regard to a regard to the disclosure of a child's address and location under this section:

(a) The address requesting parent must comply with the requirements of WAC 388-215-1150 when submitting a request for disclosure;

(b) The department shall notify the child's caretaker relative of the request for disclosure and provide the relative an opportunity to demonstrate why the disclosure request should be denied following the requirements in WAC 388-215-1160; and

(c) The department shall respond to the address disclosure request following the requirements in WAC 388-215-1170.

NEW SECTION

WAC 388-215-1150 Living in the home of a relative of specified degree—Requirements for submitting a request for disclosure of a child's address. A parent requesting disclosure of a child's address and location under WAC 388-215-1140 shall submit the request in writing and

in person, with satisfactory evidence of identity, at the department's community services office which is currently maintaining the child's case record.

(1) If the request is made by the parent's attorney, the department shall waive the provisions regarding submission in person with satisfactory evidence of identity;

(2) If the parent resides outside the state of Washington, the department shall waive the provision requiring submission in person if the parent:

(a) Submits a notarized request for disclosure; and

(b) Complies with the requirements of subsection (3) of this section.

(3) If the request for disclosure is based upon a court order which grants the parent legal custody of the child or visitation rights or residential time with the child, the parent shall include the following with a request for disclosure of an address:

(a) A copy of the court order; and

(b) A sworn statement that the order has not been modified.

NEW SECTION

WAC 388-215-1160 Living in the home of a relative of specified degree—Notifying the caretaker relative of a request for disclosure of a child's address. Prior to disclosing the address and location of a child to the child's parent under WAC 388-215-1140, the department shall mail a notice to the last known address of the nonparental caretaker relative advising the relative that:

(1) A request for disclosure has been made by the child's parent; and

(2) The office will disclose the address to the parent after thirty days from the date of the notice, unless the caretaker relative:

(a) Provides proof of a pending court case involving abuse or neglect of a child by the parent requesting disclosure;

(b) Provides proof of a current investigation of allegations of abuse or neglect of a child by the parent requesting disclosure;

(c) Provides a copy of a court order which enjoins disclosure of the address or restricts the address requesting party's right to contact or visit the caretaker relative or the child by imposing conditions to protect the nonparental relative or the child from harm, including, but not limited to, temporary orders for protection under chapter 26.50 RCW; or

(d) Requests a fair hearing under chapter 388-08 WAC which ultimately results in a decision that disclosure must be denied because of the existence of one or more of the conditions listed in WAC 388-215-1140(1).

NEW SECTION

WAC 388-215-1170 Living in the home of a relative of specified degree—Responding to a request for disclosure of a child's address. The department shall respond to a parent's request for disclosure of a child's address made under WAC 388-215-1170 within thirty five days of receiving the request. The response will notify the parent:

(1) Of the child's address and location if such information may be disclosed under the requirements of WAC 388-215-1140;

(2) That the child's address and location may not be disclosed under the requirements of WAC 388-215-1140, including the reasons for denying the parent's request; or

(3) That a decision on address disclosure has not been made because:

(a) The nonparental caretaker relative has requested a fair hearing and a final hearing decision has not been entered; or

(b) The nonparental caretaker relative is claiming good cause for refusing to cooperate with the department's child support agency with regard to enforcing the address requesting parent's child support obligation and the department has not made a final determination on the relative's claim.

(4) When a decision on address disclosure has been delayed because of a pending fair hearing decision or good cause claim, the department shall notify the parent of the decision on address disclosure within ten calendar days of the date of the fair hearing decision or good cause claim determination.

PROPOSED

WSR 95-16-064
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 27, 1995, 10:45 a.m.]

Original Notice.

Title of Rule: Remote and necessary small school plants.

Purpose: Establish policies and procedures for the designation of small school plants as remote and necessary.

Statutory Authority for Adoption: Section 502 (1)(e), chapter 6, Laws of 1994 sp. sess.

Summary: Clarify unwritten policies and procedures for the designation of small school plants as remote and necessary.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule is to establish policies and procedures to govern the classification of small school plants as remote and necessary and to define criteria for such designation. Also, a review committee will be established.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have a minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 4, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, by September 18, 1995.

Date of Intended Adoption: September 22, 1995.

July 25, 1995
Larry Davis
Executive Director

NEW SECTION

WAC 180-24-400 Remote and necessary small school plants—Authority. The authority for WAC 180-24-400 through 180-24-420 is the state Operating Appropriations Act which allocates funds to school districts for small school plants which have been judged by the state board of education to be remote and necessary.

NEW SECTION

WAC 180-24-405 Remote and necessary small school plants—Purpose. The purpose of WAC 180-24-400 through 180-24-420 is to establish policies and procedures to govern the classification of small school plants as remote and necessary.

NEW SECTION

WAC 180-24-410 Remote and necessary small school plants—Criteria. (1) Decisions of the state board of education on granting remote and necessary status to small school plants within school districts shall be based on a finding that granting remote and necessary status is necessary to assure reasonable provision of a basic education program to students, including related services, equipment, materials and supplies.

(2) In making the finding under subsection (1) of this section, the state board of education shall consider factors including but not limited to the following:

(a) Existence of an intact, permanent community which is defined as a geographically site-specific, nonmobile group of people;

(b) Student population to be served;

(c) Resources required to meet student needs, including but not limited to staffing, specialized personnel, and technology;

(d) Transportation, including: Condition of roads or waterways, seasonal weather conditions, topography, distance and travel time to another school in the district or in another district, and student safety related to transportation;

(e) Operational efficiency, including but not limited to:

(i) Adequacy and availability of facilities in the community, the district, or in the next nearest district or districts;

(ii) Adequacy and availability of other age appropriate grade level or cooperative programs in adjacent school facilities in the district, or in the next nearest district or districts, or through the educational service district; and

(f) A safe and healthful environment for students.

(3) At its discretion, the state board of education may use as guidance the applicable provisions of WAC 180-24-013, 180-24-016, and 180-24-017.

NEW SECTION

WAC 180-24-415 Remote and necessary small school plants—Review committee. (1) There is hereby established by the state board of education a remote and necessary review committee comprised of at least the following five members:

(a) One member of the state board of education selected by the president of the board;

(b) Two staff members from the office of the superintendent of public instruction, one who is knowledgeable about finance issues and one who is knowledgeable about curriculum issues, both selected by the state superintendent;

(c) One school director selected by the Washington State School Directors' Association;

(d) One school district administrator selected by the Washington Association of School Administrators;

Vacancies on the review committee shall be filled by the person or organization responsible for appointments.

(2) It is the responsibility of the review committee to receive and review all applications from school districts requesting the state board of education to grant remote and necessary status to a small school plant located in the district. Following the review of applications, the review committee shall recommend to the state board whether such designation should be granted. Recommendations of the review committee shall be advisory only. The final determination rests solely with the state board of education.

(3) Every small school plant with remote and necessary status shall be reviewed every four years by the review committee. The review committee shall submit its findings and recommendations to the state board. The review committee may conduct the review on-site, with the number of members participating determined by the committee, or may conduct the review by other means as determined by the committee and with state board approval. The state board shall provide to the fiscal committees of the legislature in January of odd-numbered years a list of remote and necessary small school plants. The first report shall be provided in January 1997. All currently designated remote and necessary small school plants shall be reviewed prior to January 1997.

(4) A small school plant shall lose its remote and necessary status if the number of students exceeds the enrollment requirements set forth in the state Operating Appropriations Act for three consecutive years. The loss of remote and necessary status shall take effect the immediate ensuing school year. When the enrollment of such small school plant again meets the requirements of the state Operating Appropriations Act, the school district may apply to the state board of education for redesignation as a remote and necessary plant.

WSR 95-16-077
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-12-075.

Title of Rule: WAC 180-27-019 Definition—Instructional space.

Purpose: To provide an exclusion from the definition of instructional space.

Statutory Authority for Adoption: RCW 28A.525.020.

Summary: This change will expand the current list of areas not now included in the calculation of instructional space to include attic spaces which are either vacant or which primarily house mechanical and/or electrical equipment.

Reasons Supporting Proposal: As technologies have changed over the years, the installation of smaller, more efficient mechanical and/or electrical equipment in attic spaces became a prevalent practice causing square footage to be added to school district inventories which were previously not counted.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: David L. Moberly, Office of Superintendent of Public Instruction, Olympia, (360) 753-6742; and Enforcement: Alberta J. Mehring, Office of Superintendent of Public Instruction, Olympia, (360) 753-6702.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule defines instructional areas for the purpose of calculating square footage in school buildings. This change will provide one additional exclusion, over those already defined, from the calculation.

Proposal Changes the Following Existing Rules: This change will provide one additional exclusion over those already defined from the calculation.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have a minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 8, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, by September 19, 1995.

Date of Intended Adoption: September 22, 1995.

July 28, 1995
Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 95-08-032, filed 3/29/95, effective 4/29/95)

WAC 180-27-019 Definition—Instructional space. As used in this chapter, the term "instructional space" means the gross amount of square footage calculated in accordance with the *American Institute of Architects, Document D101, The Architectural Area and Volume of Buildings,* latest edition, for a school facility utilized by a school district for the purpose of instructing students: *Provided,* That the following areas shall not be included in any calculation of instructional space:

(1) Exterior covered walkways, cantilevered or supported.

(2) Exterior porches including loading platforms.

(3) Spaces above occupied areas which are either vacant or primarily housing mechanical and/or electrical equipment.

(4) Space used by central administrative personnel.

((~~(4)~~)) (5) Stadia and grandstands.

((~~(5)~~)) (6) Bus garages.

((~~(6)~~)) (7) Free-standing warehouse space specifically designed for that purpose.

((~~(7)~~)) (8) Portable facilities.

((~~(8)~~)) (9) Other square footage not otherwise available or related to direct instruction or instructional support of the education program in the district.

((~~(9)~~)) (10) The portion(s) of any space(s) constructed from grants made as a gift to a school district by a private entity or a public entity which:

(a) Is dedicated by the written terms of the grant to joint use by the school district for educational purposes and by the general public for community activities for the useful life of the space(s); and

(b) The school district board of directors has accepted the gift in accordance with the joint use terms of the grant: *Provided,* That this exception does not apply to space(s) jointly financed by two or more school districts.

WSR 95-16-078
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-14-042.

Title of Rule: Proposed new sections in chapter 180-27 WAC, State assistance in providing school plant facilities.

Purpose: To establish policies and procedures for the allocation of a limited amount of funds each year for emergency repair projects for school buildings and for the establishment of policies for the recovery of funds from school districts receiving funds, from insurance payments for the same projects.

Statutory Authority for Adoption: RCW 28A.525.020.

Summary: Proposed rules will provide school districts an avenue for access to a limited amount of funds to assist them in making emergency repairs to a school building that presents an immediate danger to the health and safety of students being housed there.

PROPOSED

Reasons Supporting Proposal: To comply with section 508(3) of E2SHB 1070 which contains proviso language directing the state board to maintain a reserve contingency fund for emergency repair projects for school buildings with imminent safety hazards to building occupancy.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: David L. Moberly, Office of Superintendent of Public Instruction, Olympia, (360) 753-6742; and Enforcement: Alberta J. Mehring, Office of Superintendent of Public Instruction, Olympia, (360) 753-6702.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The 1995-97 capital budget contained proviso language directing the state board to maintain a reserve contingency fund for emergency repair projects for school buildings which present imminent health and safety hazards to building occupants. The state board was also directed to establish policies for the recovery of funds from school districts receiving funds, from insurance payments for the same projects. The proposed new sections to chapter 180-27 WAC establish policies and procedures to comply with section 508(3) of E2SHB 1070.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have a minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 8, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, by September 19, 1995.

Date of Intended Adoption: September 22, 1995.

July 28, 1995
Larry Davis
Executive Director

NEW SECTION

WAC 180-27-600 Emergency repair grant applications—Definitions—"Emergency repair" and "imminent health and safety hazards." As used in WAC 180-27-605 through 615:

(1) The term "emergency repair' means a repair to a school building necessitated by unforeseeable defects in the building due to error(s) in the design and/or construction of the building.

(2) The term "imminent health and safety hazard" means a threat of immediate physical injury to the occupants of a building.

NEW SECTION

WAC 180-27-605 Emergency repair grant applications—Contents of applications. The State Board of Education may allocate an amount not to exceed five million dollars per fiscal year 1995-96 and 1996-97 to school districts for emergency repair projects for school buildings which present imminent health and safety hazards for building occupants in accordance with the following process and eligibility criteria:

(1) A school district board of directors shall approve and present to the Superintendent of Public Instruction a written application for emergency repair funding on a form provided by the Superintendent of Public Instruction.

(2) The application and accompanying documentation shall include, but not be limited to:

(a) Certification of the unrestricted balance, if any, of the district's general fund and capital projects fund;

(b) A determination and description of available alternative housing options for occupants of the building;

(c) A detailed description of the cause and nature of the emergency repair;

(d) A detailed description of the nature and extent of the imminent health and safety hazards that exist, and the extent they would be alleviated by the emergency repair;

(e) Evidence that the district is aggressively pursuing civil (and/or criminal) actions against the responsible party(ies).

(f) Certification by an authorized health official, fire official, building official, or Labor and Industries official with jurisdiction that an imminent health and safety hazard to building occupants of a specified nature and extent exists unless the emergency repairs are made;

(g) The estimated cost of the emergency repairs based upon an estimate made by two or more independent, qualified cost estimators;

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 180-27-610 Emergency repair grant applications—Review committee—State board of education approval/disapproval. A review committee appointed by the Superintendent of Public Instruction shall periodically evaluate and rank applications for emergency repair funding submitted pursuant to WAC 180-27-605, and recommend to the State Board of Education whether or not an application shall be funded and, if so, the amount to be funded. The State Board of Education shall make the final decisions respecting emergency repair applications and grants.

NEW SECTION

WAC 180-27-615 Emergency repair grant applications—Repayment conditions. Grants of emergency repair moneys shall be conditioned upon the written commitment of the school district board of directors to repay the grant by waiving the school district's current or future eligibility for state building assistance under chapters 180-25 through 180-33 WAC, or with insurance payments, or with any judgment(s) that have been awarded, or with other

means and sources of repayment. The State Board of Education may waive or qualify the requirements of this section in whole or part based upon credible evidence of long-range extenuating financial circumstances.

WSR 95-16-079
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-12-073.

Title of Rule: WAC 180-27-040 Square foot area analysis.

Purpose: To exclude specific spaces from the square foot area analysis calculation.

Statutory Authority for Adoption: RCW 28A.525.020.

Summary: This change will expand the current list of specific spaces which are not included in the square foot area analysis calculation.

Reasons Supporting Proposal: As technology changed over the years, smaller, more efficient mechanical and/or electrical equipment was being installed in previously vacant attic space, and what was not previously included in the area analysis became a requirement under the AIA definition.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: David L. Moberly, Office of Superintendent of Public Instruction, Olympia, (360) 753-6742; and Enforcement: Alberta J. Mehring, Office of Superintendent of Public Instruction, Olympia, (360) 753-6702.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule defines instructional areas for the purpose of calculating square footage in school buildings. This change will provide one additional exclusion, over those already defined, from the calculation.

Proposal Changes the Following Existing Rules: This change will provide one additional exclusion over those already defined from the calculation.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have a minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 8, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, by September 19, 1995.

Date of Intended Adoption: September 22, 1995.

July 28, 1995
Larry Davis
Executive Director

AMENDATORY SECTION (Amending Order 6-84, filed 5/17/84)

WAC 180-27-040 Square foot area analysis. The square foot area analysis, when submitted for review by the superintendent of public instruction shall be calculated in accordance with the American Institute of Architects, Document D101, *The Architectural Area and Volume of Buildings,* ((~~January 1980~~)) latest edition, except for the following areas which shall not be counted:

(1) Exterior covered walkways, cantilevered or supported; ((~~and~~))

(2) Exterior porches, including loading platforms; and

(3) Spaces above occupied areas which are either vacant or primarily housing mechanical and/or electrical equipment.

The analysis shall be reported on a form prepared by the superintendent of public instruction.

PROPOSED

WSR 95-16-080
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-13-049.

Title of Rule: WAC 180-79-241 Internship certificate.

Purpose: To extend the provision for the internship certification program in order to adequately test the process.

Statutory Authority for Adoption: RCW 28A.410.010.

Statute Being Implemented: RCW 28A.410.010.

Summary: This amendment will extend the provision for an internship certificate program until August 31, 1999.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: Larry Davis, State Board of Education, Olympia, (360) 753-6715; and Enforcement: Theodore E. Andrews, State Board of Education, Olympia, (360) 753-3222.

Name of Proponent: State Board of Education, governmental.

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

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

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 4, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (206) 586-2357, by September 18, 1995.

Date of Intended Adoption: September 22, 1995.

Larry Davis
Executive Director

PROPOSED

AMENDATORY SECTION (Amending WSR 94-13-021, filed 6/3/94, effective 7/4/94)

WAC 180-79-241 Internship certificate. In order to broaden the base of persons eligible to pursue teaching careers, the state board of education establishes a teaching internship certificate pilot project under the specific circumstances set forth below:

Internship certificate.

(1) Candidates shall be eligible for internship certificates which allow the holder full authority to serve as a part-time or full-time teacher and will be subject to the local school district's evaluation procedures under the following conditions:

(a) Persons must possess a master's degree and have a minimum of forty-five quarter hours (thirty semester hours) in an endorsement area or in a directly related area of study; or a bachelor's degree with a minimum of forty-five quarter hours (thirty semester hours) in an endorsement area or in a directly related area of study and at least five years of relevant work experience, subsequent to the bachelor's degree, as determined by the college or university;

(b) Candidates must be admitted to an approved Washington state college or university teacher education program, and hold a contract for employment as a teacher in a participating school district or be given written notice of other program or placement options if the candidate does not hold a contract. Candidates would be eligible for the internship certificate only upon completion of the college or university course work, as specified in subsection (2)(d) of this section, and employment in a participating school district;

(c) Notwithstanding the provisions above or other provisions in this section, in order to conduct a field test of an alternative model for the internship certificate, Teach for America resident teachers participating in a professional teaching residency shall be eligible for internship certificates for the two years of their residency program if they are employed by the Seattle School District.

The internship certificate shall be issued for up to two years. The internship certificates shall be endorsed on the basis of the academic requirements in WAC 180-79-086. If a resident teacher does not continue in the program for the full two years, the certificate shall become invalid when the resident teacher leaves the program.

Prior to teaching under the internship certificate the resident teacher shall have studied issues of abuse, child or adolescent psychology, classroom management, methods of instruction in the appropriate endorsement area, the legal responsibilities of the professional educator, reading in the content area, and the safety and supervision of children.

If a resident teacher has not completed such study in the summer training program the Seattle School District shall be responsible for assuring that each resident teacher has completed the required study prior to teaching. The resident teacher shall continue study throughout the two years in appropriate workshops or courses as determined by the Seattle School District and Teach for America.

The resident teacher shall receive on-site assistance throughout the two years.

The assessment of the Professional Teaching Residency field test will focus specifically on the effective recruitment of outstanding individuals (especially minority candidates), the performance-based assessment process, and the teaching effectiveness demonstrated by the resident teachers who complete the program.

At the completion of their two-year internships, resident teachers shall be eligible for the initial certificate upon recommendation by the Seattle School District and by a review board of experienced educators. The authorization for the Teach for America field test extends from the 1994-95 school year through the 1998-99 school year.

An advisory board shall be established by Teach for America and the Seattle School District to assure the active involvement of interested persons, including teachers, principals, representatives of higher education, administrators, and parents in the ongoing review of the professional teaching residency program in order:

(i) To assure that the program is consistent with Seattle School District goals and priorities; and

(ii) To provide ongoing feedback to Teach for America and the Seattle School District.

An evaluation of the program shall be completed prior to the close of the first school year by a professional education advisory committee subcommittee, which shall include a site visit to the Seattle School District and the collection of data from the resident teachers and other parties, including, but not limited to, relevant students, teachers, principals, administrators, and parents. Findings from the evaluations shall be reviewed by the professional education advisory committee. Recommendations for continuation, revisions, or discontinuation of the professional teaching residency program shall be submitted by the professional education advisory committee to the state board of education. On the basis of the evaluation, the state board of education may rescind the authorization for any additional recruitment of resident teachers prior to the beginning of the next school year.

Prior to September 1, 1998, the professional education advisory committee shall review the evaluations of the teaching residency program and make recommendations to the state board on its future status.

(2) The college or university approved internship program shall be designed as follows:

(a) Students shall proceed through the program as a cohort group;

(b) The program shall be a minimum of forty-five quarter hours (thirty semester hours) of upper division and/or graduate study and must meet the state board of education standards for approved programs;

(c) The program shall provide the intern a minimum of fifteen quarter hours (ten semester hours) of study prior to the beginning of the school year, five quarter hours (three

semester hours) for each quarter/semester of the school year and fifteen quarter hours (ten semester hours) in the summer following the first year of teaching;

(d) Prior to beginning teaching, the candidate must complete a minimum of fifteen quarter hours (ten semester hours) of course work in pedagogy including but not limited to: Child or adolescent psychology, classroom management, methods instruction in the appropriate endorsement area, the legal responsibilities of the professional educator, reading in a content area, and the safety and supervision of children (the course work must include forty hours of observation of school students in learning situations);

(e) During each quarter/semester the interns shall participate in a college/university three hour seminar weekly in order to provide the interns with peer interaction and assistance on issues associated with their teaching experiences;

(f) The college/university shall assign a college supervisor to work with each intern;

(g) The school district shall assign a staff member to serve as a mentor (who shall be selected using the criteria established for the teacher assistance program) for each intern;

(h) The school district and the college/university shall specify in detail the resources they will provide and the procedures they will follow to assure that the intern is qualified to assume full-time responsibility when placed in the classroom as a teacher.

(i) The year of internship teaching shall be deemed comparable to the state board of education student teaching requirement, provided, the college/university evaluates the intern's teaching as satisfactory. The local school district evaluation of the intern shall be shared with the college/university in making its decision;

(j) The internship certificate shall be issued for one year and may be renewed only once for one additional year to persons who for good cause were unable to complete the program upon recommendation by the college or university where the person is enrolled in the teacher education program.

(3) At least one college/university and one school district that meet the following criteria shall be approved by the state board of education to conduct this pilot program:

(a) Colleges and universities and school districts wishing to participate in this program must submit joint proposals to the state board of education for its consideration, provided, one college/university may have joint agreements with more than one school district and may include within such agreements a cooperative arrangement with an educational service district.

(b) Colleges/universities and school districts shall submit a detailed description of the program based on the requirements in subsection (2) of this section, provided, the state board of education will consider modifications to the requirements if the proposal indicates how the intent of the program can be met in a different curricular design.

(4) The internship teaching program shall be reviewed annually by the respective professional education advisory board and evaluated by the professional education advisory committee during its third year of operation. After receiving the recommendation from the professional education advisory committee, the state board of education shall determine whether or not or under what circumstances the pilot project shall be continued.

(5) The pilot project shall terminate on August 31, ((~~1995~~)) 1999, with the exception of the field test described in subsection (1)(c) of this section unless the state board of education extends or revises the existing program.

PROPOSED

WSR 95-16-081
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-13-048.

Title of Rule: WAC 180-78-160 Evidence of compliance with candidate admission and retention policies program standard.

Purpose: To update and correct current language.

Statutory Authority for Adoption: RCW 28A.410.010.

Statute Being Implemented: RCW 28A.410.010.

Summary: This amendment will delete reference to regulations which ended in 1989 and to tests which are no longer available.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: Larry Davis, State Board of Education, Olympia, (360) 753-6715; and Enforcement: Theodore E. Andrews, State Board of Education, Olympia, (360) 753-3222.

Name of Proponent: State Board of Education, governmental.

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

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

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 4, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (206) 586-2357, by September 18, 1995.

Date of Intended Adoption: September 22, 1995.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending Order 26-88, filed 12/14/88)

WAC 180-78-160 Evidence of compliance with candidate admission and retention policies program standard. The following evidence shall be evaluated to determine whether each professional preparation program is in compliance with the candidate admission and retention policies program standard of WAC 180-78-140(4):

(1) Incentives and affirmative action procedures have been established to recruit quality candidates from under represented groups including those from diverse economic, racial, and cultural backgrounds. Support programs are provided to assist such candidates in successfully completing the professional preparation program.

(2) Admission requirements to the professional preparation programs include:

(a) A minimum 2.5 college or university undergraduate grade point average (based upon a zero to four point scale) calculated on the basis of the most recent 45 quarter (30 semester) credits.

(b) Evidence that the candidate is competent in the basic skills required for oral and written communication and computation.

(c) A combined score of not less than the state-wide median score for the prior school year scored by all persons taking the ((~~Washington Pre-College Test (WPCT) or an equivalent standard score on the comparable portions of the~~)) Scholastic Aptitude Test (SAT) or the American College Test (ACT)((~~, or the Graduate Record Examination (GRE). Equivalent standard scores shall be determined by the superintendent of public instruction and affected agencies shall be notified in official bulletins of the superintendent of public instruction~~)).

(d) ((~~*Provided,* That until June 30, 1989, college and universities with approved preparation programs may permit candidates to enter the professional preparation program with a minimum composite score of eighty or more on the verbal and quantitative subtests of the WPCT or an equivalent score on the comparable portion of the SAT, ACT, or GRE.~~

~~(e) [*Provided further,* That persons who have completed a baccalaureate or higher degree or who are twenty-one years of age or older, who have completed two or more years of college level work, and who have demonstrated in such course work, including a written essay, the competencies set forth in (b), (c), and (d) of this subsection, shall be exempted from meeting such requirements.~~

~~(f)]~~)) *Provided,* That persons who have completed a baccalaureate or higher degree or who are twenty-one years of age or older, who have completed two or more years of college level work, and who have demonstrated in such course work, including a written essay, the competencies set forth in (b) and (c) of this subsection, shall be exempted from meeting such requirements.

(e) *Provided further,* That a candidate who does not meet one of the criteria within this subsection may be admitted on probationary status if the college or university provides individual tutorial assistance to such candidate and the candidate is required to meet the above stated criteria prior to participation in a field experience and exiting from the approved preparation program.

(3) Criteria for the selection and retention of candidates are relevant to the attainment of program outcomes and available for review by applicants, students, and faculty. These written criteria may include, but not be limited to, faculty recommendations, evidence of demonstrated competency in academic and professional work, and written recommendations from appropriate professionals in the schools.

(4) A written process exists describing the procedures for:

(a) Counseling and advising students about progress and retention in the professional preparation program.

(b) Supervision and evaluation relative to the completion of the professional preparation program.

(c) The appeal process for decisions relative to admission or retention in the professional preparation program.

(d) Providing information to candidates regarding supply and demand conditions in the candidate's field.

(e) Admission and retention of nontraditional candidates, such as midcareer candidates who wish to enter professional preparation programs, if established.

WSR 95-16-082
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-13-046.

Title of Rule: WAC 180-79-062 Approved baccalaureate degree—Definition.

Purpose: To add clarifying language to ensure consistent application of rule.

Statutory Authority for Adoption: RCW 28A.410.010.

Statute Being Implemented: RCW 28A.410.010.

Summary: This amendment will specify how many credits are needed to use an endorsement area in lieu of an approved baccalaureate degree.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Office of Superintendent of Public Instruction, Olympia, (360) 753-2298; Implementation: Larry Davis, State Board of Education, Olympia, (360) 753-6715; and Enforcement: Theodore E. Andrews, State Board of Education, Olympia, (360) 753-3222.

Name of Proponent: State Board of Education, governmental.

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

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

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will have minor or negligible economic impact.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 4, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (206) 586-2357, by September 18, 1995.

Date of Intended Adoption: September 22, 1995.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending Order 3-88, filed 2/17/88)

WAC 180-79-062 Approved baccalaureate degree—Definition. "Approved baccalaureate degree" for the purpose of this chapter means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in WAC 180-79-080. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: *Provided,* That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in WAC 180-79-080.

WSR 95-16-086
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 31, 1995, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-11-006.

Title of Rule: WAC 388-330-010 Purpose and authority and 388-330-035 Appeal of disqualification.

Purpose: Provides an appeal process for persons disqualified from employment in a child care facility because of a finding or allegation of child abuse or neglect.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

Summary: Would permit a person disqualified from employment in a child care facility because of alleged child abuse or neglect to have an adjudicative hearing.

Reasons Supporting Proposal: Such persons may have a constitutional right to a hearing.

Name of Agency Personnel Responsible for Drafting: Barry Fibel and Richard McCartan, Olympia, 753-0204; Implementation: Barry Fibel, Olympia, 753-0204; and Enforcement: Rosalyn Oreskevich, Olympia, 586-4031.

Name of Proponent: Attorney General's Office, governmental and American Civil Liberties Union, public.

Rule is necessary because of federal law, the Bill of Rights.

Explanation of Rule, its Purpose, and Anticipated Effects: Protects the civil rights of persons who are disqualified from employment in child care facilities because of a child abuse allegation. The rule would give such persons the right to an adjudicative hearing and require that the file be amended if the hearing supports the person.

Proposal Changes the Following Existing Rules: See above. Changes WAC 388-330-010 so that it is clear that the chapter pertains to CPS information as well as criminal history information.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose a cost on the child care industry, but only on small numbers of prospective employees who are disqualified because of a finding of abuse or neglect. Those persons may have to pay for legal representation if they request a hearing.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Social and Health Services is not among the departments listed in subsection (5)(a)(i) of that section which specifies to whom the section applies.

Hearing Location: OB-2 Auditorium, 1115 Washington Street S.E., Olympia, WA 98504, on September 26, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Office of Vendor Services by September 12, 1995, TDD (360) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Vendor Services, P.O. Box 45811, Olympia, WA 98504, Identify WAC Numbers, FAX (360) 586-8487, by September 19, 1995.

Date of Intended Adoption: September 28, 1995.

July 31, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3534, filed 7/13/93, effective 8/13/93)

WAC 388-330-010 Purpose and authority. This chapter establishes policy within the department of social and health services for conducting ((~~criminal history portions of~~)) background inquiries and checks of Washington state ((~~patrol's~~)) child abuse information files on those licensed or authorized by the department to care for children or developmentally disabled persons. Such inquiries are required under RCW 74.15.030.

NEW SECTION

WAC 388-330-035 Appeal of disqualification. (1) Whenever a person in good faith desires employment in an agency licensed under chapter 74.15 RCW, the person, prior to applying for employment, upon request, may receive from the department an informal meeting on whether the person is disqualified from employment for not meeting the minimum requirements pursuant to chapter 74.15 RCW or rules promulgated thereunder. If the department during employment or at the time of employment, determines that a person

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is disqualified from employment with a child care agency for not meeting minimum requirements under chapter 74.15 RCW or rules promulgated thereunder, the department shall give written notice of disqualification to the person. The notice shall state what the person is disqualified from doing, the reasons for the disqualification, and the applicable law under which the person is disqualified.

(2) The procedures in RCW 43.20A.205 shall apply whenever the department issues a notice of disqualification to a person. If the disqualified person requests an adjudicative proceeding, the department shall have the burden of proving disqualification by a preponderance of the evidence.

(3) A licensee under chapter 74.15 RCW may not allow a person disqualified under subsection (1) of this section to be employed by or associate with the licensee's agency. Disqualification of a person may not be contested by a licensee.

(4) The provisions of this section do not preclude the department from taking any action against a licensee in accordance with chapter 74.15 RCW or rules promulgated thereunder.

(5) If a notice of disqualification is based on a prior department finding of abuse or neglect, and after a fair hearing it is determined that the allegations are not supported by a preponderance of the evidence, the department's records shall be supplemented to so state.

(6) The department in accordance with WAC 388-330-030 may remove a disqualification based on conviction of a crime.

The department may remove a disqualification based on a reason other than conviction of a crime if the disqualified person demonstrates by clear, cogent, and convincing evidence that the person is sufficiently rehabilitated to warrant public trust and to comply with the requirements of chapter 74.15 RCW or the rules promulgated thereunder.

WSR 95-16-088
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed July 31, 1995, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-11-090.

Title of Rule: Chapter 308-330 WAC, Washington model traffic ordinance.

Purpose: To incorporate legislation enacted during 1995 ordinary session and first special session and making administrative corrections.

Other Identifying Information: ESHB 1820 (chapter 360), SSB 5141 (chapter 332), ESSB 5685 (chapter 256), and SB 6077 (chapter 17, 1st sp. sess.).

Statutory Authority for Adoption: RCW 45.90.010.

Statute Being Implemented: Chapters 360, 332, and 256, Laws of 1995; chapter 17, Laws of 1995 1st sp. sess.

Summary: Amendment of chapter 308-330 WAC, Model traffic ordinance updates local ordinances to incorporate traffic law legislation.

Reasons Supporting Proposal: Amendment of this WAC chapter effectively amends local government traffic ordinances and standardizes traffic enforcement.

Name of Agency Personnel Responsible for Drafting and Implementation: Jack L. Lince, 1125 Washington Street, Olympia, WA, (306) [360] 902-3773; and Enforcement: Nancy Kelly, 1125 Washington Street, Olympia, WA, (306) [360] 902-3754.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: No new sections added.

Proposal Changes the Following Existing Rules: WAC 308-330-300 amended to reference ESSB 5685 changes; WAC 308-330-305 amended to repeal RCW 46.16.710, sunset on July 1, 1993; WAC 308-330-307 amended to reference SSB 5141 changes; WAC 308-330-316 amended to reference ESHB 1820 changes; WAC 308-330-330 amended to reference ESSB 5685 changes; WAC 308-330-406 amended to reference ESHB 1820 changes; WAC 308-330-425 amended to reference SSB 5141 changes; and WAC 308-330-454 amended to correct WSR 94-01-082 drafting error.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that these rule amendments are not subject to the Regulatory Fairness Act because the rules are for the purpose of implementing the requirement of chapters of Laws of 1995 and will not impact businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Room 301, Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA, on September 8, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Jack Lince by September 6, 1995, TDD (306) [360] 664-8885.

Submit Written Comments to: Jack Lince, Department of Licensing, P.O. Box 2759, Olympia, WA 98507-2957, FAX (360) 664-0831, by September 6, 1995.

Date of Intended Adoption: September 15, 1995.

July 31, 1995
Nancy Kelly
Administrator

AMENDATORY SECTION (Amending WSR 94-23-029, filed 11/8/94, effective 12/9/94)

WAC 308-330-300 RCW sections adopted—Certificates of ownership and registrations. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle certificates of ownership and registrations as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.250, 46.12.260, 46.12.270, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, ((~~and~~)) 46.12.380, and 46.12.—(section 1, chapter 256, Laws of 1995).

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-305 RCW sections adopted—Vehicle licenses. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle licenses as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.16.010, 46.16.011, 46.16.022, 46.16.023, 46.16.025, 46.16.028, 46.16.030, 46.16.048, 46.16.088, 46.16.135, 46.16.140, 46.16.145, 46.16.170, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.316, 46.16.381, 46.16.390, 46.16.500, 46.16.505, and 46.16.595((~~, and 46.16.710~~)).

AMENDATORY SECTION (Amending WSR 94-23-029, filed 11/8/94, effective 12/9/94)

WAC 308-330-307 RCW sections adopted—Driver licenses-identicards. The following sections of the Revised Code of Washington (RCW) pertaining to driver licenses and identification cards as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.20.021, 46.20.022, 46.20.025, 46.20.027, 46.20.031, 46.20.041, 46.20.045, 46.20.190, 46.20.220, 46.20.308, ((~~46.20.309,~~)) 46.20.336, 46.20.338, 46.20.342, 46.20.343, 46.20.344, ((~~46.20.365,~~)) 46.20.391, 46.20.394, 46.20.410, 46.20.420, 46.20.430, 46.20.435, 46.20.500, 46.20.510, 46.20.550, ((~~and~~)) 46.20.750, and 46.20.—- (section 3, chapter 332, Laws of 1995).

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.400, 46.37.410, 46.37.420, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.460, 46.37.465, 46.37.467, 46,37.470, 46.37.480, 46.37.490, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, ((~~and~~)) 46.37.620, and 46.37.—- (section 1, chapter 360, Laws of 1995).

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-330 RCW sections adopted—Motor vehicle wreckers. The following section of the Revised Code of Washington (RCW) pertaining to motor vehicle wreckers as now or hereafter amended is hereby adopted by reference as a part of this chapter in all respects as though such section were set forth herein in full: RCW 46.80.010 and 46.80.060.

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-406 RCW sections adopted—Abandoned, unauthorized, and junk vehicle tow truck operators. The following sections of the Revised Code of Washington (RCW) pertaining to abandoned, unauthorized, and junk vehicle tow truck operators as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.55.010, 46.55.020, 46.55.030, 46.55.035, 46.55.037, 46.55.040, 46.55.050, 46.55.060, 46.55.063, 46.55.070, 46.55.080, 46.55.085, 46.55.090, 46.55.100, 46.55.105, 46.55.110, 46.55.113, 46.55.120, 46.55.130, 46.55.140, 46.55.150, 46.55.160, 46.55.170, 46.55.230, 46.55.240, ((~~and~~)) 46.55.910, and 46.55.—- (section 2, chapter 360, Laws of 1995).

AMENDATORY SECTION (Amending WSR 94-23-029, filed 11/8/94, effective 12/9/94)

WAC 308-330-425 RCW sections adopted—Reckless driving, vehicular homicide and assault. The following sections of the Revised Code of Washington (RCW) pertaining to reckless driving, driving while under the influence of intoxicating liquor or any drug, vehicular homicide and assault as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.500, 46.61.502, 46.61.504, 46.61.506, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.525, 46.61.527, 46.61.530, 46.61.535, 46.61.540, ((~~46.61.5051, 46.61.5052, 46.61.5053,~~)) 46.61.5054, 46.61.5057, ((~~and~~)) 46.61.5058, 46.20.309, and 46.61.— (section 5, chapter 332, Laws of 1995).

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-454 Stopping, standing, and parking of buses and taxicabs regulated. (1) The operator of a bus shall not stop, stand, or park such vehicle upon any highway at any place other than a designated bus stop. This provision shall not prevent the operator of a bus from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers or their baggage.

(2) The operator of a bus shall enter a bus stop or passenger loading zone on a highway in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not farther than eighteen inches from the curb

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and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(3) The operator of a taxicab shall not stop, stand, or park such vehicle upon any highway at any place other than in a designated taxicab stand. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping, standing, or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

WSR 95-16-101
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed July 31, 1995, 5:00 p.m.]

The Department of Social and Health Services is withdrawing proposal of WAC 388-330-010 and 388-330-035. Children, youth and family services is withdrawing WAC 388-330-010 and 388-330-035 filed under WSR 95-16-086.

If you have any questions, please call Sharon Staley, Rules Coordinator, at 902-7540.

Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-108
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed August 1, 1995, 1:41 p.m.]

Supplemental Notice to WSR 95-12-064.

Preproposal statement of inquiry was filed as WSR 94-24-015.

Title of Rule: WAC 314-16-196 Class H restaurant—Floor space requirements—Conditions for service bar only premises.

Purpose: Prescribes the floor space requirements for Class H liquor licensed premises and regulates how the space within the licensed premises may be used.

Statutory Authority for Adoption: RCW 66.08.030.

Summary: The existing rule explains how portions of licensed premises may be used, how licensees may provide liquor service in specific locations and other requirements of the Class H licensed premises. The proposal clarifies existing language and eliminates language which is considered confusing.

Reasons Supporting Proposal: The proposed language makes it easier for licensees to comply with the regulations, improves the manner in which they may maintain compliance and eliminates confusing language. The proposal also defines words frequently used and standardizes language.

Name of Agency Personnel Responsible for Drafting and Implementation: David Goyette, Assistant Director, Reg. Ser., 1025 East Union, Olympia, (360) 753-2724; and Enforcement: Gary Gilbert, Assistant Director, Enforcement Division, 1025 East Union, Olympia, (360) 586-3052.

Name of Proponent: Washington State Liquor Control Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule revises floor space requirements for Class H licensees and makes the calculations for determining compliance easier. Further, terms which may have more than a single meaning are specifically defined to eliminate the possibility for confusion or misinterpretation.

Proposal Changes the Following Existing Rules: The definitions should eliminate confusion. The clarification on floor space requirements are more carefully described and existing rule is relaxed in order to make compliance easier, yet maintain the basic concept that a Class H license is issued to a bona fide restaurant.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The intent and purpose of the proposal is to make compliance earlier, reduce confusion and generally bring the existing rule's requirements into a position to accurately reflect the current operating conditions.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Washington State Liquor Control Board is not one of the agencies identified therein.

Hearing Location: Washington State Liquor Control Board, Distribution Center, 4401 East Marginal Way South, Seattle, WA, on September 6, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact ATT TTY/TDD Relay by September 5, 1995, TDD (800) 833-6388.

Submit Written Comments to: M. Carter Mitchell, Washington State Liquor Control Board, P.O. Box 43080, Olympia, WA 98504-3080, FAX (360) 664-9689, by September 5, 1995.

Date of Intended Adoption: September 13, 1995.

August 1, 1995
Joe McGavick
Chair

AMENDATORY SECTION (Amending WSR 93-10-092, filed 5/4/93, effective 6/4/93)

WAC 314-16-196 Class H restaurant—Floor space requirements—Conditions for service bar only premises. (1) Definitions. For the purpose of this section:

(a) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(b) "Cabaret" means a dining area also used to conduct entertainment such as live music, patron dancing, comedy and floor shows.

(c) "Cocktail lounge" means that portion of a licensed premises used primarily for the preparation, sale and service of liquor. Persons under twenty-one years of age are not permitted to enter a cocktail lounge except as otherwise provided under this title.

(d) "Public service area" means those public areas where food and/or liquor is normally sold and served to the general public.

(e) "Dining room" means that area dedicated to the sale and service of food with liquor being incidental to dining. A dining area must be separate and apart from a dance floor,

entertainment stage, cocktail lounge or game area except if written permission is given by the board to use a dining area during specified times as a cabaret area.

(f) "Service bar" means any fixed or portable table, counter, cart or similar work station primarily used to prepare, mix, serve and sell liquor for pickup only, by employees and customers.

(2) Before the board shall issue a Class H license to a bona fide restaurant, the applicant shall submit, as a part of or in addition to the blueprint required by WAC 314-16-190 (2)(a), a scale drawing one-quarter inch equals one foot of the proposed premises indicating that the area designated as the primary dining room(s) comprises at least ((~~fifty-one~~)) fifteen percent of the total public service area ((~~allocated for the cocktail lounge and dining room areas, except~~)): Provided,

(a) Banquet rooms are permitted without limitations as to number or size((~~;~~)).

(b) ((~~Other customer service areas, i.e., waiting rooms, game rooms, card rooms, and bandstand/dance areas located outside the cocktail lounge shall not exceed twice the total square footage of the primary dining and cocktail lounge area combined. Written board approval is required: *Provided, however,* That the board may approve variations to the floor space requirement of this subsection where the applicant/licensee can demonstrate to the satisfaction of the board that the proposed layout would best suit the available floor space.~~

~~(2)~~)) Routine sale and service of liquor in a banquet room to the public requires written board approval.

(3) The boundary of a cocktail lounge or other restricted area shall be clearly defined as a separate and distinct area by fixed or movable barriers, including, but not limited to, railings, ropes and stanchions, shrubbery or other closely placed plantings, etc.

(a) Restricted area entrances may be no wider than ten feet.

(b) Minor prohibited signs as required by WAC 314-16-025 must be placed at all restricted area entrances and other locations as necessary.

(c) The licensee is responsible to construct and post restricted area boundaries to reasonably prevent unauthorized persons from entering such areas.

(d) Movable barriers may not be placed so as to reduce the required dining area to less than fifteen percent.

(4) In Class H premises with a cocktail lounge, any portable service bar(s) may be placed in, or moved about, public service areas other than the area(s) without need for separate board approval.

(a) Any permanently fixed service bar(s) must be included as part of original floor plans or submitted as an alterations request, requiring board approval.

(b) Customers may not be seated or allowed to consume food or liquor at the service bar(s).

(5) Class H licensees/applicants may have a service bar(s) without regard to the floor space requirements of subsection ((~~(1)~~)) (2) of this section, in lieu of a cocktail lounge on the following conditions:

(a) Location of ((~~the~~)) permanently fixed service bar(s) shall be approved, in writing, by the board.

(b) ((~~Service of liquor from such service bar(s) will be by the licensee, or licensee's employees or~~)) Customers may ((~~order and pick up their drinks~~)) not be seated or allowed to consume food or liquor at the service bar(s).

(c) Liquor sale, service and consumption may take place only during hours that the full restaurant menu is available and a chef or cook is on duty.

((~~(3)~~)) (d) A Class H licensed restaurant having a service bar(s) ((~~may with written board approval have~~)) only, is not eligible for entertainment except for the added activity of live background music. Written board approval is required.

((~~(4)~~)) (6) If the board issues a Class H license to a bona fide restaurant which has a service bar in lieu of an approved cocktail lounge and the licensee subsequently applies for approval to install a cocktail lounge, the board will process such a change in the same manner as an application for a new Class H license (i.e. notice will be posted at the premises, notice will be given to local officials, and nearby churches and schools will be notified).

(7) The board may approve variations to the floor space requirement of this subsection where the applicant/licensee can demonstrate to the satisfaction of the board that the proposed layout would best suit the available floor space.

WSR 95-16-109
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 93-16—Filed August 1, 1995, 3:17 p.m.]

Continuance of WSR 95-15-104.

Preproposal statement of inquiry was filed as WSR 94-21-040.

Title of Rule: Chapter 173-354 WAC, Used oil standards.

Purpose: To add hearing dates.

Hearing Location: September 12, 1995, at 7-9 p.m., at the Snohomish County Administrative Annex, Hearing Room, Courthouse Complex, Everett, Washington; and on September 14, 1995, at 6-8 p.m. at the Spokane Public Library, Conference Room 1B, 300 Riverside, Spokane, WA.

Assistance for Persons with Disabilities: Contact Dave Nightingale by September 5, 1995, TDD (360) 407-6006.

Submit Written Comments to: David Nightingale, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, FAX (360) 407-6102, by September 21, 1995.

Date of Intended Adoption: October 10, 1995.

August 1, 1995
Mary Riveland
Director

WSR 95-16-113
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed August 1, 1995, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-15-003.

Title of Rule: Waivers for restructuring purposes.

Purpose: Establishing new waiver policies and procedures.

Statutory Authority for Adoption: Chapter 28A.630 RCW, chapter 208, Laws of 1995.

Summary: The rule is needed to implement new waiver authority granted to the State Board of Education and the Office of Superintendent of Public Instruction pursuant to HB 1224 (chapter 208, Laws of 1995).

Reasons Supporting Proposal: Establishing new waiver policies and procedures and reduce paperwork for school districts and to streamline the waiver request process.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, 753-6715.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed new sections that are necessary to meet the requirements of chapter 208, Laws of 1995, relating to waivers to assist educational restructuring are included in the comprehensive waiver chapter. This is an effort to reduce paperwork for school districts and to streamline the waiver request process.

Proposal Changes the Following Existing Rules: The proposed amended sections of rules relating to basic education waivers have been consolidated into one comprehensive waiver chapter.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Department of Labor and Industries Auditorium, 7273 Linderson Way S.W., Olympia, WA 98501, on September 20, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Jim Rich by September 4, 1995, TDD (360) 664-3631, or (360) 753-6733.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, FAX (360) 586-2357, by September 18, 1995.

Date of Intended Adoption: September 22, 1995.

Larry Davis
Executive Director

Chapter 188-18 WAC
WAIVERS FOR RESTRUCTURING PURPOSES

[NEW SECTION]

WAC 180-18-010 Authority. The authority for this chapter is RCW 28A.305.140, RCW 28A.600.010, and HB 1224 (Chapter 208, Laws of 1995) which authorize the state board of education to adopt rules that implement and ensure compliance with the basic program of education requirements and such related requirements as may be established by the state board of education.

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

[NEW SECTION]

WAC 180-18-020 Purpose. The purpose of this chapter is to establish policies and procedures and to facilitate and support school districts in their educational improvement efforts.

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

[NEW SECTION]

WAC 180-18-030 Waivers from total program hour offerings, teacher contact hours requirements, and self study requirements. (a) A district desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for all students may apply to the state board of education for a waiver from the total program hour offerings requirements and basic skills/work skills percentages/instructional hours requirements pursuant to RCW 28A.150.200 through 28A.150.220 and subsections (2) through (6) of section WAC 180-16-200. If a school district intends to waive total program hour offerings requirements under this subsection, it shall make available to students enrolled in kindergarten at least a total instructional offering of four hundred fifty hours, and to students enrolled in grades one through twelve at least a district-wide annual average total instructional hour offering of one thousand hours. The state board of education shall grant said initial waiver requests pursuant to RCW 28A.305.140 and WAC 180-18-050 for three school years.

(b) A district desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for all students may apply to the state board of education for a waiver from the classroom teacher contact hours requirement pursuant to RCW 28A.305.140 and WAC 180-16-205(5). In the event that a district develops an educational excellence component(s) which consists of less than the twenty-five hours of average teacher contact and the district determines but for the inclusion of this component(s) that it would meet the twenty-five hour average teacher contact requirement, the district may apply for a waiver of the inclusion of this component(s) within the calculations. The state board of education shall grant said initial waiver request pursuant to RCW 28A.305.140 and WAC 180-18-050 for three school years. The state board of education recognizes the critical and legitimate need for districts to provide staff time for planning to facilitate restructuring efforts. The Board also recognizes the critical nature of the student-teacher relationship to the learning process. It is the position of the state board of education that districts, in considering applying for a waiver under this subsection, very carefully balance the need to provide staff planning time, and the need for student-teacher contact time to support the opportunity for optimum student academic performance. The board strongly encourages districts to consider other means to provide planning time for staff.

(c) A district desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for all students may apply to the state board of education for a waiver from the self study requirements pursuant to RCW 28A.305.140 and WAC 180-

53-070 (1)(3). The state board of education shall grant said initial waiver requests pursuant to RCW 28A.305.140 and WAC 180-18-050 for three school years.

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

[NEW SECTION]

WAC 180-18-040 Waivers from minimum one hundred eighty day school year requirement and student-to-teacher ratio requirement. (a) A district desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(b) A district desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which require the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

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

[NEW SECTION]

WAC 180-18-050 Local restructuring plan requirements to obtain waiver. (a) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur at a state board meeting prior to implementation. A district's waiver application shall be in the form of a resolution adopted by the district board of directors which includes a request for the waive and a plan for restructuring the educational program of one or more schools which consists of at least the following information:

(I) Identification of the requirements to be waived;

(ii) Specific standards for increased student learning that the district expects to achieve;

(iii) How the district plans to achieve the higher standards, including timelines for implementation;

(iv) How the district plans to determine if the higher standards are met;

(v) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and

(vi) Evidence that opportunities were provided for parents and citizens to be involved in the development of the plan.

(b) The application for a waiver and all supporting documentation must be received by the state board of education at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

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

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

[NEW SECTION]

WAC 180-18-060 Waiver renewal procedure. (a) Waiver requests related to WAC 180-18-030 which are granted by the state board of education pursuant to WAC 180-18-030 and 180-18-050 shall be renewed every three years upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the waivers. The request to the state board of education shall include information regarding the activities and programs implemented as a result of the waivers, whether higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.

(b) Waiver requests related to WAC 180-18-040 which are granted by the state board of education pursuant to WAC 180-18-030 and 180-18-050 may be renewed every three years upon the state board of education receiving a renewal request form the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the waivers. The request to the state board of education shall include information regarding the activities and programs implemented as a result of the waivers, whether higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.

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

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

[NEW SECTION]

WAC 180-18-080 Alternative waiver application procedure. In lieu of the waiver application procedures under WAC 180-18-030, 180-18-040, and 180-18-050, a school district may request the waivers listed in WAC 180-

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18-030 and 180-18-040 through the Application for Entitlement to Basic Education Funding, Form SPI M-808.

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

AMENDATORY SECTION (Amending Order 5-94, filed 1/19/94, effective 2/19/94)

PROPOSED

WAC 180-16-200 Total program hour offering—Basic skills and work skills requirements—Waiver. (1) **Total program hour offering—Definition.**

(a) Each school district shall make available to students enrolled at least a total program hour offering as set forth in subsections (2) through (6) of this section. For the purpose of this section, "total program hour offering" shall mean those hours of sixty minutes each, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the district for purposes of discussing students' educational needs or progress—exclusive of time actually spent for eating lunchtime meals—when students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district.

For special education/handicapped programs operating in separate facilities in a school district, do not exclude the time actually spent for eating lunchtime meals if that time is specifically identified and utilized as instructional meal training for each student in the program.

(b) Adjustments of program hour offerings between grade level groupings. Any school district may petition the state board of education for a reduction in the total program hour offering requirements for one or more of the grade level groupings specified in subsections (2) through (6) of this section. The state board of education shall grant all such petitions that are accompanied by an assurance that the minimum total program hour offering requirements in one or more other grade level groupings will be exceeded concurrently by no less than the number of hours of the reduction.

(c) Each school district shall make available to students enrolled at least an instructional hour offering as set forth in subsections (3) through (6) of this section. For the purpose of this section, "instructional hour offering" shall mean those hours of sixty minutes each—exclusive of recess time, passing time, total lunch intermission time, and nonaccountable release time on early dismissal days—when students are provided the opportunity to engage in the basic skills and/or work skills offered by and under the direction of school district staff, as directed by the administration and board of directors of the district.

(d) A school district has "provided the opportunity to engage in" the basic skills and work skills activities required by this section when the district actually conducts basic skills and work skills instruction for students. If a district is not actually conducting the percentage(s) of basic skills and/or work skills required by this section, such district nevertheless shall be deemed to be in compliance with such requirements if such district's instructional time offered to students in basic skills and work skills instruction equals or exceeds the minimum instructional hour requirements in each grade level grouping as specified in subsections (3) through (6) of this section. A school district that makes a reasonable and good faith effort through the first day of the school term to provide students the opportunity to take the section(s) or course(s) necessary to comply with the basic skills and work skills percentages, as specified in subsections (3) through (6) of this section and no student enrolled in such section(s) or course(s), may count that section(s) or course(s) toward the total basic skills and work skills percentages offered to students that term. Each of the basic skills areas specified in subsections (2) through (6) of this section for a particular grade level grouping must be offered each school year to students at one or more of the grade levels within the particular grade level grouping. Instruction in at least one of the following work skills must be offered each school year to students at one or more of the grade levels within each of the grade level groupings specified in subsections (5) and (6) of this section: Industrial arts, home and family life education, business and office education, distributive education, agricultural education, health occupations education, vocational education, trade and industrial education, technical education and career education.

(e) Five percent variation—Basic skills and work skills requirements. A school district may establish minimum course mix percentages that deviate within any grade level grouping by up to five percentage points above or below the minimums established by subsections (3) through (6) of this section, provided the total program hour offering requirement for the grade level grouping is met.

(2) **Kindergarten.** Each school district shall make available to students in kindergarten at least a total program offering of four hundred fifty hours each school year. The program shall include reading, arithmetic, language skills and such other subjects and activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such program.

(3) **Grades 1 through 3.** Each school district shall make available to students in grades one through three at least a total program hour offering of two thousand seven hundred hours each school year. A minimum of ninety-five percent (ninety percent with the five percent variation included, or 2,430 instructional hours) of such total program hour offerings shall be in the instruction of the basic skills areas of reading/language arts (which may include a language other than English), mathematics, social studies, science, music, art, health and physical education. The remaining five percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades.

(4) **Grades 4 through 6.** Each school district shall make available to students in grades four through six at least a total program offering of two thousand nine hundred seventy hours each school year. A minimum of ninety percent (eighty-five percent with the five percent variation included, or 2,524.5 instructional hours) of such total program hour offerings shall be in the instruction of the basic skills areas of reading/language arts (which may include a language other than English), mathematics, social studies, science, music, art, health and physical education. The remaining ten percent of the total program hour offerings may include such subjects and activities as the school

district shall determine to be appropriate for the education of the school district's students in such grades.

(5) **Grades 7 through 8.** Each school district shall make available to students in grades seven through eight at least a total program hour offering of one thousand nine hundred eighty hours each school year. A minimum of eighty-five percent (eighty percent with the five percent variation included, or 1,584 instructional hours) of such total program hour offerings shall be in the instruction of the basic skills areas of reading/language arts (which may include a language other than English), mathematics, social studies, science, music, art, health and physical education. A minimum of ten percent (five percent with the five percent variation included, or 99 instructional hours) of the total program offerings shall be in the instruction of work skills. The remaining five percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades.

(6) **Grades 9 through 12.**

(a) Each school district shall make available to students in grades nine through twelve at least a total program hour offering of four thousand three hundred twenty hours each school year. A minimum of sixty percent (fifty-five percent with the five percent variation included, or 2,376 instructional hours) of such total program hour offerings shall be in the instruction of the basic skills areas of language arts, a language other than English, mathematics, social studies, science, music, art, health and physical education. A minimum of twenty percent (fifteen percent with the five percent variation included, or 648 instructional hours) of the total program hour offerings shall be in the instruction of work skills. The remainder of the total program hour offerings may include traffic safety or such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades: *Provided,* That, whether or not the five percent deviations in course mix percentages allowed by subsection (2)(d) of this section are applied, not less than four hundred and thirty-two instructional hours *(i.e.,* ten percent of the total program hour requirement) of such remaining instructional hours shall consist of basic skills and/or work skills: *Provided,* That any program hours and/or instructional hours not achieved due to the implementation of WAC 180-16-215(4) relating to students graduating from high school, shall not be deducted from the total program hours calculated.

(b) Grade nine option. Each school district shall have the option of including grade nine within the program hour offering requirements of grades seven and eight so long as such requirements for grades seven through nine are increased to two thousand nine hundred seventy hours and such requirements for grades ten through twelve are decreased to three thousand two hundred forty hours. Each school district shall state which option is in use when providing compliance documentation to the superintendent of public instruction.

(7) **Basis and means for determining compliance with basic skills and work skills percentage requirements.**

(a) Each school district shall adopt a written policy and procedure for establishing the basis and means for determining and monitoring compliance with the basic skills and work skills percentages, the course requirements and instructional hour minimums as established by this section. Written documentation of such annual determinations and monitoring activities shall be maintained on file by each school district.

(b) Handicapped education programs, vocational-technical institute programs, state institution, state residential school programs and alternative education programs where students are provided access to the basic skills/work skills offered in the regular program, all of which programs are conducted for the common school age, kindergarten through secondary school program students encompassed by this section, shall be exempt from the basic skills and work skills percentage and course requirements of this section in order that the unique needs, abilities or limitations of such students may be met.

(8) **Waiver option, application and renewal procedures.** See WAC 180-18-050 for waiver process.

~~(((a) A district, desiring to implement a local plan to provide an effective educational system to enhance the educational program for all students, may apply for a waiver from the provisions of subsections (2) through (6) of this section, pertaining to the total program hour offerings requirement and the basic skills/work skills percentages/ instructional hours requirement. The state board of education shall grant said waiver. Approval of district waivers shall occur at a state board of education meeting prior to implementation. A district's application for a waiver shall be in the form of a resolution adopted by the district board of directors which includes a request for the waiver, and a plan for restructuring the educational program of one or more schools consisting of at least the following information:~~

~~(i) Identification of the requirements to be waived;~~

~~(ii) Specific standards for increased student learning that the district expects to achieve;~~

~~(iii) How the district plans to achieve the higher standards, including timelines for implementation;~~

~~(iv) How the district plans to determine if the higher standards are met;~~

~~(v) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and~~

~~(vi) Evidence that opportunities were provided for parents and citizens to be involved in the development of the plan.~~

~~(b) Application procedure.~~

~~The application for a waiver and all supporting documentation must be received by the superintendent of public instruction at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The superintendent of public instruction shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.~~

~~(c) Renewal procedure.~~

~~Waivers granted by the state board of education under this section shall be renewed every three years upon the state board of education receiving a renewal request from the school district board of directors. The school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the~~

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~~waivers before filing the request. The request to the state board of education shall include information regarding the activities and programs implemented as a result of the waivers, whether higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.~~

~~(d) Minimum instructional hour offerings. If a school district intends to waive total program hour offerings requirements under this subsection, it shall make available to students enrolled in kindergarten at least a total instructional offering of four hundred fifty hours, and to students enrolled in grades one through twelve at least a district wide annual average total instructional hour offering of one thousand hours.~~))

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AMENDATORY SECTION (Amending WSR 92-17-053, filed 8/17/92, effective 9/17/92)

WAC 180-16-205 Classroom teacher contact hours requirement—Waiver. (1) **Contact hours requirement—Definition.** The average annual classroom contact hours for each average annual full-time equivalent certificated classroom teacher employed by a school district shall be no less than twenty-five hours per week. For the purpose of this section "classroom contact hours" shall mean those hours a certificated classroom teacher is instructing students in a classroom, exclusive of such time as the teacher spends for preparation, conferences, administrative duties, and any other nonclassroom instruction duties.

(2) **Classroom—Definition.** For the purpose of this section, "classroom" shall mean those areas or spaces within or without a building, on or off a school campus, that are utilized by a certificated classroom teacher and his/her students for the conduct of planned instructional activities.

(3) **Computation of FTE teachers.** For the purpose of this section the "average annual full-time equivalent classroom teachers" of a school district shall be the sum of full-time and part-time teachers computed as follows:

(a) **Full-time teachers.** Each employee who is employed full time for the regular instructional year exclusive of summer school, and who is assigned solely classroom instructional and related duties (e.g., planning periods, parent/teacher conferences, before and after school supervision of students, etc.) pursuant to his/her basic contract shall be counted as one full-time equivalent classroom teacher regardless of his/her actual teaching load. No such employee shall be counted as more than one full-time equivalent classroom teacher: *Provided,* That in the case of full-time employees of a school district that conducts a year round regular school program who are employed for a term in excess of the equivalent of the regular instructional year for individual students, such excess term of employment shall be counted as a portion of an additional full-time equivalent classroom teacher.

(b) **Part-time teachers.** Each part-time employee who is assigned classroom instructional duties solely or in part, and each full-time employee who is assigned both classroom instructional duties and nonclassroom related duties (e.g., administrative duties, extracurricular instructional or supervisory duties, etc.) pursuant to his/her basic contract, shall be counted as a fractional full-time equivalent classroom teacher based upon the percentage of time he or she performs duties equivalent to the duties performed by a full-time employee who is assigned solely classroom instructional duties and related duties (e.g., planning periods, parent/teacher conferences, before and after school supervision of students, etc.) pursuant to his/her basic contract.

(4) **Computation of annual average classroom contact hour requirement.** A school district's compliance with the average annual contact requirement shall be based upon teachers' normally assigned weekly instructional schedules, as assigned by the district administration. Additional recordkeeping by classroom teachers as a means of accounting for contact hours shall not be required.

(a) For each teacher, count the actual number of minutes during the school week when the teacher has regularly scheduled responsibilities for the instruction of students. Teacher instructional contact time for the purposes of this requirement shall be that time between the start of the first regularly scheduled class and the end of the last regularly scheduled class including actual minutes scheduled in all regular classes, laboratories, study halls and the supervision of extended classrooms, work experience, outdoor education and other such programs.

(b) Time spent for lunch intermissions, class changes, recesses, planning/preparation, staff meetings, home visits, conferences, supervision of students in noninstructional activities (lunch duty, playground duty, hall duty, sports programs, student clubs and other activities not requiring student attendance or required for credit), and for specialist teachers (librarian, subject-matter specialist) when the teacher is free from instructional purposes (i.e., released from classroom responsibilities) shall not be countable time for the purpose of computing the teacher's instructional contact. This time is considered valuable and is covered under (e) of this subsection.

(c) The number of average annual full-time equivalent classroom teachers employed by a school district and computed pursuant to subsection (3) of this section shall be divided into the total number of actual contact minutes within a normally scheduled instructional week, pursuant to (a) and (b) of this subsection, that such average annual full-time equivalent classroom teachers are scheduled to be in contact with and instructing students in a classroom (including those hours which would have been accrued but for the implementation of WAC 180-16-215(4) relating to students graduating from high school).

(d) The quotient received by dividing the total number of actual contact minutes per week, for all average annual full-time equivalent classroom teachers in the school district by the number of average annual full-time equivalent classroom teachers shall be called the net average contact minutes per week for the average annual full-time equivalent certificated classroom teacher in the school district.

(e) At the discretion of each school district board of directors, up to two hundred minutes per average annual full-time equivalent classroom teacher for every five school days scheduled for the regular instructional year may be added to the net average contact minutes per week to accommodate for time spent in authorized parent-guardian/teacher conferences, recess, passing time between classes and informal instructional activity.

(f) The quotient received by dividing the net average contact minutes, per week, including up to two hundred

minutes to accommodate for time spent in authorized parent-guardian/teacher conferences, recess, passing time between classes and informal instructional activity, by sixty shall be the school district's *average annual direct classroom contact hours* per week for the average annual full-time equivalent certificated classroom teacher in the school district.

(g) The average annual classroom contact hours per week shall not be less than twenty-five hours per week.

(5) **Waiver option, application and renewal procedures.** See WAC 180-18-050 for waiver process.

~~(((a) In the event that a district develops an educational excellence component(s) which consists of less than the twenty-five hours of average teacher contact and the district determines, but for the inclusion of this component(s), that it would meet the twenty-five hour average teacher contact requirement, the district may apply for a waiver of the inclusion of this component(s) within the calculations. The state board of education shall grant said waiver. Approval of district waivers shall occur at a state board of education meeting prior to implementation. A district's application for a waiver shall be in the form of a resolution adopted by the district board of directors which includes a request for the waiver, and a plan for restructuring the educational program of one or more schools consisting of at least the following information:~~

~~(i) Identification of the requirement to be waived;~~

~~(ii) Specific standards for increased student learning expected to be achieved;~~

~~(iii) How the district plans to achieve the higher standards, including timelines for implementation;~~

~~(iv) How the district plans to determine if the higher standards are met;~~

~~(v) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and~~

~~(vi) Evidence that opportunities were provided for parents and citizens to be involved in the development of the plan.~~

~~(b) Application procedure.~~

~~The application for a waiver and all supporting documentation must be received by the superintendent of public instruction at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The superintendent of public instruction shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.~~

~~(c) Renewal procedures.~~

~~Waivers granted by the state board of education under this section shall be renewed every three years upon the state board of education receiving a renewal request from the school district board of directors. The school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the waivers before filing the request. The request to the state board of education shall include information regarding the activities and programs implemented as a result of the waivers, whether higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.~~)))

AMENDATORY SECTION (Amending Order 24-88, filed 12/14/88)

WAC 180-16-210 Kindergarten through grade three students to classroom teacher ratio requirement. The ratio of the FTE students enrolled in a school district in kindergarten through grade three to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. For the purpose of this section "classroom teacher" shall mean any instructional employee who possesses a valid teaching certificate or permit issued by the superintendent of public instruction, but not necessarily employed as a certificated employee, and whose "primary" duty is the daily educational instruction of students.

Computation of ratios. The FTE student to FTE classroom teacher ratios shall be computed as follows:

(1) For the purpose of this section exclude that portion of the time teachers and students participate in vocational approved programs, traffic safety and special education programs from the above computations (i.e., programs hereby deemed to be "special programs").

(2) Exclude preparation and planning times from the computations for all FTE classroom teachers.

(3) Include in the above computations only the time certificated employees are actually instructing students on a regularly scheduled basis.

(4) Calculations:

(a) The kindergarten FTE October enrollment plus the October FTE enrollment in grades 1-3 divided by the FTE classroom teachers whose "primary" duty is the daily instruction of pupils in grades K through 3.

(b) The October FTE enrollment in grades 4 and above divided by the FTE classroom teachers whose "primary" duty is the daily instruction of pupils in grades 4 and above: *Provided,* That any district with three hundred or fewer FTE students in grades K-3 and an average K-3 classroom ratio of twenty-five or fewer FTE classroom students to one FTE classroom teacher shall be exempt from the FTE students to FTE classroom teachers ratio requirement of this subsection.

(5) **Waiver option, application and renewal procedures.** See WAC 180-18-050 for waiver process.

AMENDATORY SECTION (Amending Order 10-79, filed 9/12/79)

WAC 180-16-215 Minimum one hundred eighty school day year. (1)(a) **One hundred eighty school day requirement.** Each school district shall conduct no less than a one hundred eighty school day program each school year in such grades as are conducted by such school district, and one hundred eighty half-days of instruction, or the equivalent, in kindergarten. If a school district schedules a kindergarten program other than one hundred eighty half-days, the district shall attach an explanation of its kindergarten schedule when providing compliance documentation to the superintendent of public instruction.

(b) **Waiver option, application and renewal procedures.** See WAC 180-18-050 for waiver process.

(2) **School day defined.** A school day shall mean each day of the school year on which pupils enrolled in the common schools of a school district are engaged in educational activity planned by and under the direction of the

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school district staff, as directed by the administration and board of directors of the district.

(3) **Accessibility of program.** Each school district's program shall be accessible to all legally eligible students, including handicapped students, who are five years of age and under twenty-one years of age who have not completed high school graduation requirements.

(4) **Five-day flexibility - Students graduating from high school.** A school district may schedule the last five school days of the one hundred eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student.

AMENDATORY SECTION (Amending WSR 92-17-053, filed 8/17/92, effective 9/17/92)

WAC 180-53-070 Waiver ((~~for restructuring~~)) option, application and renewal procedures. ((~~(1) A district desiring to implement a restructuring plan may apply for a waiver from the self study requirements of this chapter. The state board of education shall grant said waiver. Approval of district waivers shall occur at a state board of education meeting prior to implementation. A district's application for a waiver shall be in the form of a resolution adopted by the district board of directors which includes a request for the waiver, and a plan for restructuring the educational program of one or more schools consisting of at least the following information:~~

~~(a) Identification of the requirement to be waived;~~

~~(b) Specific standards for increased student learning expected to be achieved;~~

~~(c) How the district plans to achieve the higher standards, including timelines for implementation;~~

~~(d) How the district plans to determine if the higher standards are met;~~

~~(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and~~

~~(f) Evidence that opportunities were provided for parents and citizens to be involved in the development of the plan.~~

~~(2) Application procedure. The application for a waiver and all supporting documentation must be received by the superintendent of public instruction at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The superintendent of public instruction shall review all applications and supporting documentation. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.~~

~~(3) Renewal procedure. Waivers granted by the state board of education under this section shall be renewed every three years upon the state board of education receiving a renewal request from the school district board of directors. The school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the waivers before filing the request. The request to the state board of education for renewal shall include information regarding the activities and programs implemented as a result of the waivers, whether the higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.~~))

See WAC 180-18-050 for waiver process.

WSR 95-16-117
PROPOSED RULES
LOTTERY COMMISSION
[Filed August 2, 1995, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-16-020.

Title of Rule: WAC 315-11A-149 Instant Game Number 149 (Lucky 7s), 315-11A-150 Instant Game Number 150 (Cold Cash), 315-11A-151 Instant Game Number 151 (Washington Green), and 315-11A-152 Instant Game Number 152 ($2 High Roller).

Purpose: To establish the game play rules and criteria for determining winners of Instant Game Nos. 149 ("Lucky 7s"), 150 ("Cold Cash"), 151 ("Washington Green"), and 152 ("$2 High Roller").

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See Purpose above.

Reasons Supporting Proposal: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Jeff Burkhardt, Rules Coordinator, Olympia, 586-6583; Implementation and Enforcement: Evelyn P. Yenson, Director, Olympia, 753-3330.

Name of Proponent: Washington State Lottery Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 315-11A-149, 315-11A-150, 315-11A-151, and 315-11A-152, for each game, certain terms must be defined in order to provide consistency in the game play rules. The play criteria will explain how the game functions to licensed retailers and players. Rigid validation requirements are set forth which will prevent the lottery or its retailers from paying out prize money on invalid tickets.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The lottery has considered whether these rules are subject to the Regulatory Fairness Act, chapter 19.85 RCW, and has determined that they are not for the following reasons: (1) The rules have no economic impact on business' cost of equipment, supplies, labor or administrative costs. The rules are designed to establish rules and procedures for the playing of instant lottery games; and (2) the rules will have a negligible impact, if any, on business because they are interpretive. They have been promulgated for the purpose of stating policy, procedure and practice and do not include requirements for forms, fees, appearances or other actions by business.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Said section does not apply to these proposed rules because they are not proposed by one of the

listed agencies. As the rules are merely interpretive, the lottery does not voluntarily apply this section.

Hearing Location: Washington State Lottery, 9 South Fifth Avenue, Yakima, WA 98902-3432, on September 8, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Jeff Burkhardt by August 29, 1995, (360) 586-6583.

Submit Written Comments to: Jeff Burkhardt, Lottery, FAX (360) 586-6586, by September 7, 1995.

Date of Intended Adoption: September 8, 1995.

August 1, 1995
James S. Hattori
Chair

NEW SECTION

WAC 315-11A-149 Instant Game Number 149 ("Lucky 7s"). (1) **Definitions for Instant Game Number 149.**

(a) Play symbols: The "play symbols" are listed below in (b) of this subsection. One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning card."

(b) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out, in full or abbreviated form, of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 149, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION
2	TWO
3	THREE
4	FOUR
5	FIVE
6	SIX
7	SEVEN
8	EIGHT
9	NINE
10	TEN

(c) Prize symbols: The following are the "prize symbols": "$1.00," "$2.00," "$3.00," "$4.00," "$5.00," "$6.00," "$7.00," "$10.00," "$20.00," "$25.00," and "$7,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning card."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 149, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
$ 1.00	ONE DOL
$ 2.00	TWO DOL
$ 3.00	THR DOL
$ 4.00	FOR DOL
$ 5.00	FIV DOL
$ 6.00	SIX DOL
$ 7.00	SVN DOL
$ 10.00	TEN DOL
$ 20.00	TWY DOL
$ 25.00	TWF DOL
$ 7,000	SVNTHOU

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 14900001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 149 constitute the "pack number" which starts at 14900001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of $600.00 or less. For Instant Game Number 149, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE	
ONE	$ 1.00	
THR	$ 3.00	($1, $1 AND $1; $2 AND $1; $3)
SVN	$ 7.00	($4, $1, $1 AND $1; $3, $3 AND $1; $2, $2, $2 AND $1)
FRN	$ 14.00	($6, $6, $1 AND $1; $5, $5, $2 AND $2)
TTN	$ 21.00	($10, $7, $2 AND $2)
SVY	$ 70.00	($25, $25 AND $20)

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) **Criteria for Instant Game Number 149.**

(a) The price of each instant game ticket shall be $1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly the play symbol labeled "winning card," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) In Instant Game Number 149, the " 7 " play symbol with the caption "SEVEN" shall always be a winning play symbol, and the bearer of a ticket which has a " 7 " play symbol with the caption "SEVEN" shall be entitled to the prize shown below the " 7 " play symbol.

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(iii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 149 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 149; and/or

(ii) Vary the number of tickets sold in Instant Game Number 149 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) **Ticket validation requirements for Instant Game Number 149.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 149 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning card" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11A-150 Instant Game Number 150 ("Cold Cash"). (1) Definitions for Instant Game Number 150.

(a) Play symbols: The "play symbols" are listed below in (b) of this subsection. One of these play symbols appears in each of the six play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the six play spots shall be labeled "winning number."

(b) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out, in full or abbreviated form, of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 150, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
12	TLV
	COI

(c) Prize symbols: The following are the "prize symbols": "$1.00," "$2.00," "$3.00," "$4.00," "$6.00," "$7.00," "$10.00," "$20.00," "$50.00," and "$2,500." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning number."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 150, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
$ 1.00	ONE DOL
$ 2.00	TWO DOL
$ 3.00	THR DOL
$ 4.00	FOR DOL
$ 6.00	SIX DOL
$ 7.00	SVN DOL
$ 10.00	TEN DOL
$ 20.00	TWY DOL
$ 50.00	FTY DOL
$ 2,500	TWFHUND

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 15000001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 150 constitute the "pack number" which starts at 15000001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of $600.00 or less. For Instant Game Number 150, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE	
ONE	$ 1.00	
TWO	$ 2.00	($1 AND $1; $2)
FOR	$ 4.00	($1, $1, $1 AND $1)
EGT	$ 8.00	($2, $2, $2 AND $2; $3, $2, $1, $1 AND $1)
EGN	$ 18.00	($4, $4, $4, $3 AND $3; $7, $6, $3, $1 AND $1)
TTF	$ 24.00	($10, $10, $2, $1 AND $1)
OHN	$ 100.00	($20, $20, $20, $20 AND $20; $50 AND $50)

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) **Criteria for Instant Game Number 150.**

(a) The price of each instant game ticket shall be $1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the five play symbols matches exactly the play symbol labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) In Instant Game Number 150, the " " play symbol with the caption "COI" shall always be a winning play symbol, and the bearer of a ticket which has a " " play symbol with the caption "COI" shall be entitled to the prize shown below the " " play symbol.

(iii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 150 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 150; and/or

(ii) Vary the number of tickets sold in Instant Game Number 150 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) **Ticket validation requirements for Instant Game Number 150.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 150 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the six play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11A-151 Instant Game Number 151 ("Washington Green"). (1) Definitions for Instant Game Number 151.

(a) Play symbols: The "play symbols" are listed below in (b) of this subsection. One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning symbol."

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(b) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out, in full or abbreviated form, of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 151, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION
	TREE
	ONIO
	UMBR
	APPL
	CORN
	MNTN
	CHRY
	FISH
	BOAT

(c) Prize symbols: The following are the "prize symbols": "$1.00," "$2.00," "$3.00," "$4.00," "$5.00," "$6.00," "$10.00," "$20.00," "$30.00," "$45.00," and "$3,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbol labeled "winning symbol."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 151, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
$ 1.00	ONE DOL
$ 2.00	TWO DOL
$ 3.00	THR DOL
$ 4.00	FOR DOL
$ 5.00	FIV DOL
$ 6.00	SIX DOL
$ 10.00	TEN DOL
$ 20.00	TWY DOL
$ 30.00	$THIRTY
$ 45.00	FORTYFV
$ 3,000	THRTHOU

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 15100001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 151 constitute the "pack number" which starts at 15100001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of $600.00 or less. For Instant Game Number 151, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE	
ONE	$ 1.00	
TWO	$ 2.00	($1 AND $1; $2)
THR	$ 3.00	($1, $1 AND $1)
SIX	$ 6.00	($3, $1, $1 AND $1; $4, $1 AND $1)
TLV	$ 12.00	($3, $3, $3 AND $3; $5, $5 AND $2)
TRY	$ 30.00	($10, $10, $6 AND $4)
NTY	$ 90.00	($30, $30, $20 AND $10; $45 AND $45)

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) **Criteria for Instant Game Number 151.**

(a) The price of each instant game ticket shall be $1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the four play symbols matches exactly the play symbol labeled "winning symbol," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 151 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 151; and/or

(ii) Vary the number of tickets sold in Instant Game Number 151 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) **Ticket validation requirements for Instant Game Number 151.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 151 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning symbol" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11A-152 Instant Game Number 152 ("$2 High Roller"). (1) Definitions for Instant Game Number 152.

(a) Play symbols: The "play symbols" are listed below in (b) of this subsection. Two playfields shall appear on the front of each ticket and shall be covered by latex. Each playfield shall contain six play spots. One play symbol shall appear in each of the play spots. One of the play spots in each of the two playfields shall be labeled "winning score." The five other play spots in each play field shall be the player's "scores" or "rolls," one each labeled "1st Roll," "2nd Roll," "3rd Roll," "4th Roll," and "5th Roll."

(b) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out, in full or abbreviated form, of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 152, the captions which correspond with and verify the play symbols are:

PLAY SYMBOL	CAPTION
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV

(c) Prize symbols: The following are the "prize symbols": "$1.00," "$2.00," "$3.00," "$4.00," "$5.00," "$6.00," "$10.00," "$20.00," "$25.00," and "$6,000." One of these prize symbols appears below each of the play symbol captions, except that no prize symbol appears below the caption of the play symbols labeled "winning score."

(d) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 152, the prize symbol captions which correspond with and verify the prize symbols are:

PRIZE SYMBOL	CAPTION
$ 1.00	ONE DOL
$ 2.00	TWO DOL
$ 3.00	THR DOL
$ 4.00	FOR DOL
$ 5.00	FIV DOL
$ 6.00	SIX DOL
$ 10.00	TEN DOL
$ 20.00	TWY DOL
$ 25.00	TWF DOL
$ 6,000	SIXTHOU

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered by latex.

(f) Pack-ticket number: The twelve-digit number of the form 15200001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 152 constitute the "pack number" which starts at 15200001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of $600.00 or less. For Instant Game Number 152, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE	PRIZE	
TWO	$ 2.00	($1 AND $1)
FIV	$ 5.00	($2, $2 AND $1; $4 AND $1)
TEN	$ 10.00	($1, $1, $1, $1, $1, $1, $1, $1, $1 AND $1; $3, $3, $1, $1, $1 AND $1)
TWY	$ 20.00	($2, $2, $2, $2, $2, $2, $2, $2, $2 AND

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		$2; $5, $5, $2, $2, $1, $1, $1, $1, $1 AND $1)
FTY	$ 50.00	($5, $5, $5, $5, $5, $5, $5, $5, $5 AND $5; $10, $10, $10, $6, $6, $6, $1 AND $1)
OHN	$ 100.00	($20, $20, $20, $20 AND $20; $25, $25, $25 AND $25)

(h) Pack: A set of one hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) **Criteria for Instant Game Number 152.**

(a) The price of each instant game ticket shall be $2.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(i) When any of the five player's rolls within a playfield matches exactly the play symbol within that same playfield labeled "winning score," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(ii) In Instant Game Number 152, the "7" play symbol with the caption "SVN" and the "11" play symbol with the caption "ELV" shall always be winning play symbols, and the bearer of a ticket which has a "7" play symbol with the caption "SVN" and/or an "11" play symbol with the caption "ELV" shall be entitled to the prize shown below the "7" and/or "11" play symbol.

(iii) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(c) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(d) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 152 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(e) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 152; and/or

(ii) Vary the number of tickets sold in Instant Game Number 152 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) **Ticket validation requirements for Instant Game Number 152.**

(a) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 152 all of the following validation requirements apply:

(i) Exactly one play symbol must appear in each of the twelve play spots on the front of the ticket.

(ii) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(iii) Each of the play symbol captions, except for the "winning score" play symbol captions, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(iv) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(v) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(vi) Each of the play symbols and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section.

(vii) Each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and in (a) of this subsection is invalid and ineligible for any prize.

WSR 95-16-118
PROPOSED RULES
STATE TOXICOLOGIST
[Filed August 2, 1995, 9:36 a.m.]

Original Notice.

Title of Rule: Administration of breath test program.

Purpose: Provide information regarding changes in administration and interpretation in breath alcohol testing program.

Statutory Authority for Adoption: RCW 46.61.506.

Statute Being Implemented: RCW 46.61.506.

Summary: Program enhancements to increase efficiency and provide greater information regarding administration of test.

Name of Agency Personnel Responsible for Drafting and Implementation: Dr. Barry Logan, Seattle, (206) 343-5435; and Enforcement: Dr. Barry Logan and Sgt. Rod Gullberg, Seattle, (206) 343-5435 and (206) 720-3018.

Name of Proponent: State Toxicologist, Dr. Barry Logan, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Introduction of new definitions; invalidation of tests showing presence of interference; description of calculation of acceptable limits for test; use of lower of two test results as presumed breath alcohol level for legal purposes; clarification of definition of external standard; clarification of policy on software approval; clarification of definition of technician, and additional responsibilities; new address for correspondence.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules affect only administration of breath test program carried out by Washington State Patrol.

Hearing Location: State Toxicology Lab, 2203 Airport Way South, Suite 360, Seattle, WA 98134-2027, on September 5, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Linda Collins by August 25, 1995, TDD (206) 343-5435.

Submit Written Comments to: State Toxicologist, FAX (206) 287-8564, by August 25, 1995.

Date of Intended Adoption: September 5, 1995.

August 2, 1995
Barry Logan
State Toxicologist

AMENDATORY SECTION (Amending WSR 91-21-040, filed 10/11/91, effective 11/11/91)

WAC 448-13-020 Approval of breath test instruments. Pursuant to RCW 46.61.506, the ((~~BAC Verifier~~)) DataMaster is the only ((~~infrared~~)) breath test instrument approved by the state toxicologist as a device for the measurement of alcohol in a person's breath. A simulator filled with a certified simulator solution will be attached to each instrument to provide a known external standard as defined in WAC 448-13-030(13). The simulator used must be on the National Highway Traffic Safety Administration (NHTSA) conforming products list. Any agency, group, or individual seeking approval or certification from the state toxicologist for the use of other breath test instruments for evidential breath testing programs in the state of Washington should contact the state toxicologist at the address given in WAC 448-13-210.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-030 Definitions. (1) "Accuracy" means the proximity of a measured value to a reference value.

(2) "Alcohol" means the unique chemical compound ethyl alcohol.

(3) "Blank test" means the testing of a DataMaster instrument to ensure that no alcohol from a previous test can interfere with a person's breath test.

(4) "Breath alcohol analysis" means analysis of a sample of a person's expired breath, using a breath testing instrument designed for this purpose, which instrument is approved by the state toxicologist, in order to determine the alcohol concentration in that breath sample.

(5) "Breath test document" means the form which is printed by the ((~~BAC Verifier~~)) DataMaster on the completion of a breath alcohol test.

(6) "Calibration" means the process of standardizing the DataMaster using a certified simulator solution to allow by proportion, the measurement of the alcohol concentration of a person's breath. Calibration will be performed periodically as required and at least once a year during quality assurance.

(7) "Certified" when used in conjunction with breath test personnel means an operator, instructor, solution changer or technician possessing a valid permit.

(8) "Certified simulator solution" means an alcohol/water solution prepared and tested by an approved protocol, and meeting the criteria specified therein.

(9) "Certified test" means a test conducted in accordance with WAC 448-13-040 and 448-13-050. A test which meets these requirements as determined from the breath test document is a certified test.

(10) "Concentration" means the weight amount of alcohol, expressed in grams, contained in two hundred ten liters of breath or alcohol/water vapor.

(11) "DataMaster" means BAC Verifier DataMaster, instruments including those carrying the designation BAC Verifier DataMaster II, and the BAC DataMaster. These are the only approved breath test instruments in the state of Washington.

(12) "Data base" means information collected primarily for the purposes of statistical analysis of patterns of drinking and driving in the state of Washington.

((~~(12)~~)) (13) "Data entry" means the process of providing information through a keyboard to the BAC Verifier DataMaster for the purposes of (a) identifying a breath test document to an individual, and (b) statistical analysis.

((~~(13)~~)) (14) "Interference" means a test result whose infrared absorbance properties are not consistent with ethanol.

(15) "External standard test" means the use of a simulator containing a certified simulator solution, to provide a known alcohol vapor concentration to test the accuracy and proper working order of the DataMaster and confirm its calibration at the time of a person's breath test. This test of the function of the DataMaster is performed with every breath test. The external standard test does not calibrate the DataMaster.

((~~(14)~~)) (16) "Internal standard test" means the use of a quartz filter to provide a check that the instrument has maintained calibration since the last time calibration was performed and is in proper working order at the time of the test.

((~~(15)~~)) (17) "Precision" means the ability of a technique to perform a measurement in a reproducible manner.

((~~(16)~~)) (18) "Procedure" and "method" are used interchangeably to indicate a series of steps which, when carried out as directed, constitute the means by which a given task is performed in a reproducible manner.

((~~(17)~~)) (19) "Protocol" means the written record of any method or procedure.

((~~(18)~~)) (20) "Quality assurance program" means an ongoing program designed to perform preventative maintenance and identify potential defects before they affect the operation of the instrument.

((~~(19)~~)) (21) "Simulator" means a device which when filled with a certified simulator solution, maintained at a known temperature, provides a vapor sample of known alcohol concentration.

((~~(20)~~)) (22) "Software" means the computer program stored in the DataMaster which allows it to operate.

((~~(21)~~)) (23) "Valid breath sample" means a sample of a person's breath provided in such a manner to be accepted for analysis by the BAC Verifier DataMaster.

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AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-050 Test defined. The test of a person's breath for alcohol concentration using the ((~~BAC Verifier~~)) DataMaster shall consist of the person insufflating end-expiratory air samples at least twice into the instrument, sufficient to allow two separate measurements. There will be sufficient time between the provision of each sample to permit the instrument to measure each sample individually. ((~~The~~)) Two valid breath samples, provided consecutively, will constitute one test.

The ((~~BAC Verifier~~)) DataMaster will perform this test according to the following protocol when being employed to measure an individual's breath alcohol concentration. Any test not performed according to the following protocol is not a valid test. Successful compliance with each step of this protocol is determined from an inspection of the breath test document. These steps are necessary to ensure accuracy, precision, and confidence in each test.

Step 1. Data entry.
Step 2. Blank test with a result of ((~~.00~~)) .000.
Step 3. Internal standard verified.
Step 4. First breath sample provided by subject.
Step 5. Blank test with a result of ((~~.00~~)) .000.
Step 6. External standard simulator solution test. The result of this test must be between .090 and .110 inclusive.
Step 7. Blank test with a result of ((~~.00~~)) .000.
Step 8. Second breath sample provided by subject.
Step 9. Blank test with a result of ((~~.00~~)) .000.
Step 10. Printout of results on a breath test document.

NEW SECTION

WAC 448-13-055 Interference with breath test. If during a breath test, an interference is detected, this will invalidate the test. If a breath test document is produced which notes the presence of an interference, the breath test will not be valid. The subject will be required to repeat the test. A subject whose breath registers the presence of an interference on two or more successive breaths shall be presumed to be incapable of providing a valid breath sample.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-060 Validity and certification of test results. A test shall be a valid test and so certified, if the requirements of WAC 448-13-040 ((~~and~~)), 448-13-050 and 448-13-055 are met, and in addition the following criteria for precision and accuracy, as determined solely from the breath test document, are met:

(1) The internal standard test results in the message "verified."

(2) ((~~The results of both breath samples are within, and inclusive of, plus or minus ten percent of the average of the two measurements. The upper and lower limits of this range shall be based on a three-digit average and shall be truncated to two digits (e.g., .109 will be read as .10).~~)) In order to be valid, the two breath samples must agree to within plus or minus ten percent of their mean. This shall be determined as follows:

(a) The breath test results shall be reported, truncated to three decimal places.

(b) The mean of the two breath test results shall be calculated and rounded to four decimal places.

(c) The lower acceptable limit shall be determined by multiplying the above mean by 0.9, and truncating to three decimal places.

(d) The upper acceptable limit shall be determined by multiplying the mean by 1.1 and truncating to three decimal places.

(e) If the results fall within and inclusive of the upper and lower acceptable limits, the two breath samples are valid.

(3) The simulator external standard result ((~~lies~~)) must lie between .090 to .110 inclusive.

(4) All four blank tests must give results of ((~~.00~~)) .000.

If these criteria are met, then these and no other factors are necessary to indicate the proper working order of the instrument, and so certify it, at the time of the breath test.

NEW SECTION

WAC 448-13-065 Interpretation of breath test results. Once it is determined that a breath test has met all the above criteria and is valid, the person's presumed breath alcohol content for the purposes of the interpretation of civil and criminal statutes shall be determined by taking the lower of the two subject sample breath test results, and truncating this to two decimal places. (E.g., if a person's two breath test results were 0.106 and 0.121, the person's presumed breath alcohol content would be 0.10 g/210L.)

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-070 External standard simulator solution. In order to validate and certify the proper working order of the BAC Verifier DataMaster at the time of a person's breath test, the vapor from a certified external standard simulator solution will be tested, separated by blank tests, between the two valid breath samples provided by the subject per WAC 448-13-050. This test of the vapor from the certified external standard simulator solution concentration, by the infrared technique employed by the ((~~BAC Verifier~~)) DataMaster, will confirm the certification of the person's test results as they appear on the breath test document, provided that the results of such analysis also meet the criteria of WAC 448-13-060. At such time as the concentration of the vapor from the external standard simulator solution measured by the DataMaster approaches the lower acceptable limit of .090, the solution will be discarded and replaced with a new solution which meets the criteria of WAC 448-13-080. In any event, the solution will be replaced no more than sixty days from the date of its installation. As there is no meaningful way to interpret data resulting from reanalysis of the simulator solution following its removal after use on a DataMaster instrument, collection and reanalysis of such solutions is neither recommended nor approved by the state toxicologist. The internal standard test conducted with every breath test provides a check that the instrument has remained in calibration while in use in the field.

AMENDATORY SECTION (Amending WSR 91-21-040, filed 10/11/91, effective 11/11/91)

WAC 448-13-080 Preparation and certification of external standard simulator solution. The external standard simulator solutions shall be prepared by the forensic toxicology staff or by persons certified as technicians in the state toxicology laboratory, using standard laboratory procedures, in such a manner that when ((~~used in a BAC Verifier DataMaster the external standard test performed as part of a person's breath test pursuant to WAC 448-13-050, will read~~)) heated to 34°C ± 0.2°C it will produce a vapor with an ethanol concentration of between .090 and .110 inclusive, at the time of the test. The principle used for the preparation of the simulator solutions is that a 0.123g/100mL solution will give a vapor ethanol concentration at 34°C of 0.100g/210L. The protocol which shall be followed for the preparation and certification of the external standard simulator solution will be that protocol currently approved and authorized by the state toxicologist according to WAC 448-13-130 and conforming to WAC 448-14-010. Details of the currently approved and authorized protocols are available upon request from the office of the state toxicologist. Sworn statements ((~~from the analyst~~)) regarding the preparation, testing, and certification of the simulator solution are available under the provisions of CrRLJ 6.13. The simulator solution shall have an expiration date of one calendar year following the date of its preparation.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-090 Software. The software which shall be used in the data collection by, in the operation of, and in the measurements made by the ((~~BAC Verifier~~)) DataMaster, will be those versions currently approved for use by the state toxicologist. A list of those versions of software currently approved for use can be obtained from the office of the state toxicologist. The state toxicologist shall approve software which allows the DataMaster to meet the strict accuracy and precision standards of the quality assurance procedure, and which can perform breath tests in compliance with the standards set out herein.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-100 Use of the data base on the ((~~BAC Verifier~~)) DataMaster. The specific purpose of the data base functions of the BAC Verifier DataMaster is to provide statistical analysis and remote monitoring of the instruments to determine their current operational status. The information contained in the data base is separate from, and does not affect the results of, any individual breath test. All information required to certify a breath test per WAC 448-13-060 is contained in the breath test document. The presence or absence of data base information does not compromise the validity of a breath test certified per WAC 448-13-060.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-110 Quality assurance program. Technicians authorized per WAC 448-13-170 and 448-13-180 shall carry out on a regular periodic basis a quality assurance program which shall include recalibration, and checks of components and function of every ((~~BAC Verifier~~)) DataMaster instrument used for evidential breath testing purposes in the state of Washington. The protocol which shall be followed for quality assurance will be that protocol currently approved and authorized by the state toxicologist pursuant to WAC 448-13-130.

Upon successfully meeting all the requirements of the quality assurance program, the instrument is approved by the state toxicologist for use over a period of not more than one year, or until such time as one of the following operations is required: Replacement of the central processing unit (CPU) board, replacement of the infrared detector, replacement of the infrared detector block, replacement of the infrared detector board, replacement or updating of the software, disassembly and then reassembly of the sample chamber, or recalibration. On successful completion of the quality assurance procedure the instrument is approved for use for a further one-year period. As the quality assurance procedure includes all the elements of the procedure previously known as "certification," the use of ((~~BAC Verifier~~)) DataMaster Certification documents described in CrRLJ 6.13 is recommended by the state toxicologist to indicate compliance with this quality assurance program.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-130 Review, approval, and authorization of protocols of procedures and methods by the state toxicologist. The state toxicologist shall review, approve, and authorize such protocols of procedures and methods (of ((~~his~~)) the toxicologist's own promulgation or submitted ((~~to him~~)) by outside agencies or individuals for consideration) required in the administration of the breath test program. Such review, approval, and authorization will be so signified by a signed statement attached to each protocol, and kept on file in the office of the state toxicologist. These protocols will be updated as necessary to maintain the quality of the breath test program in light of new findings in the scientific literature or from peer discussion, or the availability of superior equipment or services. Information concerning currently approved protocols can be obtained on application to the office of the state toxicologist.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-140 Instructors. The state toxicologist shall certify persons found by him to be competent and qualified, as "instructors." Instructors are authorized to administer breath tests for alcohol concentration using the ((~~BAC Verifier~~)) DataMaster ((~~infrared breath testing instrument~~)) and are further authorized to train and certify as operators, according to outlines approved by the state toxicologist, those persons the instructor finds qualified to administer the breath test utilizing the BAC Verifier

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DataMaster breath test instrument. Details of persons certified as instructors shall be maintained by the state toxicologist and available upon request.

If an instructor fails or refuses to demonstrate to the state toxicologist or to his representative, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-150 Operators. The state toxicologist, or instructors on his behalf, shall certify as "operators" persons found by them to be competent and qualified to administer breath tests for alcohol concentration using the ((~~BAC Verifier~~)) DataMaster ((~~infrared~~)) breath testing instrument. Persons who have attended courses in the operation of the ((~~BAC Verifier~~)) DataMaster ((~~infrared~~)) breath testing instrument taught by an instructor qualified by the state toxicologist, upon certification of attendance and qualification, shall be designated as "operators." Details of persons so certified shall be maintained by the state toxicologist and available upon request.

If an operator fails or refuses to demonstrate to the state toxicologist or to an instructor certified by the state toxicologist, that he or she has the ability to adequately perform his or her responsibilities as an operator, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-160 Solution changers. The state toxicologist, or instructors on his behalf, shall certify as "solution changers" operators found by them to be competent and qualified. In addition to being qualified as "operators" these persons must receive approved instruction covering the changing of simulator external standard solutions for the ((~~BAC Verifier~~)) DataMaster ((~~infrared breath testing instrument~~)), taught by an instructor qualified by the state toxicologist. Details of persons so certified shall be maintained by the state toxicologist and available upon request.

If a solution changer fails or refuses to demonstrate to the state toxicologist or to an instructor certified by the state toxicologist, that he or she has the ability to adequately perform his or her responsibilities as a solution changer, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 91-21-040, filed 10/11/91, effective 11/11/91)

WAC 448-13-170 Technicians. The state toxicologist shall certify as "technicians" such persons found by him to be competent and qualified to maintain the proper working order of the BAC Verifier DataMaster infrared breath testing instrument, through adjustment, repair, and regular service. Further, technicians are authorized by the state toxicologist to prepare simulator external standard solutions and to perform the procedures approved for periodic quality assurance of the ((~~BAC Verifier~~)) DataMaster ((~~infrared breath testing~~)) instruments as required pursuant to WAC 448-13-110. Details of persons so certified shall be maintained by the state toxicologist and available upon request.

Technicians are also authorized to instruct persons otherwise qualified as "instructors," "operators," and "solution changers" according to training outlines approved by the state toxicologist. Certified technicians are themselves authorized to perform the duties of "instructors," "operators," and "solution changers."

Electronics technicians who repair component parts of the DataMaster, and who are not certified as technicians under this section, are not authorized to conduct quality assurance, conduct training, or perform duties in the above categories.

If a technician fails or refuses to demonstrate to the state toxicologist or his representative, that he or she has the ability to adequately perform his or her responsibilities as a technician, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-200 Information concerning technical aspects of the breath test program. Documents used by the state toxicologist and personnel involved in breath testing for the state of Washington, which are available on request include: The breath test document, simulator solution preparation protocol, alcohol analysis protocol, certification document for simulator solution, affidavit from analyst of simulator solution, data base, quality assurance protocol, quality assurance procedure report, affidavit concerning quality assurance procedure, operator course outline, operator refresher course outline, and operator training record. A fee may be charged to cover the cost of providing these copies.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-210 Address for correspondence. Persons seeking information regarding currently approved protocols and procedures, or information regarding those persons currently authorized as operators, instructors, solution changers, or technicians for the BAC Verifier DataMaster, shall direct their request to the State Toxicologist, State Toxicology Laboratory, ((~~Harborview Medical Center ZA-88, 325 9th Avenue, Seattle, Washington 98104~~)) University of Washington, Department of Laboratory Medicine, 2203 Airport Way S., Seattle, WA 98134.

AMENDATORY SECTION (Amending WSR 91-06-022, filed 2/26/91, effective 3/29/91)

WAC 448-13-220 Effective date. These provisions, WAC 448-13-010 through and including WAC 448-13-210, and any subsequent amendments will be adopted and in full force and effect for all aspects of the operation of the breath alcohol concentration test program in the state of Washington thirty-one days after the filing of the permanent rules. These new provisions are not retroactive and will not apply to the interpretation of results from any breath test conducted prior to thirty-one days after the filing of the permanent rules.

WSR 95-16-119
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed August 2, 1995, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-14-080.

Title of Rule: WAC 388-218-1695 Deeming of income—Alien sponsorship.

Purpose: Clarifies the requirement that a sponsor's income is considered available for the three years following the sponsored alien's entry for permanent residence into the United States.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Clarified to state that the income of a sponsor will be considered available to meet the needs of a sponsored alien for three years following the alien's entry for permanent residence into the United States.

Reasons Supporting Proposal: This revision will add language which will clarify the requirement that a sponsor's income is considered available for three years following the sponsored alien's entry for permanent residence into the United States.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rena Milare, Division of Income Assistance, (360) 438-8311.

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 has been prepared under chapter 19.85 RCW. Affects only sponsored aliens receiving AFDC. Amendment clarifies the rule, but does not substantially change the effect of the rule.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: OB-2 Auditorium, 1115 Washington Street S.E., Olympia, WA 98504, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Jeanette Savedge-App by August 22, 1995, TDD (360) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Vendor Services, P.O. Box 45811, Olympia, WA 98504, Identify WAC Numbers, FAX (360) 586-8487, by August 29, 1995.

Date of Intended Adoption: September 6, 1995.

August 2, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-218-1695 Deeming of income—Alien sponsorship. (1) For a period of three years following entry for permanent residence into the United States, an individually sponsored alien shall provide the state agency with any information and documentation necessary to determine the income of the sponsor that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(2) For all subsections in this section, the department shall deem the income of an individual sponsor (and the sponsor's spouse if living with the sponsor) to be the unearned income of an alien for three years following the alien's entry for permanent residence into the United States.

(3) Monthly income deemed available to the alien from the individual sponsor or the sponsor's spouse not receiving AFDC or SSI shall be:

(a) The sponsor's total monthly unearned income, added to the sponsor's total monthly earned income reduced by twenty percent (not to exceed one hundred seventy-five dollars) of the total of any amounts received by the sponsor in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred in producing self-employment income in the month.

(b) The amount described in (a) of this subsection reduced by:

(i) The basic requirements standard for a family of the same size and composition as the sponsor and those other persons living in the same household as the sponsor claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability but who are not AFDC recipients;

(ii) Any amounts actually paid by the sponsor to persons not living in the household claimed by the sponsor as dependents to determine the sponsor's federal personal income tax liability; and

(iii) Actual payments of alimony or child support, with respect to persons not living in the sponsor's household.

(4) In any case where a person is the sponsor of two or more aliens, the department shall divide the income of the sponsor, to the extent they would be deemed the income of any one of the aliens under provisions of this section, equally among the aliens.

(5) The department shall not consider the income which is deemed to a sponsored alien in determining the need of other unsponsored members of the alien's family except to the extent the income is actually available.

WSR 95-16-120
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed August 2, 1995, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-14-081.

PROPOSED

Title of Rule: WAC 388-216-2350 Resources—Availability of alien sponsor's resources.

Purpose: Adds language clarifying the requirement that a sponsor's resources are considered available for three years following the sponsored alien's entry for permanent residence into the United States.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Existing rule will be clarified to state that the resources of a sponsor will be considered available to meet the needs of a sponsored alien for the three years following the alien's entry for permanent residence into the United States.

Reasons Supporting Proposal: Adds language to the existing WAC will [that] will clarify the requirement that a sponsor's resources are considered available for three years following the sponsored alien's entry for permanent residence into the United States.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rena Milare, Division of Income Assistance, 438-8311.

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 has been prepared under chapter 19.85 RCW. Affects only sponsored aliens receiving AFDC. Amendment clarifies the rule, but does not substantially change the effect of the rule.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: OB-2 Auditorium, 1115 Washington Street S.E., Olympia, WA 98504, on September 5, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Jeanette Sevedge-App by August 15, 1995, TDD (360) 753-4542, or SCAN 234-4542.

Submit Written Comments to: Jeanette Sevedge-App, Acting Chief, Vendor Services, P.O. Box 45811, Olympia, WA 98504, Identify WAC Numbers, FAX (360) 586-8487, by August 22, 1995.

Date of Intended Adoption: September 6, 1995.

August 2, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-216-2350 Resources—Availability of alien sponsor's resources. (1) The department shall apply the rules of this section to a sponsored alien who is applying for AFDC or GA and to the sponsor of that alien, unless the alien:

(a) Meets the definition of an asylee, Amerasian, or refugee in WAC 388-55-010;

(b) Is a Cuban or Haitian entrant, as defined in section 501(3) of the Refugee Education Assistance Act of 1980; or

(c) Is the dependent child of the sponsor or sponsor's spouse.

(2) A sponsor is defined as any person or public or private organization executing an affidavit or affidavits of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States.

(3) Sponsorship shall affect the eligibility of an alien for a period of three years from the date of entry for permanent residence into the United States. When the sponsor of an alien is:

(a) A public or private agency or organization, the sponsored alien shall be ineligible for assistance throughout the sponsorship period, unless the agency or organization is either no longer in existence or has become unable to meet the alien's needs; or

(b) A private individual, the department shall deem the resources of the sponsor (and the sponsor's spouse if living with the sponsor) to be the resources of the sponsored alien throughout the sponsorship period.

(4) The alien who is sponsored by an individual shall:

(a) Provide the department with any information and documentation necessary to determine the resources of the sponsor that can be deemed available to the alien; and

(b) Obtain any cooperation necessary from the sponsor.

(5) The department shall calculate the monthly resources deemed available to the sponsored alien, as follows:

(a) Use the total amount of the resources of the sponsor, determined as if the sponsor was applying for AFDC in the alien's state of residence; minus

(b) One thousand five hundred dollars.

(6) In any case where a person is the sponsor of two or more aliens who are subject to the provisions in this section, the deemable resources of the sponsor shall be divided equally among the aliens.

(7) Resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the resources are actually available.

(8) Any sponsor of an alien and the alien shall be jointly and individually liable for any overpayment of assistance made to the alien during the three years after the alien's entry for permanent residence into the United States due to the sponsor's failure to provide correct information, except where such sponsors were without fault or where good cause existed.

(a) When the department finds a sponsor has good cause or is without fault for not providing information to the agency, the sponsor shall not be held liable for the overpayment and recovery will not be made from the sponsor.

(b) Good cause and no fault shall be defined as any circumstance beyond the control of the sponsor.

WSR 95-16-121
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed August 2, 1995, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-12-093.

Title of Rule: WAC 246-861-090 Amount of continuing education.

Purpose: To provide incentive for patient counseling continuing education.

Statutory Authority for Adoption: RCW 18.64.005.

Statute Being Implemented: RCW 18.64.005(8).

Summary: This rule provides a one time incentive of 1.5 continuing education units per contact hour of pharmacists to obtain patient counseling as part of the continuing education to renew their license.

Reasons Supporting Proposal: To facilitate better communication between parties.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Don Williams, Olympia, 753-6834.

Name of Proponent: Department of Health/Board of Pharmacy, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To provide incentive for patient counseling education. To facilitate better communication between patients and pharmacists.

Proposal Changes the Following Existing Rules: Provides a one time continuing education incentive to facilitate patient counseling.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses in any way.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule does not subject a person to a penalty or sanction; does not establish, alter or revoke a qualification or standard for pharmacists' licensure; and does not make significant amendment to a policy or regulatory program. It qualifies patient counseling and education as continuing education for pharmacists.

Hearing Location: Red Lion Inn, 300 112th S.E., Bellevue, WA, on October 26, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Lisa Salmi, Program Manager by October 10, 1995, (360) 753-6834.

Submit Written Comments to: Georgia Robinson-Sage, 1300 Quince Street, Mailstop 7863, Olympia, 98504, FAX (360) 586-4359, by October 10, 1995.

Date of Intended Adoption: October 26, 1995.

August 1, 1995
D. H. Williams
Executive Director

AMENDATORY SECTION (Amending Order 234B, filed 1/8/92, effective 2/8/92)

WAC 246-861-090 Amount of continuing education. (1) The equivalent of ((~~one-and-one-half~~)) 1.5 continuing education unit (equal to fifteen contact hours) of continuing education shall be required annually of each applicant for renewal of licensure. 0.1 CEU will be given for each contact hour. A pharmacist may claim an incentive of 0.15 CEU for each contact hour for successfully completing a patient education training program which meets the criteria listed below, provided that the incentive credits shall not exceed 1.2 CEU (equal to eight contact hours and four incentive hours).

(2) Patient education training requirements: The program must include patient-pharmacist verbal interactive techniques developed by role-playing in which the pharmacist, in dispensing a medication to the patient can verify that:

(a) The patient knows how to use the medication correctly.

(b) The patient knows about the important or significant side effects and potential adverse effects of the medication.

(c) The patient has the information and demonstrates their understanding of the importance of drug therapy compliance.

PROPOSED

WSR 95-16-123
PROPOSED RULES
INSURANCE COMMISSIONER'S OFFICE
[Filed August 2, 1995, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-14-128.

Title of Rule: The Washington United States Longshore and Harbor Workers' Compensation Act.

Purpose: To promote a strong and healthy maritime industry through the continuation of the plan established by the legislature in 1992. To ensure the continued availability of USL&H coverage for those employers unable to purchase the essential coverage in the normal insurance market.

Other Identifying Information: Commissioner Matter No. R 95-7.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.22.070.

Summary: This rule will ensure the continued availability of workers' compensation coverage for longshore and harbor workers.

Reasons Supporting Proposal: The maritime industry within Washington state requires the availability of worker's compensation coverage, as required by the United States Longshore and Harbor Workers' Act.

Name of Agency Personnel Responsible for Drafting: Kacy Brandeberry, Insurance Building, Olympia, (360) 664-3790; Implementation and Enforcement: Allen Morrow, Federation Building, Olympia, 753-5396.

Name of Proponent: Deborah Senn, Insurance Commissioner, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will ensure the continued availability of workers' compensation coverage for longshore and harbor workers.

Proposal Changes the Following Existing Rules: This permanent rule eliminates the sunset date, extended by the 1995 legislature to July 1, 1997, as provided at RCW 48.22.070, as amended.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only reflects the 1995 amendments to RCW 48.22.070.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This is not a "significant legislative rule" to which section 201 applies. It adopts no substantive provision of law; establishes no policy or program; and makes no significant change.

Hearing Location: Insurance Commissioner's Office, Insurance Building, 2nd Floor Conference Room, Olympia, Washington, on September 6, 1995, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Lori Malabed by September 1, 1995, TDD (360) 586-0691.

Submit Written Comments to: Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, Internet address: 73303.700 @compuserve.com, FAX (360) 586-3535, by September 1, 1995.

Date of Intended Adoption: September 6, 1995.

August 2, 1995
Deborah Senn
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 93-17, filed 9/24/93, effective 10/25/93)

WAC 284-22-030 Effective date. (1) The assigned risk plan shall become effective at 12:01 a.m. July 1, 1992.

(2) The assigned risk plan shall ((~~cease accepting new applicants at 12:01 a.m. July 1, 1995. However, it shall~~)) not terminate until all policies ((~~issued~~)) under the plan have expired and outstanding obligations incurred under such policies have been satisfied.

WSR 95-16-124
PROPOSED RULES
PUGET SOUND AIR POLLUTION CONTROL AGENCY
[Filed August 2, 1995, 10:45 a.m.]

Original Notice.

Proposal is exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Amending sections 3.11, 5.07, 5.11, 6.11, 7.07 of Regulation I. Sections 1.01, 2.02, of Regulation III.

Purpose: Adjust maximum civil penalty amount for inflation; adjust fees for registration and operating permits to cover program costs and move operating permit fees to the operating permit section; remove late charges for delinquent registration fees; and update delegation for federal NSPS and NESHAPs.

Other Identifying Information: 3.11 Civil Penalties; 5.07 Registration Fees; 5.11 Registration of Oxygenated Gasoline Blenders; 6.11 New Source Performance Standards; 7.07 Fees; 1.01 Policy; 2.02 National Emission Standards for Hazardous Air Pollutants.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Summary: Increases maximum civil penalty amount for inflation and adjusts registration and operating permit fees to cover program costs; moves operating permit fees to the operating permit section; removes the late charge for delinquent registration fees; and updates delegation for federal NSPS and NESHAPs.

Reasons Supporting Proposal: Maximum civil penalty amount needs to be adjusted for inflation; registration and operating permit fees need to cover program costs and operating permit fees should be in the operating permit section; the agency has determined that late charges are a penalty and not a fee; and delegation for federal NSPS and NESHAPs needs to be updated.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, 98101, 689-4053; and Implementation: Dave Kircher, 110 Union Street, #500, Seattle, 98101, 689-4050.

Name of Proponent: Puget Sound Air Pollution Control Agency, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This proposal would increase maximum civil penalty amount for inflation; adjust registration and operating permit fees to cover program costs; move operating permit fees to the operating permit section; remove additional delinquent registration charges; and update delegation for federal NSPS and NESHAPs.

Proposal Changes the Following Existing Rules: Maximum civil penalty amount would increase for inflation. Registration and operating permit fees would increase to cover program costs, and operating permit fees would move to the operating permit section. Additional delinquent registration charges would be removed. Delegation for federal NSPS and NESHAPs will be updated.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This agency is not subject to this law.

Hearing Location: Puget Sound Air Pollution Control Agency Offices, 110 Union Street, #500, Seattle, WA 98101, on September 14, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, 689-4010 by September 7, 1995, TDD (800) 833-6388, or (800) 833-6385 (braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Air Pollution Control Agency, 110 Union Street, #500, Seattle, WA 98101, FAX (206) 343-7522, by September 4, 1995.

Date of Intended Adoption: September 14, 1995.

August 1, 1995
James Nolan
Director - Compliance

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of Chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ((~~$11,000.00~~)) $11,225.00 per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to Chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Air Pollution Control Agency shall be liable for a civil penalty of not more than ((~~$11,000.00~~)) $11,225.00 for each day of continued noncompliance.

(c) Within 15 days after receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Any such request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the appealing party;

(2) A copy of the Notice and Order of Civil Penalty appealed from;

(3) A short and plain statement showing the grounds upon which the appealing party considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the appealing party relies to sustain his or her grounds for appeal;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the appealing party has read the notice of appeal and believes the contents to be true, followed by the party's signature.

Upon receipt of the application, the Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(d) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to Chapter 43.21B RCW and Chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition on the application for relief from penalty.

(e) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

AMENDATORY SECTION

REGULATION I SECTION 5.07 REGISTRATION ((~~AND OPERATING PERMIT~~)) FEES

(a) The Agency shall levy annual fees as set forth in the ((~~1995~~)) 1996 Registration ((~~and Operating Permit~~)) Fee Schedule for services provided in administering the registration program ((~~or operating permit programs~~)). Fees received under the registration program ((~~or operating permit programs~~)) shall not exceed the cost of administering the program ((~~these programs~~)).

(b) Upon assessment by the Agency, registration ((~~or operating permit~~)) fees are due and payable within 30 days. They shall be deemed delinquent if not fully paid within 90 days ((~~, and shall be subject to an additional fee equal to 3 times the original fee~~)).

((~~1995~~)) 1996 REGISTRATION ((~~AND OPERATING PERMIT~~)) FEE SCHEDULE

(1) For all facilities, a fee of $85.00 per facility except $600.00 per facility for those with synthetic minor permits ((~~$2,085.00 per facility for those subject to Article 7 of Regulation I~~)); and

(2) For all facilities:

(i) ((~~$35.00~~)) $38.00 for each item of air contaminant generating equipment; and

(ii) ((~~$80.00~~)) $62.00 for each item of air contaminant control equipment; and

(iii) ((~~$500.00~~)) $1,200.00 for each continuous emission monitor required under Article 12 of Regulation I; and

((~~(iv) $500.00 for each incinerator; and~~

~~(v) $500.00 for each landfill; and~~))

(3) For all facilities except those subject to (4) below, a ((~~$21.00~~)) $24.00 emission fee for each item of air contaminant generating equipment except for unvented dry cleaning machines; and

(4) For only those facilities which have permitted emissions or actual annual emissions of 25 tons or more of any of the following: PM10, sulfur oxides, nitrogen oxides, or carbon monoxide; or annual emissions of ((~~10~~)) 5 tons or more of toxic air contaminants or volatile organic compounds, including any negligibly reactive compound:

(i) ((~~$21.00~~)) $24.00 per ton for PM10, sulfur oxides, nitrogen oxides, or volatile organic compounds, including any negligibly reactive compound; and

(ii) ((~~$7.00~~)) $8.00 per ton for carbon monoxide or toxic air contaminants.

(5) The fees required by this section are for the calendar year ((~~1995~~)) 1996 and shall be based on Agency files showing equipment to be used during ((~~1995~~)) 1996; and either:

(i) actual emissions during calendar year ((~~1993~~)) 1994 if the source is not subject to a facility-wide limit on permitted emissions; or

(ii) if the source is subject to a facility-wide limit on permitted emissions, the lesser of actual emissions during calendar year ((~~1993~~)) 1994 or permitted emissions; or

(iii) permitted emissions if no actual emissions were reported during calendar year ((~~1993~~)) 1994.

AMENDATORY SECTION

REGULATION I SECTION 5.11 REGISTRATION OF OXYGENATED GASOLINE BLENDERS

(a) Blenders of oxygenated gasoline shall register with the Agency on an annual basis. Each request for registration shall be on forms supplied by the Agency and shall be accompanied by a fee to compensate for the cost of administering the program. The following fee table, based upon the average monthly sales of gasoline sold during the previous November, December, January and February, shall apply:

Volume (gallons)	
less than 100,000	$ 500.00
100,000 or more but less than 1,000,000	$ 1,000.00

PROPOSED

1,000,000 or more but less than 15,000,000	$ 10,000.00
15,000,000 or more	$ 25,000.00

(b) Upon assessment by the Agency, this registration fee is due and payable within 30 days. It shall be deemed delinquent if not fully paid within 90 days ((~~and shall be subject to an additional fee equal to 3 times the original fee~~)).

(c) Blenders of oxygenated gasoline shall, upon request by the Agency, submit periodic reports summarizing how the requirements of Section 2.09 of Regulation II were met. Each report shall be submitted on forms supplied by the Agency within 30 days of receipt of forms.

PROPOSED

AMENDATORY SECTION

REGULATION I SECTION 6.11 NEW SOURCE PERFORMANCE STANDARDS

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 60, Title 40, of the Code of Federal Regulations (CFR) in effect July 1, ((~~1994~~)) 1995 herein incorporated by reference.

AMENDATORY SECTION

REGULATION I SECTION 7.07 FEES

(a) The Agency shall levy annual operating permit fees as set forth in ((~~Article 5 of Regulation I~~)) the 1996 Operating Permit Fee Schedule to cover the cost of administering the operating permit program.

1996 OPERATING PERMIT FEE SCHEDULE

(1) For all facilities, a fee of $4,700.00 per facility; and

(2) For all facilities:

(i) $38.00 for each item of air contaminant generating equipment; and

(ii) $62.00 for each item of air contaminant control equipment; and

(iii) $1,200.00 for each continuous emission monitor required under Article 12 of Regulation I; and

(iv) $24.00 per ton for PM10, sulfur oxides, nitrogen oxides, or volatile organic compounds, including any negligibly reactive compound; and

(v) $8.00 per ton for carbon monoxide or toxic air contaminants.

(3) The fees required by this section are for the calendar year 1996 and shall be based on Agency files showing equipment to be used during 1996; and either:

(i) actual emissions during calendar year 1994 if the source is not subject to a facility-wide limit on permitted emissions; or

(ii) if the source is subject to a facility-wide limit on permitted emissions, the lesser of actual emissions during calendar year 1994 or permitted emissions; or

(iii) permitted emissions if no actual emissions were reported during calendar year 1994.

(b) The agency may, on a source-by-source basis, levy a surcharge to cover the cost of public involvement under WAC 173-401-800 or to cover the cost incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and Chapter 246-247 WAC.

(c) The Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under WAC 173-401 to cover the Department of Ecology's program development and oversight costs.

(d) Upon assessment by the Agency, operating permit fees are due and payable within 30 days. They shall be deemed delinquent if not fully paid within 90 days.

AMENDATORY SECTION

REGULATION III SECTION 1.01 POLICY

The Board has found that the use, production, and emission of toxic air contaminants into the atmosphere in the Puget Sound region poses a threat to the public health, safety, and welfare of the citizens of the region and causes degradation of the environment. Therefore the Board, in order to control the emission of toxic air contaminants and to provide for uniform enforcement of air pollution control in its jurisdiction and to carry out the mandates and purposes of the Washington Clean Air Act, the Federal Clean Air Act, and the National Emission Standards for Hazardous Air Pollutants (40 CFR Parts 61 and 63), declares the necessity of the adoption of this Regulation III pertaining to toxic air contaminants.

It is the policy of the Agency to continuously acquire and study available scientific information on toxic air contaminants, their sources, and their effect on the public health and welfare, and to develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

AMENDATORY SECTION

REGULATION III SECTION 2.02 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 61 or Part 63, Title 40, of the Code of Federal Regulations (CFR) in effect July 1, ((~~1994~~)) 1995 herein incorporated by reference.

WSR 95-16-125
PROPOSED RULES
BUILDING CODE COUNCIL
[Filed August 2, 1995, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-04-105.

Title of Rule: Emission standards and standard test method for particulate emissions from fireplaces.

Purpose: To adopt regulations in accordance with the Washington Clean Air Act (RCW 70.94.457) that limit particulate emissions for certified factory-built fireplaces and new masonry or concrete fireplaces.

Other Identifying Information: Washington State Uniform Building code WAC 51-30-3102.5.4, 51-30-3102.7.14 and 51.30.31200.

Statutory Authority for Adoption: RCW 19.27.074(1).

Statute Being Implemented: RCW 70.94.457 (1)(b), (c).

Summary: The purpose of this rule is to establish a methodology for the testing of new masonry or concrete fireplaces, and to establish particulate emission standards for all fireplaces.

Reasons Supporting Proposal: Required by chapter 70.94 RCW, Washington Clean Air Act, specifically RCW 70.94.457 (1)(b), (c).

Name of Agency Personnel Responsible for Drafting and Implementation: David Scott, P.O. Box 48300, Olympia, WA, 98504-8300, (360) 586-3423; and Enforcement: Local jurisdictions.

Name of Proponent: Washington State Building Code Council, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The council especially seeks comments on the proposed regulations for fireplace particulate emission standards.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules establish a testing methodology for particulate emissions from new masonry, concrete or factory-built fireplaces. The rule limits the amount of particulate emissions a new fireplace may emit and still be approved (certified) by the Washington State Department of Ecology as a clean burning solid fuel appliance. Noncertified masonry or concrete fireplaces will still be allowed to be built in Washington. The purpose is to have available to the public cleaner burning fireplaces. This will help to lower the particulate levels in the atmosphere.

Proposal Changes the Following Existing Rules: These amendments add new sections to chapter 51-30 WAC requiring testing and certification in accordance with "Standard Test Method for Particulate Emissions from Fireplaces (WAC 51-30-31200)."

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Cost of Enforcement: The cost of enforcement to the local jurisdictions during plan check and construction would be negligible. It is the responsibility of the person applying for the building permit to submit evidence to the building official that a proposed fireplace design and construction specifications are approved and listed by the Washington State Department of Ecology. The building official would still need to do the Uniform Building Code related inspections he/she is presently performing with wither a certified for a noncertified fireplace. During final inspection the building official would have to check for the label on the fireplace as specified in UBC Standard 31.210.

Enforcement after the construction phase would be by the Washington State Department of Ecology or the local air pollution districts, which are already in place. With the new low emission fireplaces there should be no reason for enforcement, unless the operator is using prohibited fuel types as listed in WAC 173-433-120.

Cost to the Mason: The initial investment for research, development, and testing to have a new fireplace certified for compliance to the Standards for Particulate Emissions will be high. The more units sold of any model line will reduce the per unit cost. It was expressed in the technical advisory group that the market will want the certified fireplace and would be willing to pay the few dollars more, which will in effect support the costs of having a fireplace certified. A mason may also use someone else's certified plans and specifications; however, the amount of a user-fee is unknown. It is assumed any costs will eventually be passed on to the consumer, either as shown below or as a user-fee.

The code does allow a mason to build a noncertified masonry or concrete fireplace, but it must be so labeled. The cost for a temporary label is minimal.

Cost to Owner: The cost to the owner could be negligible, if enough units of a fireplace model line are sold (see calculations below). A cleaner burning fireplace would also require less maintenance, thereby saving some money over the long term. The benefits would also include a cleaner air shed, which is the purpose of the Clean Air Act.

Percentage of Total Construction Cost

New house cost - statewide average	$140,000[1]
Additional cost for masonry fireplace	$2,500-3,000[5]
Total	$143,000

Cost of testing a fireplace $10,000±[2]

If 500[3] units are built per year, multiplied by 5 years before retesting, this equals 2,500 units produced per test.

Or $4.00 per unit for a testing surcharge on each unit. Add $1.00[4] for QA, or a total additional cost of $5.00 per unit. If a model line is built for more than five years this cost would be reduced.

The State Building Code Council economic impact workgroup defines a "minor cost or saving" as less than / equal to 1/4% of the total construction cost.

If the 1/4% is figured on the total house cost, **1/4% of $143,000 = $357.50.** $5.00 is considerably less than $357.50.

If the 1/4% is figured on the fireplace cost alone, **1/4% of $3,000 = $7.50.** $5.00 is still less than $7.50.

[1] Building Industry Association of Washington
[2] Paul Tiegs, OMNI, Beaverton, Oregon
[3] Jim Buckley, Buckley Rumford Co., Port Townsend, Washington. (Other estimates ran as high as 2,000 units per year.)
[4] Estimate
[5] Rick Crooks, Mutual Materials, Bellevue, Washington

A copy of the statement may be obtained by writing to David Scott, Washington State Building Code Council, P.O. Box 48300, Olympia, WA 98504-8300, phone (360) 586-3423, or FAX (360) 586-5880.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Section 201 does not expressly apply to either the State Building Code Council or the Department of Community, Trade and Economic Development, and it

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has not been otherwise made applicable pursuant to Section 201 (5)(a)(ii).

Hearing Location: On September 7, 1995, at 2 p.m., at the Kennewick City Hall, City Council Chambers, 210 West 6th Avenue, Kennewick, WA; and on October 12, 1995, at 2 p.m., at the Lighting Design Lab, 400 East Pine, Suite 100, Seattle, WA.

Assistance for Persons with Disabilities: Contact Krista Braaksma by August 28, 1995, TDD (360) 753-2200, or (360) 753-5927.

Submit Written Comments to: Gene Colin, State Building Code Council, P.O. Box 48300, Olympia, WA 98504-8300, FAX (360) 586-5880, by October 11, 1995.

Date of Intended Adoption: November 16, 1995.

July 31, 1995
Gene J. Colin
Chair

SPECIAL CONSTRUCTION

NEW SECTION

WAC 51-30-3102 Section 3102.5.4.

3102.5.4 Emission Standards for Factory-built Fireplaces. After January 1, 1997, no new or used factory-built fireplace shall be installed in Washington State unless it is certified and labeled in accordance with procedures and criteria specified in the UBC Standard 31-2.

To certify an entire fireplace model line, the internal assembly shall be tested to determine its particulate matter emission performance. Retesting and recertifying is required if the design and construction specifications of the fireplace model line internal assembly change. Testing for certification shall be performed by a Washington State Department of Ecology (DOE) approved and U.S. Environmental Protection Agency (EPA) accredited laboratory.

3102.7.14 Emission Standards for Masonry and Concrete Fireplaces. After January 1, 1997, new masonry or concrete fireplaces installed in Washington State shall be labeled certified or non-certified. Certified fireplaces shall be tested and certified in accordance with procedures and criteria specified in the UBC Standard 31-2.

To certify an entire fireplace model line, the internal assembly shall be tested to determine its particulate matter emission performance. Retesting and recertifying is required if the design and construction specifications of the fireplace model line internal assembly change. Testing for certification shall be performed by a Washington State Department of Ecology (DOE) approved and U.S. Environmental Protection Agency (EPA) accredited laboratory.

NEW SECTION

WAC 51-30-31200 Section 31.200.

UNIFORM BUILDING CODE STANDARD 31-2
STANDARD TEST METHOD FOR PARTICULATE EMISSIONS FROM FIREPLACES

See Sections 3102.5.4 and 3102.7.14, *Uniform Building Code*

SECTION 31.200 - TITLE and SCOPE.

SECTION 31.200.1 - TITLE. This Appendix Chapter 31-2 shall be known as the "Washington State Standard Test Method for Particulate Emissions from Fireplaces" and may be cited as such; and will be referred to herein as "this Standard".

SECTION 31.200.2 - SCOPE. This Standard covers emissions performance, approval/certification procedures, test laboratory accreditation, record keeping, reporting requirements and the test protocol for measuring particulate emissions from fireplaces.

All testing, reporting and inspection requirements of this Standard shall be conducted by a Washington State Department of Ecology (DOE) approved testing laboratory. In order to qualify for DOE approval, the test laboratory must be a U.S. Environmental Protection Agency (EPA) accredited laboratory (40 CFR Part 60, Subpart AAA). DOE may approve a test laboratory upon submittal of the following information:

1. A copy of their U.S. EPA accreditation certificate, and
2. A description of their facilities, test equipment, and test-personnel qualifications including education and work experience.

DOE may revoke a test laboratory approval when the test laboratory is no longer accredited by the U.S. EPA or if DOE determines that the test laboratory does not adhere to the testing requirements of this Chapter.

NEW SECTION

WAC 51-30-31201 Section 31.201—Definitions. For the purpose of this Standard certain terms are defined as follows:

ANALYZER CALIBRATION ERROR is the difference between the gas concentration exhibited by the gas analyzer and the known concentration of the calibration gas when the calibration gas is introduced directly to the analyzer.

BURN RATE is the average rate at which test-fuel is consumed in a fireplace measured in kilograms of wood (dry basis) per hour (kg/hr) during a test-burn.

CALIBRATION DRIFT is the difference in the analyzer reading from the initial calibration response at a mid-range calibration value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

CALIBRATION GAS is a known concentration of Carbon Dioxide (CO_2), Carbon Monoxide (CO), or Oxygen (O_2) in Nitrogen.

CERTIFICATION or AUDIT TEST is the completion of at least one, three-fuel-load test-burn cycle in accordance with Section 31.202.

FIREBOX is the chamber in the fireplace in which a test-fuel charge(s) is placed and combusted.

FIREPLACE is a wood burning device which is exempt from U.S. EPA 40 CFR Part 60, Subpart AAA and:

1. is not a cookstove, boiler, furnace, or pellet stove as defined in 40 CFR Part 60, Subpart AAA, and

2. is not a masonry heater as defined in Section 31.201, and

3. see Section 3102, Uniform Building Code for definitions of masonry and factory-built fireplaces as used in this Standard.

FIREPLACE DESIGN is the construction and/or fabrication specifications including all dimensions and materials required for manufacturing or building fireplaces with identical combustion function and particulate emissions factors.

FIREPLACE MODEL LINE is a series of fireplace models which all have the same internal assembly. Each model in a model line may have different facade designs and external decorative features.

FIREPLACE, CERTIFIED, is a fireplace that meets the emission performance standards when tested according to UBC Standard 31-2.

FIREPLACE, NON-CERTIFIED, (masonry or concrete) is any fireplace that is not a certified fireplace. A non-certified fireplace will be subject to applicable burn ban restrictions.

INTERNAL ASSEMBLY is the core construction and firebox design which produces the same function and emissions factor for a fireplace model line.

MASONRY HEATER is a wood burning device designed and intended for domestic space heating or domestic water heating, which meets the following criteria:

1. An appliance whose core is constructed primarily of manufacturer-built, supplied or specified masonry materials (i.e., stone, cemented aggregate, clay, tile, or other non-combustible non-metallic solid materials) which weigh at least 1,760 pounds (800 kg);

2. The firebox effluent travels horizontally and/or downward through one or more heat absorbing masonry duct(s) for a distance at least the length of the largest single internal firebox dimension before leaving the masonry heater;

Where, for the purposes of this subparagraph:

2.1 Horizontal or downward travel distance is defined as the net horizontal and/or downward internal duct length, measured from the top of the uppermost firebox door opening(s) to the exit of the masonry heater as traveled by any effluent on a single pathway through duct channel(s) within the heater (or average net internal duct length for multiple pathways of different lengths, if applicable). Net internal duct length is measured from center of the internal side or top surface of a duct, horizontally or vertically to the center of the opposite side or the bottom surface of the same duct, and summed for multiple ducts or directions on a single pathway, if applicable. For duct channel(s) traversing horizontal angles of less than ninety degrees from vertical, only the net actual horizontal distance traveled is included in the total duct length.

2.2 The largest single internal firebox dimension is defined as the longest of either the length or the width of the firebox hearth and the height of the firebox, measured from the floor of the combustion chamber (hearth) to the top of the uppermost firebox door opening(s).

3. The appliance has one or more air-controlling doors for fuel-loading which are designed to be closed during the combustion of fuel loads, and which control the entry of the combustion air (beyond simple spark arresting screen(s)) to one or more inlet(s) as prescribed by the masonry heater manufacturer. Manufacturer means a person who is engaged in the business of designing and constructing masonry heaters;

4. The appliance is assembled in conformance with the Underwriters' Laboratories-listed and/or manufacturer's specifications for its assembly and, if the core is constructed with a substantial proportion of materials not supplied by the manufacturer, and is certified by a representative of the manufacturer to be substantially in conformance with those specifications; and

5. The appliance has a label permanently affixed to the appliance stating that the appliance meets the criteria of this section and identifying its manufacturer and model.

RESPONSE TIME is the amount of time required for the measurement system to display 95 percent of a step change in gas concentration.

SAMPLING SYSTEM BIAS is the difference between the gas concentrations exhibited by the analyzer when a known concentration gas is introduced at the outlet of the sampling probe and when the sample gas is introduced directly to the analyzer.

SPAN is the upper limit of the gas concentration measurement range. (25 percent for CO_2, O_2 and 5 percent for CO).

TEST FACILITY is the area in which the fireplace is installed, operated, and sampled for emissions.

TEST FUEL LOADING DENSITY is the weight of the as-fired test-fuel charge per unit area of usable firebox floor or hearth.

TEST-BURN is an individual emission test which encompasses the time required to consume the mass of three consecutively burned test-fuel charges.

TEST-FUEL CHARGE is the collection of test fuel pieces placed in the fireplace at the start of certification test.

USABLE FIREBOX AREA is the floor (or hearth) area, within the fire chamber of a fireplace upon which a fire may be, or is intended to be built. Usable firebox area is calculated using the following definitions:

1. Length. The longest horizontal fire chamber dimension along the floor of the firebox that is parallel to a wall of the fire chamber.

2. Width. The shortest horizontal fire chamber dimension along the floor of the firebox that is parallel to a wall of the fire chamber.

3. For slanted or curved firebox walls and/or sides, the effective usable firebox area shall be determined by calculat-

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ing the sum of standard geometric areas or sub-areas of the firebox floor.

If a fireplace has a floor area within the fire chamber which is larger than the area upon which it is intended that fuel be placed and burned, the usable firebox area shall be calculated as the sum of standard geometric areas or sub-areas of the area intended for fuel placement and burning. For fireplace grates which elevate the fuel above the firebox floor, usable firebox area determined in this manner shall be multiplied by a factor of 1.5. The weight of test-fuel charges for fireplace-grate usable-firebox-area tests, shall not exceed the weight of test-fuel charges determined for the entire fireplace floor area.

ZERO DRIFT is the difference in the analyzer reading from the initial calibration response at the zero concentration level after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

NEW SECTION

WAC 51-30-31202 Section 31.202—Testing.

31.202.1 Applicability. This method is applicable for the certification and auditing of fireplace particulate emission factors. This method describes the test facility, fireplace installation requirements, test-fuel charges, and fireplace operation as well as procedures for determining burn rates and particulate emission factors.

31.202.2 Principle. Particulate matter emissions are measured from a fireplace burning prepared test-fuel charges in a test facility maintained at a set of prescribed conditions.

31.202.3 Test Apparatus.

31.202.3.1 Fireplace Temperature Monitors. Device(s) capable of measuring flue-gas temperature to within 1.5 percent of expected absolute temperatures.

31.202.3.2 Test Facility Temperature Monitor. A thermocouple located centrally in a vertically oriented pipe shield 6 inches (150 mm) long, 2 inches (50 mm) diameter that is open at both ends, capable of measuring air temperature to within 1.5 percent of expected absolute temperatures.

31.202.3.3 Balance. Balance capable of weighing the test-fuel charge(s) to within 0.1 lb (0.05 kg).

31.202.3.4 Moisture Meter. Calibrated electrical resistance meter for measuring test-fuel moisture to within 1 percent moisture content (dry basis).

31.202.3.5 Anemometer. Device capable of detecting air velocities less than 20 ft/min (0.10 m/sec), for measuring air velocities near the fireplace being tested.

31.202.3.6 Barometer. Mercury, aneroid or other barometer capable of measuring atmospheric pressure to within 0.1 inch Hg (2.5 mm Hg).

31.202.3.7 Draft Gauge. Electromanometer or other device for the determination of flue draft (i.e., static pressure) readable to within 0.002 inches of water column (0.50 Pa).

31.202.3.8 Combustion Gas Analyzer. Combustion gas analyzers for measuring Carbon Dioxide (CO_2), Carbon Monoxide (CO) and Oxygen (O_2) in the fireplace exhaust-gas stream must meet all of the following measurement system performance specifications:

1. **Analyzer Calibration Error**. Shall be less than ± 2 percent of the span value for the zero, mid-range, and high-range calibration gases.

2. **Sampling System Bias**. Shall be less than ± 5 percent of the span value for the zero, mid-range, and high-range calibration gases.

3. **Zero Drift**. Shall be less than ± 3 percent of the span over the period of each run.

4. **Calibration Drift**. Shall be less than ± 3 percent of the span value over the period of each run.

5. **Response Time**. Shall be less than 1.5 minutes.

31.202.4 Emissions Sampling Method. Use the emission sampler system (ESS) as described in Section 31.203.12 or an equivalent method as determined by the application of the U.S. EPA Method 301 Validation Procedure (Federal Register, December 12, 1992, Volume 57, Number 250, page 11998) and upon approval of DOE.

31.202.5 Fireplace Installation and Test Facility Requirements. The fireplace being tested must be constructed, if site-built, or installed, if manufactured, in accordance with the designer's/ manufacturer's written instructions. The chimney shall have a total vertical height above the base of the fire chamber of not less than 15 feet (4 600 mm). The fireplace chimney exit to the atmosphere must be freely communicating with the fireplace combustion makeup-air source. There shall be no artificial atmospheric pressure differential imposed between the chimney exit to the atmosphere and the fireplace makeup-air inlet.

31.202.6 Fireplace Aging and Curing. A fireplace of any type shall be aged before certification testing begins. The aging procedure shall be conducted and documented by the testing laboratory.

31.202.6.1 Catalyst-Equipped Fireplaces. Operate the catalyst-equipped fireplace using fuel described in Section 31.203. Operate the fireplace with a new catalytic combustor in place and in operation for at least 50 hours. Record and report hourly catalyst exit temperatures, the hours of operation, and the weight of all fuel used.

31.202.6.2 Non-Catalyst-Equipped Fireplaces. Operate the fireplace using the fuel described in Section 31.203 for at least 10 hours. Record and report the hours of operation and weight of all fuel used.

31.202.7 Pretest Preparation. Record the test-fuel charge dimensions, moisture content, weights, and fireplace (and catalyst if equipped) descriptions.

The fireplace description shall include photographs showing all externally observable features and drawings showing all internal and external dimensions needed for fabrication and/or construction. The drawings must be verified as representing the fireplace being tested and signed by an authorized representative of the testing laboratory.

31.202.8 Test Facility Conditions. Locate the test facility temperature monitor on the horizontal plane that includes the primary air intake opening for the fireplace. Locate the

temperature monitor 3 to 6 feet (1 000 to 2 000 mm) from the front of the fireplace in the 90° sector in front of the fireplace. Test facility temperatures shall be maintained between 65° and 90°F (18° and 32°C). Use an anemometer to measure the air velocity. Measure and record the room-air velocity within 2 feet (600 mm) of the test fireplace before test initiation and once immediately following the test-burn completion. Air velocity shall be less than 50 feet/minute (250 mm/second) without the fireplace operating.

NEW SECTION

WAC 51-30-31203 Section 31.203—Test protocol.

31.203.1 Test Fuel. Fuel shall be air dried Douglas fir dimensional lumber or cordwood without naturally associated bark. Fuel pieces shall not be less than 1/2 nor more than 5/6 of the length of the average fire chamber width. Fuel shall be split or cut into pieces with no cross-sectional dimension greater than 6 inches (152 mm). Spacers, if used, shall not exceed 3/4 inches (19 mm) thickness and 15 percent of the test-fuel charge weight. Fuel moisture shall be in the range of 16 to 20 percent (wet basis) or 19 to 25 percent (dry basis) meter reading.

31.203.2 Test-Fuel Loading Density. The wet (with moisture) minimum weight of each test-fuel charge shall be calculated by multiplying the hearth area in square feet by 7.0 pounds per square foot (square meters x 0.30 kg/m^2) (± 10 percent). Three test-fuel charges shall be prepared for each test-burn.

31.203.3 Kindling. The initial test-fuel charge of the three test-fuel charge test-burn shall be started by using a kindling-fuel charge which is up to 50 percent of the first test-fuel charge weight. Kindling-fuel pieces can be any size needed to start the fire or whatever is recommended in the manufacturer's (builder's) instructions to consumers. The kindling-fuel charge weight is not part of the initial test-fuel charge weight but is in addition to it.

31.203.4 Test-Burn Ignition. The fire can be started with or without paper. If used, the weight of the paper must be included in test-fuel charge weight. The remainder of the test-fuel charge may be added at any time after kindling ignition except that the entire first test-fuel charge must be added within 10 minutes after the start of the test (i.e., the time at which the flue-gas temperature at the 8-foot (2 440 mm) level is over 100°F (37.8°C) greater than the ambient temperature of the test facility).

31.203.5 Test Initiation. Emissions and flue-gas sampling are initiated immediately after the kindling has been ignited and when flue-gas temperatures in the center of the flue at an elevation of 8 feet (2 440 mm) above the base (floor) of the fire chamber reach 100°F (37.8°C) greater than the ambient temperature of the test facility.

31.203.6 Sampling Parameters. Sampling (from the 8-foot (2 440 mm) flue-gas temperature measurement location) must include:

1. Particulate Emissions
2. Carbon Dioxide (CO_2)[1]
3. Carbon Monoxide (CO)[1]
4. Oxygen (O_2)[1]
5. Temperature(s)

[1] These gases shall be measured on-line (real-time) and recorded at a frequency of not less than once every 5 minutes. These 5-minute readings are to be arithmetically averaged over the test-burn series or alternatively, a gas bag sample can be taken at a constant sample rate over the entire test-burn series and analyzed for the required gases within one hour of the end of the test-burn.

If a fireplace is equipped with an emissions control device which is located downstream from the 8-foot (2 440 mm) flue-gas temperature measurement location, a second temperature, particulate, and gaseous emissions sampling location must be located downstream from the emissions control device but not less than 4 flue diameters upstream from the flue exit to the atmosphere. The two sampling locations must be sampled simultaneously during testing for each fireplace configuration being tested.

31.203.7 Test-Fuel Additions and Test Completion. The second and third test-fuel charges for a test-burn may be placed and burned in the fire chamber at any time deemed reasonable by the operator or when recommended by the manufacturer's and/or builder's instructions to consumers.

No additional kindling may be added after the start of a test-burn series and the flue-gas temperature at the 8-foot (2 440 mm) level above the base of the hearth must always be 100°F (37.8°C) greater than the ambient temperature of the test facility for a valid test-burn series. Each entire test-fuel charges must be added within 10 minutes from the addition of the first piece.

A test (i.e., a three test-fuel charge test-burn series) is completed and all sampling and measurements are stopped when all three test-fuel charges have been consumed (to more than 90 percent by weight) in the firebox and the 8-foot (2 440 mm) level flue-gas temperature drops below 100°F (37.8°C) greater than the ambient temperature of the test facility. Within 5 minutes after the test-burn is completed and all measurements and sampling has stopped, the remaining coals and/or unburned fuel, shall be extinguished with a carbon dioxide fire extinguisher. All of the remaining coals, unburned fuel, and ash shall be removed from the firebox and weighed to the nearest 0.1 pound (0.05 kg). The weight of these unburned materials and ash shall be subtracted from the total test-burn fuel weight when calculating the test-burn burn rate. A test-burn is invalid if less than 90 percent of the weight of the total test-fuel charges plus the kindling weight have been consumed in the fireplace firebox.

31.203.8 Test-Fuel Charge (Load) Adjustments. Test-fuel charges may be adjusted (i.e., repositioned) once during the burning of each test-fuel charge. The time used to make this adjustment shall be less than 15 seconds.

31.203.9 Air Supply Adjustment. Air supply controls, if the fireplace is equipped with controls, may not be adjusted during any test-burn series after the first 10 minutes of startup of each fuel load. All air supply settings must be set to the lowest level at the start of a test and shall remain at the lowest setting throughout a test-burn.

31.203.10 Auxiliary Fireplace Equipment Operation. Heat exchange blowers (standard or optional) sold with the fireplace shall be operated during all test-burns following the

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manufacturer's written instructions. If no manufacturer's written instructions are available, operate the heat exchange blower in the "high" position. (Automatically operated blowers shall be operated as designed.) Shaker grates, by-pass controls, afterburners, or other auxiliary equipment may be adjusted only once per test-fuel charge following the manufacturer's written instructions. Record and report all adjustments on a fireplace operational written-record.

31.203.11 Fireplace Configurations. One, 3 fuel-load test-burn shall be conducted for each of the following fireplace operating configurations:

1. Door(s) closed, with hearth grate
2. Door(s) open, with hearth grate
3. Door(s) closed, without hearth grate
4. Door(s) open, without hearth grate
5. With no doors, and draft inducer on

No test-burn series is necessary for any configuration the appliance design cannot or is not intended to accommodate. If a configuration is not tested, the reason must be submitted with the test report and the appliance label must state that the appliance cannot be used in that configuration by consumer users.

31.203.11.1 Closed-Door(s) Testing. For all closed-door test configurations, the door(s) must be closed within 10 minutes from the addition of the first test-fuel piece of each test-fuel charge in a test-burn. During a test-burn, the door(s) cannot be re-opened except during test-fuel reload and adjustment as referenced in Sections 31.203.7 and 31.203.8.

31.203.11.2 Additional Test-Burn. The testing laboratory may conduct more than one test-burn series for each of the applicable configurations specified in Section 31.203.11. If more than one test-burn is conducted for a specified configuration, the results from at least 2/3 of the test-burns for that configuration shall be used in calculating the arithmetic average emission factor. The measurement data and results of all tests conducted shall be reported regardless of which values are used in calculating the average emission factor.

31.203.12 Emissions Sampling System (ESS).

31.203.12.1 Principle. Figure 31-2-1 shows a schematic of an ESS for sampling solid-fuel-fired fireplace emissions. Except as specified in Section 31.202.4, an ESS in this configuration shall be used to sample all fireplace emissions. The ESS shall draw flue gases through a 15 inch (380 mm) long, 3/8 inch (10 mm) O.D. stainless steel probe which samples from the center of the flue at an elevation which is 8 feet (2 440 mm) above the floor of the firebox (i.e., the hearth). A flue-gas sample shall then travel through a 3/8 inch (10 mm) O.D. Teflon® tube, and a heated U.S. EPA Method 5-type glass-fiber filter (40 CFR Part 60 Appendix A) for collection of particulate matter. The filter shall be followed by a cartridge containing a sorbent resin (XAD-2) for collecting semi-volatile hydrocarbons. Water vapor shall then be removed from the sampled gas by a silica-gel trap. Flue-gas oxygen concentrations, which shall be used to determine the ratio of flue-gas volume to the amount of fuel burned, are measured within the ESS system by an electrochemical cell meeting the performance specifications presented in Section 31.202.3.8 (1.).

The ESS shall use a critical orifice to maintain a nominal flue-gas sampling rate of 0.035 cfm (1.0 liters per minute). The actual flow rate through each critical orifice shall be calibrated before and after each test with a bubble flow meter to document exact sampling rates. Temperatures shall be monitored using type K ground-isolated, stainless-steel-sheathed thermocouples.

The ESS unit shall return particle-free and dry exhaust gas to the flue via a 1/4 inch (6 mm) Teflon® line and a 15 inch (380 mm) stainless steel probe inserted into the flue. A subsample aliquot of the flue-gas sample-gas stream exiting the ESS unit, shall be pumped into a 5.7 gal (22 liter) Tedlar® bag for measuring the average carbon dioxide, carbon monoxide and confirmation of average oxygen concentrations for the test period. Flow to the subsample gas bag shall be controlled by a solenoid valve connected to the main pump circuit and a fine-adjust needle-controlled flow valve. The solenoid valve shall be open only when the pump is activated, allowing the subsample gas to be pumped into the gas bag at all times when the ESS pump is on. The rate of flow into the bag shall be controlled by the fine-adjust metering needle-valve which is adjusted at setup so that 4.7 to 5.2 gal (18 to 20 liters) of gas is collected over the entire 3 test-fuel charge test-burn without over-pressurizing the gas sample bag.

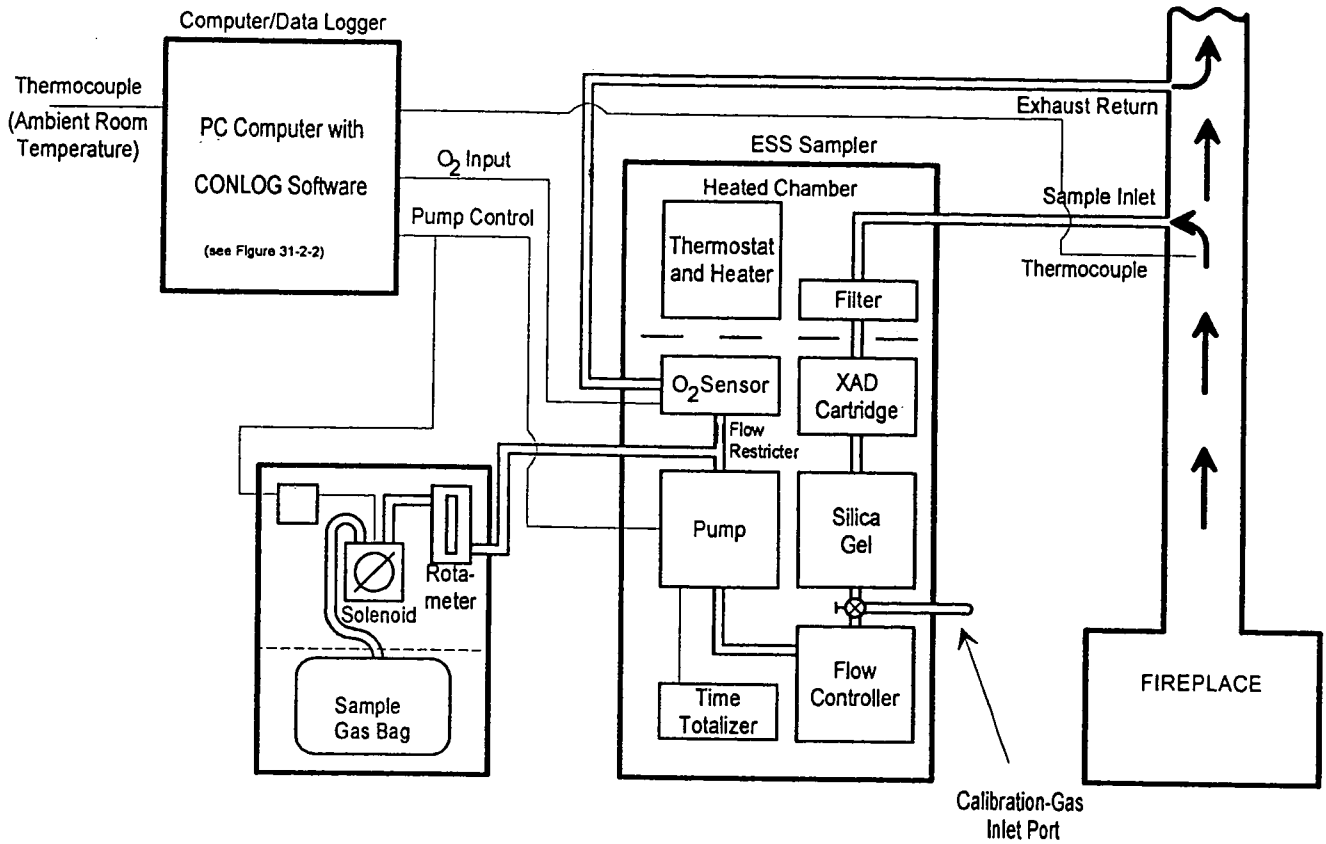

Figure 31-2-1. Schematic of ESS/Data Logger system.

31.203.12.2 The Data Acquisition and Control System. The data acquisition and control system for the ESS is shown in Figure 31-2-2. This system consists of a personal computer (PC) containing an analog-to-digital data processing board (12-bit precision), a terminal (connection) box, and specialized data acquisition and system control software (called CONLOG).

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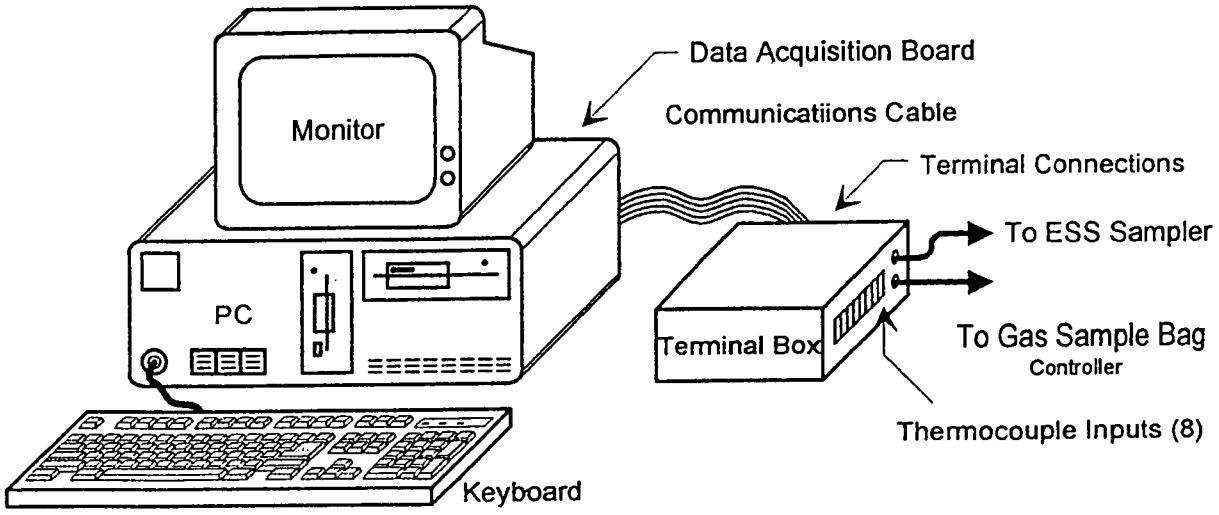

Figure 31-2-2. ESS data logger system.

For fireplace testing, the CONLOG software is configured to control, collect, and store the following data:

1. Test-period starting and ending times and dates and total length of sampling period

2. Pump-cycle on/off, cycle length and thermocouple (TC) cycle recording interval (frequency)

3. Temperature records, including flue-gas and ambient temperatures, averaged over pre-selected intervals

4. Date, times, and weights of each added fuel load

5. Flue-gas oxygen measurements taken during each sample cycle

During testing, instantaneous readings of real-time data shall be displayed on the system status screen. These data shall include the date, time, temperatures for each of the TCs and flue-gas oxygen concentrations. The most recent 15 sets of recorded data shall also be displayed.

Flue-gas sampling and the recording of flue-gas oxygen concentrations shall only occur when flue-gas temperatures are above 100°F (37.8°C) greater than the ambient temperature of the test facility. Temperatures and fueling shall always be recorded at five-minute intervals regardless of flue-gas temperature. The ESS sampling-pump operating cycle shall be adjustable as described in Section 31.203.12.3.

31.203.12.3 ESS Sampling-Pump Operating Cycle. The ESS sampling-pump operating cycle shall be adjusted to accommodate variable test-fuel charge sizes, emission factors, and the length of time needed to complete a test-burn series. The sampler-pump operation shall be adjustable from 1 second to 5 minutes (100 percent) "on" for every 5-minute test-burn data-recording interval. This will allow adjustment for the amount of anticipated emissions materials that will be sampled and deposited on the ESS filter, XAD, and the other system components. It is recommended that the minimum sample quantities stipulated in Section 31.203.12.4 be used to calculate the appropriate pump cycle "on" and "off" periods. It should be noted that if the sampler collects too much particulate material on the filter and in the XAD cartridge, the unit may fail the sample flow calibration check required at the end of each test-burn.

31.203.12.4 Minimum Sample Quantities. For each complete three test-fuel charge test-burn, the ESS must catch a minimum total particulate material mass of at least 0.231 grains (15 mg). Alternatively, the ESS must sample a minimum of 39 gal (150 liters) during each three test-fuel charge test-burn.

31.203.12.5 Equipment Preparation and Sample Processing Procedures.

31.203.12.5.1. Prior to emissions testing, the ESS unit shall be prepared with a new, tared glass-fiber filter and a clean XAD-2 sorbent resin cartridge. Within 3 hours after testing is completed, the stainless steel sampling probe, Teflon® sampling line, filter holder, and XAD-2 cartridge(s) shall be removed from the test site and transported to the laboratory for processing. Each component of the ESS sampler shall be processed as follows:

1. Filter: The glass fiber filter (4 inches (102 mm) in diameter) shall be removed from the ESS filter housing and placed in a petri dish for desiccation and gravimetric analysis.

2. XAD-2 sorbent-resin cartridge: The sorbent-resin cartridge shall be extracted in a Soxhlet extractor with dichloromethane for 24 hours. The extraction solution shall be transferred to a tared glass beaker and evaporated in an ambient-air dryer. The beaker with dried residue shall then be desiccated to constant weight (less than ± 0.5 mg change within a 2-hour period), and the extractable residue shall be weighed.

3. ESS hardware: All hardware components which are in the flue-gas sample stream (stainless steel probe, Teflon® sampling line, stainless steel filter housing, and all other Teflon® and stainless steel fittings) through the top of the sorbent-resin cartridge, shall be cleaned with a solvent mixture of 50 percent dichloromethane and 50 percent

methanol. The cleaning solvent solutions shall be placed in tared glass beakers, evaporated in an ambient-air dryer, desiccated to constant weight (less than ± 0.5 mg change within a 2-hour period), and weighed.

EPA Method 5 procedures (40 CFR Part 60 Appendix A) for desiccation and weighing time intervals shall be followed for steps 1 through 3 above.

31.203.12.5.2 The ESS shall be serviced both at the start and end of a fireplace testing period. During installation, leak checks shall be performed; the thermocouples, fuel-weighing scale, and oxygen-cell shall be calibrated, and the data logger shall be programmed. At the end of the test period, final calibration, and leak-check procedures shall again be performed, and the ESS sampling line, filter housing, XAD-2 cartridge, sampling probe, and Tedlar® bag shall be removed, sealed, and transported to the laboratory for analysis.

31.203.12.6 Data Processing and Quality Assurance.

31.203.12.6.1 Upon returning to the laboratory facilities, the data file (computer disk) shall be reviewed to check for proper equipment operation. The data-logger data files, log books, and records maintained by field staff shall be reviewed to ensure sample integrity.

The computer-logged data file shall be used in conjunction with the ESS particulate samples and sample-gas bag analyses to calculate the emission factor, emission rate, and fireplace operational parameters. An example ESS results report is presented in Table 31-2-A.

31.203.12.6.2 Burning Period. The total burning period is calculated by:

Total Burning Period = (Length of each sample cycle) x (Number of flue temperature readings over 100°F (37.8°C) greater than the ambient temperature of the test facility).

WHERE:

1. Length of sample cycle: The time between each temperature recording as configured in the CONLOG software settings (standardized at 5 minutes).

2. Number of readings during fireplace use: The total number of temperature readings when the calibrated temperature value was more than 100°F (37.8°C) greater than the ambient temperature of the test facility.

31.203.12.6.3 Particulate Emissions.

31.203.12.6.3.1 ESS Particulate Emission Factor. The equation for the total ESS particulate emission factor presented below produces reporting units of grams per dry kilogram of fuel burned (g/kg):

$$\text{Particulate emission factor (g/kg)} = \frac{\text{(Particulate catch) x (Stoichiometric Volume) x (Dilution Factor)}}{\text{(Sampling Time) x (Sample Rate)}}$$

WHERE:

1. Particulate catch: The total mass, in grams, of particulate material caught on the filter, in the XAD-2 resin cartridge (semi-volatile compounds); and in the probe clean-up and rinse solutions.

2. Sample Time: The number of minutes the sampler pump operated during the total test period.

3. Sample Rate: Sample rate is controlled by the critical orifice installed in the sampler. The actual calibrated sampling rate is used here.

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Table 31-2-A Example ESS Data Results Format

ESS Emission Results

Test Facility Location:	xxxx
Test Laboratory:	xxxx
Test-Burn Number:	xxxx
Start Time/Date:	xxxx
End Time/Date:	xxxx
Fireplace Model:	xxxx

TIME

Total Test Period	152.3 hours
Total Burn Time	64.6 hours
Flue >100 Degrees F above ambient temperature	42.4 %

ESS SETTINGS

ESS Sample Rate	1.004 l/min
Sample Cycle	5.0 min
Sample Time / Sample Cycle	0.443 min

TEST FUEL

Total Fuel Used (wet weight)	101.3 kg
Ave. Fuel Moisture (dry basis)	17.7 %
Total Fuel Used (dry weight)	86.1 kg
Average Test-Fuel Charge	14.5 kg
Average Burn Rate	1.33 dry kg/hr

PARTICULATE EMISSIONS (EPA Method 5H Equivalents)

Gram / Kilogram	2.6 g/kg
Gram / Hour	3.4 g/hr
Gram / Cubic Meter	0.06 g/m^3

CARBON MONOXIDE EMISSIONS

Gram / Kilogram	48.0 g/kg
Gram / Hour	64.0 g/hr
Gram / Cubic Meter	1.25 g/m^3

AVERAGE TEMPERATURES

Fuel-Gas Temperatures	275 °F 135 °C
Flue Exit Temperature	308 °F 154 °C
Test Facility Ambient Temperature	66 °F 19 °C

AVERAGE FLUE-GAS CONCENTRATIONS

Flue Oxygen (SE)	18.15 %
Flue Oxygen (gas bag or analyzer)	18.05 %
Flue CO (gas bag or analyzer)	0.10 %
Flue CO_2 (gas bag or analyzer)	2.60 %

BREAKDOWN OF ESS PARTICULATE SAMPLE

Rinse	25.5 mg
XAD	6.3 mg
Filter	15.7 mg
Blank	0.0 mg
TOTAL	**47.4 mg**

Notes:
NM = Not Measured, NA = Not Applicable, NU = Not Used
Total time flue temperature greater than 100°F over ambient temperature.

TEST PERFORMED BY: XYZ Testing International, Olympia Washington, 98504

4. Stoichiometric Volume: Stoichiometric volume is the volume of dry air needed to completely combust one dry kilogram of fuel with no "excess air." This value is determined by using a chemical reaction balance between the specific fuel being used and the chemical components of air. The stoichiometric volume for Douglas fir is 86.78 cubic feet per pound (5 404 liters per dry kilogram) at 68°F (20°C) and 29.92 inches of mercury pressure.

5. Flue Gas Dilution Factor: The degree to which the sampled combustion gases have been diluted in the flue by air in excess of the stoichiometric volume (called excess air). The dilution factor is obtained by using the average sampled carbon dioxide and carbon monoxide values obtained from the sample gas bag analyses and the following equation:

$$\text{Dilution Factor} = \frac{18.53 + \left(\left(1 - \left(\frac{(CO_2 + \frac{1}{2}\,CO)}{\{18.53\}}\right)\right) \times 2.37\right)}{(CO_2 + \frac{1}{2}\,CO)}$$

Note: Multiplying the g/kg emission factor by the burn rate (dry kg/hr) yields particulate emissions in grams per hour (g/hr). Burn rate is calculated by the following equation:

$$\text{Burn Rate (kg/hr)} = \frac{\text{Total Fuel (kg)}}{\text{Total Burn Period (hours)}}$$

$$\text{CO emission factor (g/kg)} = \frac{\text{(Fraction CO) x (Stoich. Volume) x (Dilution Factor) x (Molecular Weight of CO)}}{\text{(24.45 L/mole)}}$$

WHERE:

1. Fraction CO: The fraction of CO measured in the gas sampling bag.

Note: Percent CO divided by 100 gives the fraction CO.

2. Molecular Weight of CO: The gram molecular weight of CO, 28 pounds per pound-mole (28.0 g/g-mole).

Multiplying the results of the above equation by the burn rate (dry kg/hr) yields the grams per hour (g/hr) CO emission rate.

31.203.13 Calibrations.

31.203.13.1 Balance. Before each certification test, the balance used for weighing test-fuel charges shall be audited by weighing at least one calibration weight (Class F) that corresponds to 20 percent to 80 percent of the expected test-fuel charge weight. If the scale cannot reproduce the value of the calibration weight within 0.1 lb (0.05 kg) or 1 percent of the expected test-fuel charge weight, whichever is greater, re-calibrate the scale before use with at least five calibration weights spanning the operational range of the scale.

31.203.13.2 Temperature Monitor. Calibrate before the first certification test and semiannually thereafter.

31.203.13.3 Fuel Moisture Meter. Calibrate as per the manufacturer's instructions before each certification test.

31.203.13.4 Anemometer. Calibrate the anemometer as specified by the manufacturer's instructions before the first certification test and semiannually thereafter.

WHERE:

Total Fuel is the total fuel added during the entire test-burn minus the remaining unburned materials at the end of the test-burn.

31.203.12.6.3.2 EPA Method 5H Particulate Emissions. ESS-measured emissions factors submitted to DOE for approval must first be converted to U.S. EPA Method 5H equivalents. The ESS particulate emissions factor results obtained in Section 31.203.12.6.1 are converted to be equivalent to the U.S. EPA Method 5H emissions factor results by the following equation:

$$1.254 + (0.302 \times PEF) + (1.261 \times 10^{PEF})$$

WHERE:

PEF is the ESS-measured particulate emission factor for a test-burn.

31.203.12.6.4 CO Emissions. The carbon monoxide (CO) emission factor equation produces grams of CO per dry kilogram of fuel burned. The grams per kilogram equation includes some equation components described above.

31.203.13.5 Barometer. Calibrate against a mercury barometer before the first certification test and semiannually thereafter.

31.203.13.6 Draft Gauge. Calibrate as per the manufacturer's instructions; a liquid manometer does not require calibration.

31.203.14 Reporting Criteria. Submit both raw and reduced data for all fireplace tests. Specific reporting requirements are as follows:

31.203.14.1 Fireplace Identification. Report fireplace identification information including manufacturer, model, and serial number, and include installation and operating instructions.

31.203.14.2 Test Facility Information. Report test facility location, temperature, and air velocity information.

31.203.14.3 Test Equipment Calibration and Audit Information. Report calibration and audit results for the test-fuel balance, test-fuel moisture meter, analytical balance, and sampling equipment including volume metering systems and gaseous analyzers.

31.203.14.4 Pretest Information and Conditions. Report all pretest conditions including test-fuel charge weight, fireplace temperatures, and air supply settings.

31.203.14.5 Particulate Emission Data. Report a summary of test results for all test-burns conducted and the arithmeti-

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cally averaged emission rate for all test-burns used for certification. Submit copies of all data sheets and other records collected during the testing. Submit examples of all calculations.

31.203.14.6 Required Test Report Information and Suggested Format. Test report information requirements to be provided to DOE for approval/certification of fireplaces are presented in this section. The requirements are presented here in a recommended report format.

31.203.14.6.1 Introduction.

1. Purpose of test: Certification or audit.

2. Fireplace identification: Manufacturer, model number, catalytic/non-catalytic, options. Include a copy of fireplace installation and operation manuals.

3. Laboratory: Name, location and participants.

4. Test information: Date fireplace was received, date of tests, sampling methods used, number of test-burns.

31.203.14.6.2 Summary and Discussion of Results.

1. Table of results: Test-burn number, burn rate, particulate emission factor (in U.S. EPA Method 5H equivalents), efficiency (if determined), averages (indicate which test-burns are used).

2. Summary of other data: Test facility conditions, surface temperature averages, catalyst temperature averages, test-fuel charge weights, test-burn times.

3. Discussion: Specific test-burn problems and solutions.

31.203.14.6.3 Process Description.

1. Fireplace dimensions: Volume, height, width, lengths (or other linear dimensions), weight, and hearth area.

2. Firebox configuration: Air supply locations and operation, air supply introduction location, refractory location and dimensions, catalyst location, baffle and by-pass location and operation (include line drawings and photographs).

3. Process operation during test: Air supply settings and adjustments, fuel bed adjustments, and draft.

4. Test fuel: Test fuel properties (moisture and temperature), test fuel description (include line drawing or photograph), test fuel charge density.

31.203.14.6.4 Sampling Locations. Describe sampling location relative to fireplace. Include drawing and photographs.

31.203.14.6.5 Sampling and Analytical Procedures.

1. Sampling methods: Brief reference to operational and sampling procedures and optional and alternative procedures used.

2. Analytical methods: Brief description of sample recovery and analysis procedures.

31.203.14.6.6 Quality Control and Assurance Procedures and Results.

1. Calibration procedures and results: Certification procedures, sampling and analysis procedures.

2. Test method quality control procedures: Leak-checks, volume-meter checks, stratification (velocity) checks, proportionality results.

31.203.14.6.7 Appendices.

1. **Results and Example Calculations.** Complete summary tables and accompanying examples of all calculations.

2. **Raw Data.** Copies of all uncorrected data sheets for sampling measurements, temperature records and sample recovery data. Copies of all burn rate and fireplace temperature data.

3. **Sampling and Analytical Procedures.** Detailed description of procedures followed by laboratory personnel in conducting the certification test, emphasizing particularly, parts of the procedures differing from the prescribed methods (e.g., DOE approved alternatives).

4. **Calibration Results.** Summary of all calibrations, checks, and audits pertinent to certification test results including dates.

5. **Participants.** Test personnel, manufacturer representatives, and regulatory observers.

6. **Sampling and Operation Records.** Copies of uncorrected records of activities not included on raw data sheets (e.g., fireplace door open times and durations).

7. **Additional Information.** Fireplace manufacturer's written instructions for operation during the certification test and copies of the production-ready (print-ready) temporary and permanent labels required in Section 31.208 shall be included in the test report prepared by the test laboratory.

31.203.14.7 References.

1. Code of Federal Regulations, U.S. EPA Title 40, Part 60, Subpart AAA and Appendix A (40 CFR Part 60).

2. Barnett, S. G. and P. G. Fields, 1991, "In-Home Performance of Exempt Pellet Stoves in Medford, Oregon," prepared for U.S. Department of Energy, Oregon Department of Energy, Tennessee Valley Authority, and Oregon Department of Environmental Quality, July 1991.

3. Barnett, S. G. and R. R. Roholt, 1990, "In-Home Performance of Certified Pellet Stoves in Medford and Klamath Falls, Oregon," prepared for the U.S. Department of Energy, 1990.

4. Barnett, S. G., 1990, "Field Performance of Advanced Technology Woodstoves in Glens Falls, New York, 1988-1989," for New York State Energy Research and Development Authority, U.S. EPA, Coalition of Northeastern Governors, Canadian Combustion Research Laboratory, and the Wood Heating Alliance, December 1989.

NEW SECTION

WAC 51-30-31204 Section 31.204—Approval procedure for fireplaces. On or after the effective date of this regulation, a manufacturer or builder of a fireplace who wishes to have a fireplace model line or fireplace design designated as an approved (or certified) fireplace, shall submit to DOE for its review the following information:

31.204.1 Manufacturer name and street address, model or design identification, construction specifications, and drawings of the firebox and required chimney system.

31.204.2 A test report prepared in accordance with Section 31.203.14.6 showing that testing has been conducted by a DOE approved and U.S. EPA accredited laboratory, and that the particulate emission levels for that model or design of fireplace tested in accordance with UBC Standard Section 31.202, does not exceed 7.3 g/kg (U.S. EPA Method 5H equivalents) for a factory-built fireplace or 12.0 g/kg (U.S. EPA Method 5H equivalents) for a new masonry fireplace. After January 1, 1999, particulate emission levels for factory-built and new masonry fireplaces shall not exceed 7.3 g/kg (U.S. EPA Method 5H equivalents).

NEW SECTION

WAC 51-30-31205 Section 31.205—Approval of non-tested fireplaces. On or after the effective date of this regulation, DOE may grant approval for a fireplace model line or design that has not been tested pursuant to Section 31.204 upon submission of the following by the applicant:

31.205.1 Manufacturer name and street address, model or design identification, construction specifications and drawings of the firebox and required chimney system.

31.205.2 Documentation from an EPA accredited laboratory that the model is a fireplace within the definition of this regulation, has substantially the same core construction as a model already tested and/or approved by a DOE approved and EPA accredited laboratory, and is substantially similar to the approved model in firebox and chimney design, combustion function and probable emissions performance as listed in Section 31.204.2.

NEW SECTION

WAC 51-30-31206 Section 31.206—Approval through alternative test protocol. As provided in Section 31.202.4, an alternative testing protocol may be submitted by a DOE approved and EPA accredited testing laboratory for acceptance by DOE as equivalent to Uniform Building Code Standard 31-2.

NEW SECTION

WAC 51-30-31207 Section 31.207—Approval termination. All fireplace model line or design approvals shall terminate five years from the approval date. Previously approved fireplace model line and/or design may be granted re-approval (re-certification) upon application to and review by DOE. No testing shall be required for fireplace model line or design re-approvals unless DOE determines that design changes have been incorporated into the fireplace that could adversely affect the emissions factor, or testing is otherwise stipulated by DOE.

DOE may revoke a fireplace model line or design approval certification if it is determined that the fireplaces being produced in a specific model line do not comply with the requirements of Section 31.200. Such a determination shall be based on all available evidence, including:

1. Test data from a retesting (audit test) of the original unit on which the certification test was conducted or a sample unit from the current model line,

2. A finding that the certification test was not valid,

3. A finding that the labeling of the fireplace does not comply with the requirements of Section 31.200,

4. Failure by the fireplace manufacturer (builder) to comply with reporting and record keeping requirements under Section 31.200,

5. Physical examination showing that a significant percentage of production units inspected are not similar in all material respects to the fireplace submitted for testing, or

6. Failure of the manufacturer to conduct a quality assurance program in conformity with Section 31.208.

Revocation of certification under this section shall not take effect until the manufacturer (builder) concerned has been given written notice by DOE setting forth the basis for the proposed determination and an opportunity to request a hearing.

NEW SECTION

WAC 51-30-31208 Section 31.208—Quality control. Once within 30 days of each annual anniversary after the initial approval/certification, a DOE approved and U.S. EPA accredited laboratory shall inspect the most recently produced fireplace of an approved model line or design at its manufacturing location (site, if site-built) to document adherence to the approved/certified fireplace design specifications. If no fireplaces of an approved model line or design were produced (built) during the previous 12 months, no inspection is required.

An inspection report for each approved fireplace model line or design must be submitted to DOE within 30 days after the inspection date. The inspection report shall include, as a minimum, the model identification and serial number of the fireplace inspected, the location where the model was inspected, the names of the manufacturer's and/or builder's representatives present, the date of inspection, and a description of any changes made to the approved fireplace model line or design since the last inspection. The U.S. EPA accredited laboratory which conducts the annual quality control inspection is responsible for auditing the content and format of all labels to be applied to approved fireplaces as stipulated in Section 31.209.

A fireplace model line or design shall be re-tested in accordance with Section 31.202 if it is determined during inspection that design changes have been incorporated into the approved/certified fireplace design which adversely affect the fireplace particulate emissions factor. Design elements which can affect fireplace particulate emissions include:

1. Grate placement and height,

2. Air supply minimum and maximum controls,

3. Usable hearth area, and

4. Firebox height, width, and length dimensions.

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NEW SECTION

WAC 51-30-31209 Section 31.209—Permanent label, temporary label and owner's manual. Labels and owner's manual shall be prepared and installed in all "For Sale" fireplaces as specified in U.S. EPA 40 CFR Part 60, Section 60.536. Information that must be presented on all labels includes:

1. Manufacturer's or builder's name, address, and phone number,

2. Model number and/or name,

3. Starting and ending dates for the 5-year approval period,

4. If a fireplace was tested and approved with an emissions control device which is not an integral part of the fireplace structure, the label must state that "The fireplace can not be sold or installed without the specified emissions control device in place and operational,"

5. On certified fireplaces the statement: "This appliance has been tested and has demonstrated compliance with Washington State amendment to the UBC Standard, Chapter 31-2 requirements," and

6. On non-certified new masonry fireplaces: "This appliance has not been tested and is not in compliance with Washington State amendment to the UBC Standard, Chapter 31-2 requirements."

NEW SECTION

WAC 51-30-31210 Section 31.210—List of approved fireplaces. DOE shall maintain a list of approved fireplace model lines and designs, and that list shall be available to the public.

WSR 95-16-127
PROPOSED RULES
PARKS AND RECREATION COMMISSION
[Filed August 2, 1995, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 95-18-062 [95-15-062].

Title of Rule: Public use of state park areas.

Purpose: Establish rules for technical rock climbing in state parks.

Statutory Authority for Adoption: RCW 43.51.180.

Statute Being Implemented: RCW 43.51.040.

Summary: This WAC establishes rules that regulate technical rock climbing in state parks.

Reasons Supporting Proposal: The rule allows access to state parks for technical rock climbing and protects park resources and ensures compatibility with activities of other park visitors.

Name of Agency Personnel Responsible for Drafting: Rex Derr and Robyn Malmberg, 7150 Cleanwater Lane, Olympia, (360) 902-8606; Implementation and Enforcement: Rex Derr, 7150 Cleanwater Lane, Olympia, (360) 902-8609.

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: This WAC establishes rules for technical rock climbing in state parks that allow access to the parks for the activity and protects park resources; and authorizes citizen advisory groups at each climbing area.

Proposal Changes the Following Existing Rules: Adds new subsection to manage technical rock climbing. Adds new definition for "bivouac" which is an activity of technical rock climbing. Expands the definition of "camping" in state parks to include bivouac. Authorizes bivouacking, an activity associated with technical rock climbing, during periods of time that park areas are posted as closed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required under chapter 19.85 RCW.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: City Hall, Issaquah, Washington, on September 16, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Sue Zemek by September 5, 1995, TDD (360) 664-3133, or (360) 902-8562.

Submit Written Comments to: Rex Derr, P.O. Box 42650, Olympia, WA 98504-2650, FAX (360) 586-5875, by September 5, 1995.

Date of Intended Adoption: September 16, 1995.

August 2, 1995
Sharon Howdeshell
Office Manager

AMENDATORY SECTION (Amending WSR 95-07-061, filed 3/13/95, effective 4/13/95)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Boat launch" shall mean any facility located in a state park area designated for the purpose of placing or retrieving any vehicle-born or trailer-born watercraft into or out of the water.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping unit" shall mean a group of people (one or more persons) that is organized, equipped and capable of sustaining its own camping activity.

"Commission" shall mean the Washington state parks and recreation commission.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission.

"Emergency area" is an area in the park separate from the designated overnight camping area, which may be used for camping between the hours of 9 p.m. and 8 a.m. when

no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELC), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELC)" shall mean those specialized facilities, designated by the director, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include ((~~hangliders~~)) hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Popular destination park" shall mean any state park designated by the director as a popular destination park because, it is typically occupied to capacity by Thursday or Friday night during the high use season and the typical park user plans to stay more than one night.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that more than one hundred persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 43.51.170, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

Camping at a given park for more than twenty days within a thirty-day time period May 1 through September 30; or thirty days within a sixty-day time period October 1 through April 30. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping unit shall be limited to ten consecutive nights May 1 through September 30 and fifteen consecutive nights October 1 through April 30 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal and flush comfort station. Each campsite includes a camp stove and picnic table.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 43.51.655 and as regulated under chapter 352-36 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 43.51.456.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are

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near water ways, and that have varying facilities and extent of development.

AMENDATORY SECTION (Amending WSR 94-23-024, filed 11/7/94, effective 1/1/95)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping unit may use any state park facility for residence purposes, as defined (WAC 352-32-010(17)).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom prior to 3:00 p.m., (or other appropriate, established time in parks where camping is reserved) if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping unit for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping unit must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee (WAC 352-32-250(6)). Registration preference will be given to multiple camping units who want to use multiple sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping units. Multiple campsites in designated reservation parks are reservable under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping unit shall be limited to ten consecutive nights in one park, after which the camping unit must vacate the site for three consecutive nights, May 1 through September 30, not to exceed twenty days in a thirty-day time period; and fifteen consecutive nights in one park, after which the camping unit must vacate the site for three consecutive nights, October 1 through April 30, not to exceed thirty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) Only one camping unit with a maximum of eight people shall be permitted at a campsite, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car or one recreational vehicle: *Provided,* That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the designated or developed tent pad as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles shall occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are not subject to the campsite capacity limitations as otherwise set forth in this section. Capacities for water trail camping sites may be established by the ranger on an individual basis and are subject to change based upon the impacts to the area. All persons using water trail camping sites shall have in their possession a valid water trail permit.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas set aside in certain state parks may be used only when all designated campsites are full but may not be used prior to 9:00 p.m. Persons using emergency areas must pay the standard campsite fee and must vacate the site by 8:00 the following morning.

((~~(12)~~)) (13) Except as provided in WAC 352-32-310, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-32-050 Park periods. (1) The director shall establish for each state park area, according to existing conditions, times, and periods when it will be open or closed to the public. Such times and periods shall be posted at the entrance to the state park area affected and at the park office. No person shall enter or be present in a state park area after the posted closing time except:

(a) Currently registered campers who are camping in a designated campsite or camping area;

(b) Guests of a currently registered camper who may enter and remain until 10:00 p.m.;

(c) Guests of a state park employee;

(d) Technical rock climbers who bivouac on vertical climbing routes.

(2) Except as provided in WAC 352-32-310, any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-085 Technical rock climbing. (1) Whenever technical rock climbing is used in this section, it shall be defined as climbing where such aids as pitons, carabiners or snap links, chalk, ropes, fixed or removable anchors, or other similar equipment is used to make the climb. It includes bouldering and free soloing (respectively low and high elevation climbing without ropes).

(2) Technical rock climbing will be allowed in state parks except, the director or designee may, for a specified period or periods of time, close any state park or state park area to technical rock climbing if the director or designee concludes that a technical rock climbing closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. Prior to closing any park or park area to technical rock climbing, the director or the designee shall hold a public meeting in the general area of the park or park area to be closed to technical rock climbing. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee determines that an immediate technical rock climbing closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resource, the director or designee may take emergency action to close a park or park area to rock climbing without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director to comply with the publication and hearing requirements of this subsection.

(3) The director or designee shall ensure that any park or park area closed to technical rock climbing pursuant to subsection (2) of this section is conspicuously posted as such at the entrance of said park or said park area. Additionally, the director shall maintain a list of all parks and park areas closed to technical rock climbing pursuant to subsection (2) of this section.

(4) The director or designee shall establish a committee of technical rock climbers, for each park with a climbing area, which will advise park staff on park management issues related to technical rock climbing.

(5) Each park with a climbing area will have a climbing management plan which will specify rules about the following technical rock climbing related actions: Overnight stays on climbing routes, bolting, power drills, stabilization of holds, group size and activities, gardening/cleaning of routes pursuant to chapter 352-28 WAC and RCW 43.51.180, chalk, special use designations for climbing areas, protection of sensitive park resources, and other such issues required by the director.

(6) Bolting will be allowed as specified in climbing management plans.

(7) The use of power drills will be allowed only if the park climbing management plans specifically permit under specified conditions for bolt replacement and bolt installation on new routes. They are otherwise prohibited.

(8) The addition of holds onto the rock face by any means, including gluing, chipping, or bolting is prohibited.

(9) Except as provided in WAC 352-32-310, any violation of this section and rules contained in the park management plan and posted at the park is an infraction under chapter 7.84 RCW.

PROPOSED

WSR 95-16-007
PERMANENT RULES
LIQUOR CONTROL BOARD
[Filed July 20, 1995, 2:23 p.m.]

Date of Adoption: July 19, 1995.

Purpose: The rule requiring a handling fee for split case Class H orders is no longer necessary, thus repeal is in order.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-16-111.

Statutory Authority for Adoption: RCW 66.08.030.

Pursuant to notice filed as WSR 95-11-140 on May 24, 1995.

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

July 20, 1995
Joe McGavick
Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-16-111	Split case handling fee for Class H liquor purchases.

WSR 95-16-008
PERMANENT RULES
LIQUOR CONTROL BOARD
[Filed July 20, 1995, 2:25 p.m.]

Date of Adoption: July 19, 1995.

Purpose: WAC 314-16-190 specifies qualifications for obtaining and retaining a Class H liquor license. The amendatory action taken by the board repeals the food/liquor ratio and minimum daily gross food sales requirement.

Citation of Existing Rules Affected by this Order: Amending WAC 314-16-190.

Statutory Authority for Adoption: RCW 66.08.030.

Pursuant to notice filed as WSR 95-12-063 on June 5, 1995.

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

July 20, 1995
Joe McGavick
Chair

AMENDATORY SECTION (Amending WSR 93-10-092, filed 5/4/93, effective 6/4/93)

WAC 314-16-190 Class H restaurant—Qualifications. (1) Definitions: For the purpose of this section:

(a) Complete meals means any combination of foods consisting of an entree and at least one additional course that is prepared and cooked on the premises and, except as provided in subsection (~~((6))~~) (5) of this section, requires the use of dining implements for consumption.

(b) Entree means the main course of a meal to include meat, fish, fowl, eggs, vegetarian meat substitutes, pasta, or any combination thereof. Except as provided in subsection (~~((6))~~) (5) of this section, such entree must be heated by means of baking, roasting, broiling, or grilling.

(c) Minimum food service means sandwiches and/or short orders such as deep fried foods, hors d'oeuvres, soup, or chili. Snacks such as peanuts, popcorn, and chips are not sufficient to meet the minimum food service requirement.

(2) All restaurant applicants for a Class H license, in addition to furnishing all requested material and information relating to the premises applied for and their personal qualifications, shall establish to the satisfaction of the board that the premises will commence as, and continue to operate as, a bona fide restaurant as required by RCW 66.24.400 and 66.24.410(2).

(3) A restaurant applicant for a Class H license shall be subject to the following requirements which are conditions precedent to action by the board on the application:

(a) The applicant shall furnish to the board a detailed blueprint of the entire premises to be licensed drawn to scale of one-fourth inch to one foot. This blueprint shall include the kitchen equipment layout plus a detailed listing of the kitchen equipment and its approximate value. The kitchen equipment shall include, at a minimum, adequate refrigeration, oven, grill, cooktop, and/or broiler to support the menu.

(b) Prior to delivery of the license the board shall receive a verification from its enforcement officer, based upon an inspection of the premises, that the kitchen equipment designated in (a) of this subsection is in place and is operational.

(4) In any case where the board has a concern as to the applicant's qualifications, based on the applicant's experience; the adequacy of the proposed facility; the proposed method of operation; the applicant's financial stability; or for any other good and sufficient reason, the board may require such applicant to submit figures reflecting operation as a restaurant for a period to be designated by the board. The submission of these operating figures shall be a condition precedent to the board making a decision on a license application. Any applicant required to submit operating figures for a period designated by the board, shall not thereby be deemed to have acquired a vested right to have the license applied for issued merely because the requested figures have been submitted.

(5) ((~~To demonstrate to the satisfaction of the board that a Class H restaurant as defined in RCW 66.24.410(2) is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals, a Class H restaurant shall maintain daily average gross retail food sales of one hundred dollars or more, and such food sales shall amount to thirty percent or more of the restaurant's total food liquor sales.~~

~~(6) Each Class H restaurant licensee shall submit reports annually, or as directed by the board in writing, on forms provided by the board, showing its gross food and liquor sales. Sales of food and liquor made by a Class H licensee under a Class I license shall be included as a part of the licensee's gross food and liquor sales. If a Class H restaurant's daily average gross retail food sales are less than one hundred dollars, or its retail food sales are less than thirty percent of its total food liquor sales, such restaurant shall be ineligible to retain its Class H license. Further,~~)) Each Class H restaurant licensee shall conspicuously display or provide to any patron upon request, a menu offering a variety of at least five entrees accompanied by such other foods as to constitute a complete meal. One of the five entrees may

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consist of pizza or a deep fried food. Where salad bars or other buffet-type meals are offered, one or more entrees may be included to count toward the five entree requirement.

(((~~7~~))) (6) The restaurant area of any Class H restaurant shall be open to the public for service of complete meals, with a minimum selection of five entrees, at least five days a week, unless otherwise authorized in writing by the board to alleviate demonstrated hardship, and such service of complete meals shall be available to the public for five hours a day between the hours of 11:00 a.m. and 11:00 p.m. on any day liquor is offered for sale, service or consumption, unless otherwise authorized in writing by the board to alleviate demonstrated hardship. The hours of complete meal service shall be conspicuously posted for public viewing. A chef or cook shall be on duty during the hours when complete meal service is available. At all other times when the restaurant area is not open for service of complete meals, but liquor is offered for sale, service or consumption on the licensed premises, minimum food service shall be available for sale to the public. Notice of such minimum food service availability shall be conspicuously posted in all areas where liquor is being served.

~~(((8) In the event a Class H restaurant licensee shall fail to comply with any of the foregoing requirements, and such licensee has been notified that they will not be eligible to retain its Class H license, such licensee may petition the board setting forth unusual, extenuating and mitigating circumstances for the failure to comply and the board may consider such reasons and may grant an extension of the Class H license under such terms and conditions as the board determines are in the best interest of the public.~~

~~(9)~~))) (7) The licensee shall maintain the ingredients necessary to provide complete meals including at least five different entrees during those times as required in subsection (((~~6~~))) (5) of this section and minimum food service at all other times. Such ingredients shall be fresh, palatable, and relate to the menu so posted or available to the public.

(((~~10~~))) (8) The refusal or failure by any licensee or employee thereof to provide complete meals or minimum food service ((~~in subsection (6) of this section~~)) shall be *prima facie* evidence of a violation of this section.

~~(((11) Licensees assessing customers a mandatory premises entry fee which includes a cover charge, meal charge, and/or other charges may not apply the mandatory food sales charge to the food/liquor ratio: *Provided*, That customary holiday food/entertainment packages and Sunday brunches are not subject to the provisions of this subsection.~~

~~(12) Meals provided to employees by Class H licensees may be applied to the food/liquor ratio to the extent that the amount applied does not exceed the licensees per meal cost. The recordkeeping requirements in WAC 314-16-160 apply to employee meals that are included as a part of the food/liquor ratio.~~

~~(13) Nonliquor ingredients (pop, bottled water, lime, olives, etc.) served in an alcoholic beverage shall not be considered food sales. Soft drinks, juices, bottled water, etc., sold without an alcohol ingredient may be counted as food sales as long as they are sold and accounted for (rung up) as a separate item.~~)) (9) In the event a Class H restaurant licensee shall fail to comply with any of the foregoing requirements, and such licensee has been notified that they will not be eligible to retain its Class H license, such licensee may petition the board setting forth unusual, extenuating and mitigating circumstances for the failure to comply and the board may consider such reasons and may grant an extension of the Class H license under such terms and conditions as the board determines are in the best interest of the public.

WSR 95-16-009
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Order R-431, Docket No. A-950021—Filed July 20, 1995, 4:30 p.m.]

In the matter of amending WAC 480-146-010, 480-146-020, 480-146-030, 480-146-050, 480-146-060, 480-146-070, 480-146-080, 480-146-200, 480-146-210, and 480-146-220; and adopting WAC 480-146-230.

The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 95-08-068, filed with the code reviser on April 4, 1995. The commission brings this proceeding pursuant to RCW 80.01.040 and chapter 251, Laws of 1994.

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 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The commission is authorized to promulgate these rules by RCW 80.01.040.

These proposed modifications to the commission's rules pertaining to securities transactions will update several sections of chapter 480-146 WAC to be consistent with 1994 revisions to chapter 80.08 RCW in chapter 251, Laws of 1994. The purpose of these revisions is to streamline reporting requirements and minimize the regulatory oversight and paperwork associated with the issuance of securities.

The commission scheduled this matter for oral comment and adoption under Notice No. WSR 95-08-068, for 9:00 a.m., Wednesday, May 10, 1995, 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 written comments to the commission until April 26, 1995. To allow further time for comment and for discussions between commenters and commission staff, the commission continued the matter on the record of the May 10, 1995, session until June 9, 1995. It was then heard at that time and place.

The commission received three "rounds" of written comments. In addition, commission staff conducted one workshop and held informal discussions with interested persons to resolve concerns. The proposed rules reflect the comments and suggestions of regulated utilities in the telecommunications, electric, natural gas, and water sectors. Written comments were filed by GTE Northwest, Puget Sound Power & Light Company, PacifiCorp, Washington Natural Gas, Washington Water Power Company, U S WEST Communications, and Richard A. Finnigan. Industry representatives expressed approval of the recommended proposal to commission staff, with one minor exception, and

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no industry representative addressed the commission at the adoption meeting.

U S WEST objected to a commission staff proposal in WAC 480-146-230 that only telecommunications companies serving more than two percent of total access lines in Washington be required to file an annual report of securities transactions for each year in which the company issued securities. U S WEST argued that exempting some companies from reporting requirements is without basis in law or policy. It urged that Washington law allows waiver of regulations only for companies classified as effectively competitive and otherwise subject to "minimal regulation."

Staff responded, and the commission finds, that the proposed exemption from the annual reporting requirement is consistent with efforts to minimize regulatory oversight where possible. A similar exemption for companies serving less than fifty thousand access lines in Washington exists in WAC 480-146-091, governing the reporting of affiliated interest transactions. The exemption is also consistent with chapter 110, Laws of 1995, providing for streamlined regulation of small telecommunications companies. The exempted companies are required to maintain the information so that it is available to the commission upon request.

The rule change proposal was considered for adoption at the commission's regularly scheduled open public meeting on June 9, 1995, before Chairman Sharon L. Nelson, Commissioner Richard Hemstad and Commissioner William R. Gillis. Kathy Folsom of the commission staff made oral comments, supporting the proposal. She described the need for the proposal, the comments from industry, the suggested changes to the proposal, and the commission staff's discussions with industry representatives. No other person appeared to comment on the rule-making proposal.

The commission adopts four changes (other than the correction of typographical errors) to the text of the rules that were noticed and filed with the code reviser on April 5, 1995. These changes affect WAC 480-146-020, 480-146-070, and 480-146-230. Each of the revisions was recommended by commenting parties and provides further clarification of regulatory requirements in a way that is consistent with the spirit of the changes to the statute.

The final sentence of WAC 480-146-020 is revised to clarify the meaning of the sentence. WAC 480-146-070 has been changed to recognize that when securities are to be issued by a corporation formed by merger or consolidation, the utility may choose whether to request a written order from the commission. Language is added to WAC 480-146-230 to recognize the unique nature of issuances related to ongoing dividend reinvestment and similar employee benefit plans, and to clarify the reporting requirements of the annual securities transaction report. Finally, WAC 480-146-020 and 480-146-230 are changed to exempt from their requirements every local exchange company serving less than two percent of total access lines in the state of Washington. These changes reflect provisions in chapter 110, Laws of 1995 relating to streamlined regulation of small companies, as described in the discussion above.

These amendments to existing rules adversely affect no economic values and have no adverse environmental effect. They implement changes required by state law and they reduce regulatory requirements.

In reviewing the entire file, the commission determines that it should amend WAC 480-146-010, 480-146-020, 480-146-030, 480-146-050, 480-146-060, 480-146-070, 480-146-080, 480-146-200, 480-146-210, and 480-146-220, and it should adopt WAC 480-146-230 as noticed, with the changes described in this order, to read as set forth in Appendix A, shown below and included in it by this reference.

ORDER

THE COMMISSION ORDERS That WAC 480-146-010, 480-146-020, 480-146-030, 480-146-050, 480-146-060, 480-146-070, 480-146-080, 480-146-200, 480-146-210, and 480-146-220 are amended, and WAC 480-146-230 is adopted, to read as set forth in Appendix A shown below, as permanent rules of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.360, to be effective with the expiration of thirty days after filing in the office of the code reviser, pursuant to RCW 34.05.380(2).

THE COMMISSION FURTHER ORDERS That this order and the rules set forth in Appendix A, shown below, after being first recorded in the order register of the Washington Utilities and Transportation Commission, be forwarded to the code reviser for filing pursuant to chapters 34.05 RCW and 1-21 WAC.

THE COMMISSION Adopts the commission staff memoranda, presented when the commission considered noticing and adopting this proposal as its concise explanatory statement of the reasons for adoption, under RCW 34.05.355.

DATED at Olympia, Washington, this 17th day of July, 1995.

Washington Utilities and Transportation Commission
Sharon L. Nelson, Chairman
Richard Hemstad, Commissioner
William R. Gillis, Commissioner

APPENDIX A

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-010 Filing ((~~of application~~)). Applications for orders and statements of securities issuance may be filed at the office of the commission in Olympia, Washington, by mail or in person. ((~~Receipt of same will be acknowledged by the commission.~~

~~The requirements of the rules, regulations and forms set forth herein should be adhered to as closely as the circumstances permit. The commission will cooperate whenever possible in furnishing such information from the records on file as will assist in the preparation of any application.~~))

Applications and statements will be ((~~recorded~~)) docketed by number and all ((~~additional exhibits and data thereafter~~)) material filed((~~, and correspondence~~)) in connection therewith should bear ((~~such~~)) that number.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-020 ((~~Number of copies.~~)) **Requests, applications, and statements.** ((~~Applicant shall file with the commission an original application and shall furnish such additional copies as may be requested by the commission.~~)) Any public service company except any local exchange

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company which serves less than two percent of the access lines in the state of Washington, that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file a statement with the commission prior to such issuance containing the information required under RCW 80.08.040 (1), (2) and (3). Any company making such a filing may request from the commission a written order affirming that the company has complied with the requirements of RCW 80.08.040. For purposes of this chapter, a request for such an order is termed an application. Unless the context indicates otherwise, references to applications and applicants also include statements of securities issuance and persons filing such statements.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-030 General contents. Each application shall ((~~set forth and~~)) state fully the facts upon which ((~~the application~~)) it is based and shall be signed by the applicant, a representative of the applicant who is authorized to sign, or applicant's attorney((~~, dated and duly verified~~)). Each application shall be dated and shall bear a certification that the information is true and correct to the best of the signer's information and belief, under penalties of perjury as set forth in RCW 9A.72.085.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-050 Material incorporated by reference. ((~~Where~~)) When any documents, data or information required to be filed under these rules ((~~and regulations~~)) are on file with the commission ((~~in connection with other proceedings, in reports or otherwise~~)), it shall be sufficient ((~~if the application shall~~)) to so state and to make specific reference to ((~~said proceedings, reports or other filing. Where any exhibits herein specified do not apply to the authority requested,~~)) the document and to the proceeding, report or other filing containing the referenced information. When any information specified in this chapter is irrelevant to the application so indicate and state the reason. In the event any of the required exhibits or portions thereof cannot be supplied at the time the application is filed, state the circumstances with respect thereto and indicate when ((~~such may~~)) it will be available.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-060 Conditions for public hearing. ((~~Upon the filing of any application the same shall be acted upon as promptly as possible. Such application~~)) The commission will act upon a complete filed application as promptly as possible. It may be considered without a hearing, or, if the commission deems it advisable, a hearing may be held thereon ((~~upon such notice as the commission may provide and at such hearing witnesses may be subpoenaed and shall be sworn and such hearing conducted in the same manner as other hearings before the commission~~)) pursuant to provisions of the Administrative Procedure Act and the commission's procedural rules governing adjudications of brief adjudications.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-070 Procedure for merger or consolidation. If the securities are to be issued by a corporation to be formed by the merger or consolidation of two or more corporations, the ((~~application shall contain the general information and exhibits as required by the form of application hereinafter set forth~~)) filing shall contain the information required under WAC ((~~480-146-080~~)) 480-146-020, for each of the corporations to be so merged or consolidated. When the utility requests a written order affirming that the company has complied with the requirements of RCW 80.08.040, the filing shall contain the information required under WAC 480-146-080.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-080 Form of securities application. ((~~Applications for authority to issue securities, create liens on property, or assume or guarantee securities as liens, pursuant to the provisions of chapter 151, Laws of 1933, as amended, shall be submitted in the following form with such modifications as the circumstances may render necessary:~~

~~BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION~~

~~IN THE MATTER OF THE APPLICATION of (here insert name of applicant) FOR AN ORDER (here insert desired authorization or permission, thus: "AUTHORIZING THE ISSUANCE OF STOCKS OR BONDS: As the case maybe)~~	~~No. . . . . (Number to be inserted by secretary of the commission)~~

~~Application is hereby made to the Washington utilities and transportation commission for an order authorizing (here insert, "the issuance of securities, the creating of liens, the assumption of obligations or liabilities," as the case may be) pursuant to the provisions of chapter 151, Laws of 1933, as amended. The following general information and specific exhibits are furnished in support thereof:~~

~~GENERAL INFORMATION~~

~~1. Name of applicant.~~
~~2. Address of principal office of applicant.~~
~~3. Name and address of attorney or agent if application is submitted by such in behalf of applicant.~~
~~4. State or states under which applicant is organized and form of organization (corporation, partnership, association, firm, individual, etc.). Date of organization and term or duration thereof.~~
~~5. A general description of the property owned by applicant and the field of its operations.~~
~~6. If a corporation, the names and addresses of the ten common stockholders of applicant owning the greatest number of shares of common stock and the number of such shares owned by each; also the names and addresses of the ten preferred stock-~~

holders of applicant owning the greatest number of shares of preferred stock and the number of such shares owned by each, as follows:

Name and Address .....
Shares owned
Common .....
Preferred .....
Percentage of all Shares Issued & Outstanding
Common .....
Preferred .....
Percentage of Voting Control .....

7. Names and addresses of the officers and directors of applicant.
8. Name and address of any affiliated interest (see chapter 152, Laws of 1933 for definition of "affiliated interest"), corporation, association or similar organization which holds control over applicant, and the manner and extent of such control. The amount of each class of securities of applicant owned by such affiliated interest, to best of applicant's knowledge.
9. Names and addresses of subsidiary companies, when and where incorporated, classes of stock, shares outstanding, shares owned or controlled by applicant and percentage of voting control represented thereby.

EXHIBIT "A"

A true copy of the articles of incorporation of applicant and all amendments thereto, where applicant is a corporation.

A true copy of the partnership or operating agreement, including the names of all interested parties, where applicant is a partnership, firm, association, etc.

EXHIBIT "B"

Capital Stock Structure

Par Value .....
Shares Authorized .....
Shares Issued and Outstanding .....
Shares Reacquired and held in Treasury Uncancelled ....

Preferred
Common
Other Evidence
of Interest or
Ownership

(a) State terms of preferred stock, namely:
1. Cumulative or participating.
2. Voting rights.
3. Redemption provisions.
4. Record of dividend payments during the previous five years.
5. If cumulative, state amount of cumulated dividends, if any.
(b) Common stock:
1. Record of dividend payments during the previous five years.
2. Show all entries made to common stock account from sources other than cash received therefor, and the date of such entries.
(c) If capitalization consists of evidence of interest or ownership other than stock, describe the same fully.
(d) State in general terms, in the light of the provisions of chapter 151, Laws of 1933, the purpose or purposes for which each class of stock or other evidence of interest or ownership was issued.

EXHIBIT "C"

A brief description of each mortgage upon any of the property of applicant, as follows:

1. Date of execution.
2. Name of mortgagor.
3. Name of mortgagee or trustee.
4. Amount of indebtedness authorized to be secured thereby.
5. Amount of indebtedness actually secured.
6. Sinking fund provisions.
7. Redemption provisions.
8. Brief description of the mortgaged property, if other than the entire property described under Item 5 of general information.

EXHIBIT "D"

Long term indebtedness of applicant comprising bonds, debentures, notes or other evidences of indebtedness: (Describe separately if more than one issue).

1. Title of issue.
2. Date of issue.
3. Maturity date.
4. Interest rate.
5. Interest payment dates.
6. Amount of interest paid thereon during last fiscal year.
7. Date to which interest was last paid.
8. Principal amount authorized.
9. Principal amount outstanding.
10. Principal amount held in treasury.
11. Principal amount in sinking fund or other funds.
12. Principal amount outstanding per balance sheet.
13. Principal amount held by affiliated interests, if known. (See section 1, chapter 152, Laws of 1933, for definition of "affiliated interests")
14. Describe method of operation of sinking fund.
15. Amount of unamortized discount and expense.
16. If convertible, describe conversion privileges fully.
17. If callable, describe call provisions.
18. How is issue secured.
19. If a note or other evidence of indebtedness other than bonds or debentures, give name of payee or present owner.
20. State, in general terms, the purpose for which the securities were issued.

EXHIBIT "E"

Open account advances or loans from and to affiliated interests: (See section 1, chapter 152, Laws of 1933, for definition of "affiliated interests.")

1. Name of affiliated interest.
2. Purpose for which advances or loans were made.
3. Interest provision.

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4. Terms of settlement.
5. Amount of interest paid on such open account during the last fiscal year.
6. Date to which such interest was paid.

EXHIBIT "F"

Detailed unconsolidated balance sheet as of a date not prior to the last day of the third month preceding that in which the application is filed, and a pro forma balance sheet as of the same date giving effect to the issuance of the securities which it is proposed to issue. Indicate separately the amount of intangibles and the amount reflected in plant acquisition adjustment account if such items are included in fixed capital or utility plant accounts of the balance sheet.

EXHIBIT "F-1"

(a) Detailed income and profit and loss statement for the twelve months ended as of the date of the balance sheet submitted as EXHIBIT "F," or, if more readily available, for the period since the close of the preceding calendar year.

(b) Reconcilement of surplus account for the period covered by the income and profit and loss statement. Earned surplus should be segregated from other surplus accounts.

EXHIBIT "G"

Description of, and data relating to, proposed securities:

1. The amount and kind of stock or other evidence of interest or ownership which it is desired to issue.
2. If preferred, the nature and extent of the preference, voting rights, redemption provisions, etc.
3. The amount of bonds, notes and other evidence of indebtedness which the applicant desires to issue.
4. The date of issue.
5. The term in years.
6. The rate of interest.
7. Whether and how to be secured.
8. Sinking fund or amortization provisions.
9. If to be secured by a mortgage or pledge, the terms thereof, unless copy of the instrument is submitted with the application.
10. The lowest price at which it is proposed to sell the securities, and the terms of the sale.
11. A true copy of all underwriting or purchase agreements pertaining to the sale of the proposed securities, if available, otherwise an outline of the terms and provisions of such contemplated agreement.
12. A statement showing the names and addresses of all other prospective underwriters or purchasers with whom applicant has negotiated for the underwriting or sale of the proposed securities, and the reasons for favoring the offer or offers which it is proposed to accept.
13. The lowest price at which it is proposed to offer the securities to the public.
14. Underwriting discount, commission, or finder's fee to be paid.
15. Estimated miscellaneous incidental expenses in detail.
16. Estimated net proceeds.
17. A specimen copy of the proposed stock certificate or certificates or other evidence of interest or ownership and/or of the proposed bonds, notes or other evidences of indebtedness, if available.
18. A preliminary draft or a true copy of the proposed mortgage trust deed, escrow agreement, pledge agreement or other document, which is to be used to secure the proposed issue, if available when application is submitted.
19. A certified copy of the relevant portions of the minutes of all meetings of the directors and stockholders relating to the issuance of the proposed securities.

EXHIBIT "H"

Statement of the purpose or purposes for which the capital to be obtained by the issue of such stock, bonds, notes or other evidence of interest or ownership, or indebtedness is to be used, and showing the amount to be used severally for the following purposes:

1. Acquisition of property.
2. Construction, completion, extension or improvement of facilities.
3. Improvement or maintenance of service.
4. Discharge or lawful refunding of obligations.
5. The reimbursement of moneys actually expended from income or from any other moneys in the treasury as provided by section 3, chapter 151, Laws of 1933, as amended.

EXHIBIT "I"

If it is proposed to acquire property, submit hereunder:

(a) If property to be acquired is an operating utility system or unit thereof:

1. A description of the property which is to be acquired.
2. The historical or original cost thereof and the related accrued depreciation therein. (Estimated in both cases if actual amounts are not known.)
3. The amount of contributions in aid of construction.
4. Proposed purchase price and terms of purchase.

(b) If property to be acquired is of another type:

1. A description of the property which is to be acquired.
2. Proposed purchase price and terms of purchase.

EXHIBIT "J"

If it is proposed to construct, complete, extend or improve facilities, submit hereunder an outline of general plans and estimates thereof in such detail as is available at the time the application is submitted. Estimates should be arranged, if possible, according to the applicable uniform classification of accounts prescribed by the commission.

EXHIBIT "K"

If it is proposed to improve or maintain service, submit a statement of the reasons why the service should be improved or maintained from capital and show the estimated cost of the undertaking in reasonable detail.

EXHIBIT "L"

If it is proposed to discharge or refund obligations, submit the following information hereunder:

1. The nature and description of such obligations, including the par or stated value thereof, the amount of call premium and the plan for disposing of the same.
2. The amount for which they were originally sold, the net amount of such sale price received by the company, and the general purposes for which the proceeds were used.
3. The amount of unamortized discount and expense and the plan for disposition thereof.

If such obligations consist of or include promissory notes, show the date, amount, term, rate of interest and payee of each note.

If it is proposed to reimburse the treasury for moneys actually expended from income or from any other moneys in the treasury as provided by section 3, chapter 151, Laws of 1933, as amended, state the general purpose or purposes for which such moneys were expended.

EXHIBIT "M"

If it is proposed to assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to securities of others, submit hereunder:

1. The reasons in detail why the applicant desires to assume or guarantee such securities.
2. The amount of other securities of said person, firm or corporation now held, owned or controlled by the applicant.
3. The present market value of the securities to be assumed or guaranteed, and where listed or quoted.
4. A certified copy of the relevant portions of the minutes of all meetings of the directors and stockholders relating to the proposed assumption or guarantee of said securities.

EXHIBIT "N"

If such securities are to be issued as a result of a reorganization or merger, submit a copy of the proposed reorganization or merger plan or agreement.

EXHIBIT "O"

Show such other facts, not set forth in preceding exhibits as, in the opinion of applicant, may be pertinent to the application.

WHEREFORE, the undersigned applicant requests that the Washington utilities and transportation commission, make its order granting to such applicant its application, as provided for in chapter 151, Laws of 1933, as amended.

DATED at . . . . . this . . . . . day of . . . . . 19. . .

. . . . . .
(Applicant)

By . . . . . .
Title . . . . . .

STATE OF WASHINGTON }
} ss.
County of . . . . . }

. . . . . ., being first duly sworn, deposes and says that he is (Title) of (name of applicant), the applicant in the proceeding entitled above, that he has read the foregoing application and knows the contents thereof; that the same are true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters he believes them to be true.

. . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . . ., 19. . .

. . . . . .
Notary Public in and for the state of Washington, residing at . . . . . .))

Any public service company requesting a written order affirming that the company has complied with the requirements of RCW 80.08.040 must submit a draft copy of the proposed order which it seeks, and must submit its request to the commission in substantially the following form:

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the request) Application
of (insert name of company) for)
an order establishing compliance) Docket . . . . . .
with RCW 80.08.040.)

(Name of Company) hereby requests the Washington utilities and transportation commission to enter a written order establishing compliance with RCW 80.08.040 (1), (2) and (3). The following information is furnished in support of this application:

(1) A description of the purposes for which the issuance will be made, including a certification by an officer authorized to do so that the proceeds from any such financing are for one or more of the purposes allowed by chapter 80.08 RCW;

(2) A description of the proposed issuance including the terms of financing;

(3) A statement as to why the transaction is in the public interest; and

(4) Text of a draft order granting applicant's request for an order, including a disk containing the proposed language in a format acceptable to the commission.

Wherefore, the undersigned, an authorized agent of the applicant, requests that the Washington utilities and transportation commission issue its order affirming that the applicant has complied with the requirements of RCW 80.08.040.

The undersigned certifies, under penalties of perjury as provided in RCW 9A.72.085, that he or she has read the foregoing application and knows the contents thereof and that the same are true to the best of his or her own knowledge or belief.

Dated at . . . . this . . . . . day of . . . . ., ...

. . . . . .
(Applicant)

By . . . . . .
Title . . . . . +

PERMANENT

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-200 Minimum time required for commission order. Except as provided in WAC 480-146-210 and 480-146-220, every ((~~formal application made to the commission by public service companies, under the provisions of chapters 80.08 and 81.08~~)) application for a written order under the provisions of chapter 80-08 RCW, shall ((~~henceforth~~)) be filed with the commission at least 15 working days prior to the date when an order of the commission is desired ((~~by the applicant in the proceeding. Said~~)). The fifteen-day period ((~~of 15 working days~~)) shall begin ((~~as of the date~~)) only when the applicant has completed the filing of all the information and exhibits required by the commission's rules ((~~and regulations~~)) relating to such ((~~formal~~)) applications.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-210 Supplemental filings exempt from time limitations. WAC 480-146-200 shall apply to all supplemental applications requesting an order except those which are filed (1) to comply with the provisions of a previous order of the commission, or (2) to obtain authority to modify the terms and conditions under which a previous order of the commission was entered, or (3) to request that technical flaws of a previous order be corrected.

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69, effective 10/9/69)

WAC 480-146-220 Waiver of time limitations. The commission may, in its discretion, waive the provisions of WAC ((~~480-146-220~~)) 480-146-200 when required by a genuine emergency. Applicants ((~~desiring~~)) requesting such a waiver may be required to submit a written statement clearly indicating the nature of the emergency, the reason why emergency relief is needed and the nature and extent of any hardships that may be suffered in the event an order of the commission is not entered on or before a designated date.

NEW SECTION

WAC 480-146-230 Reporting of securities transactions. (1) Within thirty days after the issuance of stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness, each public service company shall file with the commission a letter setting forth the final terms and conditions of the transaction. The final terms and conditions of the issuance of stock under dividend reinvestment and similar employee benefit plans shall only be reported in the annual securities transaction report as set forth in subsection (2) of this section.

(2) By April 1 of each year, every gas company, every electrical company, and every local exchange company serving more than two percent of the access lines in Washington that has issued securities during the prior calendar year, shall file with the commission an annual securities transaction report containing final agreements and describing the use of proceeds and level of expenses for each of the securities transactions for the prior year ended December 31. The report shall contain sufficient detail to determine the individual and collective impact on capital structure and pro forma cost of money for the securities transactions for the prior year ended December 31.

(3) Any public service company not required to file the annual report specified in subsection (2) of this section, shall maintain its records in a way allowing it to provide, upon request of the commission, the information referenced in subsection (2) of this section on an annual basis.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-146-100	Notes with combined twelve months maturity exempt.

WSR 95-16-024
PERMANENT RULES
DEPARTMENT OF ECOLOGY
[Order 95-08—Filed July 21, 1995, 1:05 p.m.]

Date of Adoption: July 21, 1995.

Purpose: To adopt an amendment to the city of Seattle shoreline master program.

Citation of Existing Rules Affected by this Order: Amending WAC 173-19-2521.

Statutory Authority for Adoption: Chapter 90.58 RCW.

Pursuant to notice filed as WSR 95-11-088 on May 18, 1995.

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

July 21, 1995
Mary Riveland
Director

AMENDATORY SECTION (Amending Order 94-24, filed 10/21/94, effective 11/21/94)

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 September 16, 1992. Revision approved February 2, 1993. Revision approved May 18, 1993. Revision approved October 20, 1994. Revision approved July 21, 1995.

WSR 95-16-026
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
[Filed July 21, 1995, 1:30 p.m.]

Date of Adoption: July 20, 1995.

Purpose: To reorganize the rules relating to broker-dealer and salesperson registration to make them easier to use. To update the broker-dealer and salesperson registration provisions to reflect current industry procedures and examination requirements. To simplify examination requirements for agents of issuers who receive no commission. To revise examination requirements for investment advisers and investment adviser representatives. To further define the supervisory responsibilities of broker-dealers.

Citation of Existing Rules Affected by this Order: Repealing chapter 460-20A WAC; and amending WAC 460-10A-015, 460-24A-050, 460-24A-055, 460-33A-080, and 460-33A-085.

Statutory Authority for Adoption: RCW 21.20.070 and 21.20.450.

Pursuant to notice filed as WSR 95-11-079 on May 16, 1995.

Changes Other than Editing from Proposed to Adopted Version: WAC 460-21B-070 was modified to provide that generally supervisory systems require local supervision and to clarify that the rule applies to the supervision of salespersons located in Washington.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Pursuant to RCW 21.20.450, the director finds that this action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter.

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

July 20, 1995
John L. Bley
Director

AMENDATORY SECTION (Amending Order SDO-37-80, filed 3/19/80)

WAC 460-10A-015 Division. Means the securities division of the department of ((~~licensing~~)) financial institutions.

Chapter 460-20B WAC
BROKER-DEALER REGISTRATION

NEW SECTION

WAC 460-20B-010 Application. The rules contained in this chapter apply to broker-dealers (other than mortgage broker-dealers under chapter 460-33A WAC).

NEW SECTION

WAC 460-20B-020 Definitions. For the purposes of this chapter and chapters 460-21B, 460-22B, and 460-23B WAC:

(1) "Central Registration Depository" ("CRD") shall mean the national registration system operated by the National Association of Securities Dealers, Inc. pursuant to a contract with the North American Securities Administrators Association.

(2) "Balance sheet" shall mean a balance sheet prepared in accordance with generally accepted accounting principles.

(3) "Branch office," for the purpose of this chapter, shall mean any office, residence or other place or location in this state where the business of a registered broker-dealer is conducted and which is owned or controlled by, or operated directly or indirectly for the benefit of, the registered broker-dealer, and where the business of a broker-dealer is conducted by a principal, salesperson, or salespersons for such registered broker-dealer, except that the following are not considered branch offices:

(a) Any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office from which persons conducting business from the location are directly supervised;

(b) Any location referred to, in an advertisement by a broker-dealer, by its local telephone number or local post office box provided that such reference may not include the street address of the location and that such reference also sets forth the address and telephone number of the office from which persons conducting business at the location are directly supervised;

(c) Any location identified by address in a broker-dealer's sales literature, provided that the sales literature also sets forth the address and telephone number of the office from which persons conducting business at the location are directly supervised; or

(d) The principal office of the broker-dealer.

(4) "OTC non-NASDAQ equity securities" shall mean equity securities not traded on a national securities exchange or on NASDAQ. NASDAQ Small-Cap equity securities and equity securities quoted on the NASD's OTC Bulletin Board are OTC non-NASDAQ equity securities.

NEW SECTION

WAC 460-20B-030 Registration procedure. (1) Broker-dealers that are members of the National Association of Securities Dealers must:

(a) Submit Form BD designating Washington as a state in which the broker-dealer requests registration to the Central Registration Depository together with the required fee; and

(b) Submit to the securities division in a form acceptable to the administrator such additional information as the administrator may require.

(2) Broker-dealers that are not members of the National Association of Securities Dealers must submit the following to the securities division:

(a) A check for the required fee made out to "state treasurer";

(b) A complete Form BD;

(c) Balance sheet as of a date not more than ninety days before the date of filing, and computation of net capital and aggregate indebtedness ratio of the same date as the balance sheet;

(d) A copy of any subordination agreement;

(e) Proof of passage of qualifying examinations by the designated principals;

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(f) Such other information as the administrator may require.

NEW SECTION

WAC 460-20B-040 Examination requirements. (1) In order to be licensed in this state as a broker-dealer, the individual applicant, an officer if the applicant is a corporation, a manager if the applicant is a limited liability company, or a general partner if the applicant is a partnership, shall pass the following examinations:

(a) The uniform securities agent state law examination (series 63); or the uniform combined state law examination (series 66); and

(b) The appropriate qualifying examination or examinations administered by such national securities association for the activities in which the broker-dealer is to engage.

(2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the broker-dealer must notify the securities administrator of a substitute officer or general partner who has passed the same category of examination specified in subsection (1) of this section within two months of the date of substitution in order to maintain the broker-dealer's license.

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NEW SECTION

WAC 460-20B-050 Expiration of broker-dealer license, renewal procedure, and delinquency fees. The broker-dealer licenses issued pursuant to this chapter shall be effective until December 31 at which time they shall be renewed or be delinquent. For any renewal application postmarked after the expiration date but received by the administrator on or before March 1, the licensee shall pay a delinquency fee of one hundred dollars in addition to the renewal fee. No renewal applications will be accepted thereafter.

NEW SECTION

WAC 460-20B-060 Notice of changes by broker-dealers. (1) Each licensed broker-dealer shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein), promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each licensed broker-dealer shall notify the administrator of the employment of any new agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment, and the location of the office in which he or she will be employed by submitting a completed NASD Form U-4 to the administrator or the administrator's designee within twenty-one days after the event occurs.

(3) Each licensed broker-dealer shall notify the administrator of the termination of employment of any agent in Washington by submitting a completed NASD Form U-5 to the administrator or the administrator's designee, within thirty days after the event occurs.

(4) With respect to any broker-dealer registered under the Securities Exchange Act of 1934, it shall be sufficient compliance with subsection (1) of this section if a copy of an amendment to Form BD of the Securities and Exchange Commission containing the required information, or transmitted for filing to, the administrator not later than the date on which such amendment is required to be filed with the Securities and Exchange Commission.

Chapter 460-21B WAC
BROKER-DEALER PRACTICES

NEW SECTION

WAC 460-21B-008 Fraudulent practices of broker-dealers. A broker-dealer who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

(1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

(3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would impact on the value of the security.

(4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

(5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things:

(a) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or

(b) Parking or withholding securities.

(6) Although nothing in this section precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subsections specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:

(a) Failing to comply with rules adopted by the Securities and Exchange Commission under authority granted by the Penny Stock Act of 1990, i.e., United States Securities and Exchange Commission Rules 15g-1 through 15g-9 and 15g-100 (17 C.F.R. § 240.15g-1 through § 240.15g-6 adopted in Release 34-30608 issued 4/20/92; 17 C.F.R. § 240.15g-8 adopted in Release 34-30577 issued 4/13/92; 17

C.F.R. § 240.15g-9 originally adopted as § 240.15c2-6 in Release 34-27160 issued 8/22/89 and amended and redesignated as § 240.15g-9 in Release 34-32576 issued 8/11/93; 17 C.F.R. § 240.15g-100 adopted in Release 34-30608 issued 4/20/92 and amended in Release 34-32576 issued 7/2/93) which are hereby incorporated by reference.

(b) Conducting sales contests in a particular security.

(c) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(d) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(e) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

(7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

(8) Failing to comply with any prospectus delivery requirement promulgated under federal law.

NEW SECTION

WAC 460-21B-010 Churning. The phrase "employ any device, scheme or artifice," as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for any customer's account with respect to which such broker-dealer or his/her agent or employee is vested with any discretionary power, or with respect to which he/she is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

NEW SECTION

WAC 460-21B-020 Transmission or maintenance of payments received in connection with underwritings. It shall constitute a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any broker-dealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(1) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

(a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

NEW SECTION

WAC 460-21B-030 Minimum net capital requirement for broker-dealers. Every licensed broker-dealer shall meet the minimum net capital requirements required by the United States Securities and Exchange Commission. Copies of these requirements may be obtained from the securities division.

NEW SECTION

WAC 460-21B-040 Net capital defined. The definition of "net capital" shall be the same as the definition promulgated by the United States Securities and Exchange Commission. Copies of this definition may be obtained from the securities division.

NEW SECTION

WAC 460-21B-050 Books and records of broker-dealers. (1) Each registered broker-dealer shall make, maintain, and preserve books and records in compliance with United States Securities and Exchange Commission Rules 17a-3 (17 C.F.R. § 240.17a-3 (1991)), 17a-4 (17 C.F.R. § 240.17a-4(1991)), 15c2-6 (17 C.F.R. § 240.15c2-6 (1991)) and 15c2-11 (17 C.F.R. § 240.15c2-11 (1991) as amended in Release No. 34-29094, 56 Fed. Reg. 19148 (1991)) which are hereby incorporated by reference. To the extent that the United States Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

(2) Each broker-dealer shall keep and maintain at each branch office or if the broker-dealer maintains no branch office in this state, at any office in this state where the broker-dealer conducts business, the following items relating to the operations of that branch office, which, together with any other books and records made or kept at the branch office, are open to inspection by the administrator or the administrator's designee pursuant to RCW 21.20.100:

(a) A complaint file containing every written customer complaint and a record of the action taken by the broker-dealer with respect to that complaint;

(b) A litigation file documenting each criminal or civil action filed in a state or federal court against the broker-dealer office or against any of its personnel with respect to a securities or investment advisory transaction and the disposition of any such litigation;

(c) A correspondence file containing all correspondence or copies thereof disseminated to or received from the public in connection with the business of the office;

(d) Copies of each confirmation of purchase or sale sent to each customer and each order ticket completed at the office;

(e) Copies of each periodic statement sent to a customer;

(f) Commission runs showing the amount of commissions earned by each salesperson of the broker-dealer;

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(g) Copies or originals of new account records indicating the name and address of each customer or client, whether the customer or client is legally of age, the signature of the salesperson introducing the account, and the signature of the manager accepting the account for the broker-dealer. If a broker-dealer customer is associated with or employed by another broker-dealer, this fact must be recorded. In discretionary broker-dealer accounts, the broker-dealer shall also record:

(i) The age or approximate age and occupation of the customer;

(ii) The signature of the person authorizing the use of discretion;

(iii) The signature of each person authorized to exercise discretion in such account;

(h) Copies of each margin agreement;

(i) Copies of each written option agreement; and

(j) Blotter (or other records of original entry) containing an itemized daily record of all purchases and sales of securities at the office, all receipts and deliveries of securities (including certificate numbers) at the office, and all other debits and credits relating to the operation of the office. Such records shall show the amount for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(3) The administrator or the administrator's designee may copy records made, kept, or maintained pursuant to subsections (1) and (2) of this section or require a broker-dealer registered in this state to copy those records and provide the copies to the administrator in a manner reasonable under the circumstances.

(4) The records required to be kept and maintained by subsection (2) of this section may be kept or maintained on computer, microform, or other electronic data storage system if the records can be immediately produced in document form.

(5) The administrator may, by order, upon written request and for good cause shown, waive any of the requirements of this rule.

NEW SECTION

WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of

creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: *Provided,* That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(24) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(25) Any acts or practices enumerated in WAC 460-21B-010.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

NEW SECTION

WAC 460-21B-070 Supervision of securities salespersons. (1) In order to supervise its salespersons reasonably, a broker-dealer must designate a qualified person as supervisor for each salesperson. For the purpose of this section, that person shall be referred to as the "designated supervisor" of the salesperson or salespersons he or she supervises. To be qualified, a designated supervisor must demonstrate competence by passing the examinations required by WAC 460-20B-040 to qualify as a broker-dealer.

(2) The administrator finds that a designated supervisor generally cannot reasonably supervise salespersons who conduct business at locations far from the principal place of business of the designated supervisor. A designated supervisor of salespersons (other than salespersons who are themselves designated supervisors) located in this state must maintain his or her principal place of business in this state or in a contiguous state, and that office may not, without the written permission of the administrator, be so distant from the principal place of business of any person for whose supervision the designated supervisor is responsible as to make it impractical for the designated supervisor to visit the premises at which the salesperson supervised works on at least a monthly basis.

NEW SECTION

WAC 460-21B-080 Written procedures. (1) In order to supervise its salespersons reasonably, a broker-dealer must establish, maintain and enforce written procedures to supervise the business in which it engages and to supervise the activities of its salespersons and its other employees. The written procedures shall include, but not be limited to, procedures concerning:

(a) Review and approval of new accounts;

(b) Periodic examination of customer accounts to detect and prevent irregularities or abuses;

(c) Review of and response to customer complaints;

(d) Review and endorsement of customer orders;

(e) Review and approval of delegation of discretionary authority by a customer to a salesperson;

(f) Review and approval of correspondence from salespersons;

(g) Review of incoming correspondence;

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(h) Review and approval of advertising and sales literature to be used by salespersons;

(i) Order execution;

(j) Cashiering and operations functions including the handling of cash and securities;

(k) Market making (if the broker-dealer is a market maker); and

(l) Underwriting of public offerings and private placements (to the extent that the broker-dealer engages in those activities).

(2) A copy of the written procedures described in subsection (1) of this section shall be kept and maintained at every location in which supervisory activities are conducted on behalf of the broker-dealer.

Chapter 460-22B WAC
SALESPERSONS OF BROKER-DEALERS

NEW SECTION

WAC 460-22B-010 Application. The rules contained in this chapter apply to securities salespersons for broker-dealers other than mortgage paper broker-dealers.

NEW SECTION

WAC 460-22B-020 Cross-reference to other sections relating to securities salespersons. Securities salespersons of issuers are covered in chapter 460-23B WAC. Salespersons of mortgage paper broker-dealers are covered in chapter 460-33A WAC.

NEW SECTION

WAC 460-22B-030 Registration procedure. (1) Applications for registration of salespersons of broker-dealers that are members of a national securities association or national securities exchange must be submitted, together with the required fee, through the Central Registration Depository (CRD).

(2) Applications for registration of salespersons of broker-dealers not members of a national securities association or national securities exchange must be submitted to the securities division on Form U-4 together with the required fee and proof of passage of required examinations.

NEW SECTION

WAC 460-22B-040 Salesperson registration and examination. (1) Every applicant for registration as a securities salesperson of a broker-dealer shall pass the examinations specified below.

(a) For applicants seeking registration as salespersons of broker-dealers that are members of a national securities association or national securities exchange:

(i) The uniform securities agent state law examination (series 63); or the uniform combined state law examination (series 66); and

(ii) The appropriate qualifying examination administered by such national securities association.

(b) For all other applicants seeking registration as salespersons of broker-dealers:

(i) The uniform securities agent state law examination (series 63); or the uniform combined state law examination (series 66); and

(ii) The appropriate qualifying examination administered by the National Association of Securities Dealers for the activities in which the salesperson is to engage.

(2) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examinations in subsection (1)(a) or (b) of this section or the Washington state securities examination shall not be required to retake the examination(s) to be eligible to be relicensed upon application.

NEW SECTION

WAC 460-22B-050 Expiration of salesperson license, renewal procedure, and delinquency fees. (1) A license issued pursuant to this section shall be effective until December 31 of the year of issuance at which time it shall be renewed or if not renewed shall be deemed delinquent. For any renewal application postmarked after the expiration date but received by the administrator by the following March 1, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

(2) A salesperson registered with a broker-dealer that is a member of a national securities association or a national securities exchange shall make application for renewal using one of the following methods:

(a) Through the Central Registration Depository (CRD) prior to the CRD's closing date for renewals; or

(b) With the securities division after the closing date for renewals through the CRD.

(3) A salesperson registered with a broker-dealer that is not a member of a national securities association or a national securities exchange shall make application for renewal with the securities division.

NEW SECTION

WAC 460-22B-060 Duty to update application. A salesperson who has been issued a license under this chapter has a duty to update his or her application. If an event occurs that causes a salesperson's application to be inaccurate, the salesperson shall amend his or her application within thirty days of the occurrence of the event. The amendment shall be made as follows:

(1) For a salesperson of a broker-dealer that is a member of a national securities association or national securities exchange, through the Central Registration Depository; or

(2) For a salesperson of a broker-dealer that is not a member of a national securities association or national securities exchange, by filing an amended Form U-4 with the securities division.

NEW SECTION

WAC 460-22B-070 Dual representation and affiliation. (1) A person is dually registered for the purpose of this section if that person is simultaneously registered with the securities division, department of financial institutions with:

(a) More than one broker-dealer;

(b) One or more broker-dealers and one or more issuers;

(c) One or more broker-dealers and one or more investment advisers; as a securities salesperson, investment adviser salesperson, broker-dealer, or investment adviser. A person may be dually registered in this state if all broker-dealers, issuers, or investment advisers employing or engaging such person consent to such dual registration in writing in a form acceptable to the administrator.

(2) The consent for subsection (1) of this section shall contain the following provisions:

(a) The effective date of the dual employment or engagement with the respective broker-dealers, issuers, or investment advisers;

(b) Consent by each broker-dealer, issuer, or investment adviser employing or engaging such person to the employment or engagement of the person by all other broker-dealers, issuers, or investment advisers; and

(c) An agreement that each broker-dealer, issuer, or investment adviser employing or engaging such person will register the person with the securities division and pay the applicable registration fee.

(3) A separate application for registration or renewal shall be made by each broker-dealer, issuer, or investment adviser desiring to employ or engage the person. An executed copy of the consent required by subsection (1) of this section shall accompany the application. The application shall be filed with the administrator and shall contain such exhibits and information as may be required by the administrator, together with the fees required by RCW 21.20.340.

(4) A broker-dealer or investment adviser who employs or engages a securities salesperson or investment adviser salesperson and who consents to the dual registration of that securities salesperson or investment adviser salesperson shall supervise all securities activities of that salesperson relating to the broker-dealer or investment adviser.

NEW SECTION

WAC 460-22B-080 Receipt of both securities sales commission and investment adviser fees. (1) It shall constitute a violation of RCW 21.20.010 and 21.20.020 for any person to receive both a sales commission for the purchase or sale of any security and compensation for rendering investment advice concerning said security; provided, however, receipt of both a sales commission and advisory compensation shall not constitute such violation if either:

(a) Such person provides to each customer receiving advice a disclosure of conflict of interest on a form promulgated by the administrator to be given to the customer at least forty-eight hours before the customer agrees to have the person render the advice; or

(b) The administrator by rule or order waives the necessity of such disclosure on said form as not being necessary in the public interest for the protection of investors.

(2) For the purposes of this provision, the term "person" shall include all "affiliates" of such person as defined in WAC 460-10A-060.

(3) In lieu of giving disclosure forty-eight hours before the agreement, the customer may be given the disclosure document simultaneous to the signing of the agreement so long as the customer is also given five days to cancel the agreement.

(4) A person charging a wrap fee to a customer who delivers a copy of Schedule H of Form ADV describing the wrap fee arrangement to that customer shall be deemed to have satisfied the disclosure requirement of subsection (1)(a) of this section as to the wrap fee arrangement.

NEW SECTION

WAC 460-22B-090 Dishonest and unethical business practices-salespersons. The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

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(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions of any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(19) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; or

(20) Any act or practice enumerated in WAC 460-21A-010.

The conduct set forth above is not inclusive. Engaging in other conduct such a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

Chapter 460-23B WAC
SALESPERSONS FOR ISSUERS

NEW SECTION

WAC 460-23B-010 Application. The rules contained in this chapter apply to the registration of securities salespersons for issuers.

NEW SECTION

WAC 460-23B-020 Registration procedure. Applications for registration of salespersons of issuers must be submitted to the securities administrator on Form U-4 together with the required fee and proof of passage of required examinations.

NEW SECTION

WAC 460-23B-030 Salesperson examination requirements. Every applicant for registration as a securities salesperson of an issuer shall pass the examinations specified below:

(1) For an officer or director of an issuer that is a corporation, or a general partner of an issuer that is a limited partnership, or a manager of an issuer that is a limited liability company seeking registration as a salesperson for an issuer of a single offering of the issuer who will receive no commissions or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities, no examination is required;

(2) For an officer or director of the issuer seeking registration as a salesperson for an issuer of a single offering of the issuer, the uniform state law examination (series 63); or the uniform combined state law examination (series 66) is required;

(3) For all other salespersons of issuers:

(a) The uniform securities agent state law examination (series 63); or the uniform combined state law examination (series 66); and

(b) The appropriate qualifying examination administered by the National Association of Securities Dealers, Inc. for the activities in which the salesperson is to engage;

(4) Any individual out of the securities business of effecting transactions in securities for less than two years and who has previously passed the required examinations in subsection (2) or (3) of this section or the Washington state securities examination shall not be required to retake the examination(s) to be eligible to be relicensed upon application.

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NEW SECTION

WAC 460-23B-040 Expiration of salesperson license, renewal procedure, and delinquency fees. A license issued to a salesperson representing an issuer shall expire on the expiration date of the securities registration of the issuer. The license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the administrator within two months of the expiration date, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

NEW SECTION

WAC 460-23B-050 Duty to update application. A salesperson who has been issued a license has a duty to update his or her application. If an event occurs that causes a salesperson's application to be inaccurate, the salesperson shall file an amended Form U-4 with the Securities Division within thirty days of the occurrence of the event.

NEW SECTION

WAC 460-23B-060 Exemption from registration for condominium salespersons. An exemption from registration as a broker-dealer or salesperson will be granted to those engaged in exclusively selling condominium securities provided:

(1) That the person claiming the exemption give written notice of their intention to claim the exemption five working days prior to exercising the exemption; and

(2) They submit their Washington real estate license number to the division.

If for any reason the person claiming this exemption should have their Washington real estate license cancelled, suspended or revoked then this exemption will not apply to any further transactions.

NEW SECTION

WAC 460-24A-046 Dual representation and affiliation. (1) A person is dually registered for the purpose of this section if that person is simultaneously registered with the securities division, department of financial institutions with:

(a) More than one investment adviser;

(b) One or more broker-dealers and one or more investment advisers; as a securities salesperson, investment adviser salesperson, broker-dealer, or investment adviser;

(c) One or more investment advisers and one or more issuers, as an investment adviser, investment adviser salesperson, or securities salesperson.

A person may be dually registered in this state if all broker-dealers, issuers, or investment advisers employing or engaging such person consent to such dual registration in writing in a form acceptable to the administrator.

(2) The consent for subsection (1) of this section shall contain the following provisions:

(a) The effective date of the dual employment or engagement with the respective broker-dealers, issuers, or investment advisers;

(b) Consent by each broker-dealer, issuer, or investment adviser employing or engaging such person to the employment or engagement of the person by all other broker-dealers, issuers, or investment advisers; and

(c) An agreement that each broker-dealer, issuer, or investment adviser employing or engaging such person will register the person with the securities division and pay the applicable registration fee.

(3) A separate application for registration or renewal shall be made by each broker-dealer, issuer, or investment adviser desiring to employ or engage the person. An executed copy of the consent required by subsection (1) of this section shall accompany the application. The application shall be filed with the administrator and shall contain such exhibits and information as may be required by the administrator, together with the fees required by RCW 21.20.340.

(4) A broker-dealer or investment adviser who employs or engages a securities salesperson or investment adviser salesperson and who consents to the dual registration of that securities salesperson or investment adviser salesperson shall supervise all securities activities of that salesperson relating to the broker-dealer or investment adviser.

AMENDATORY SECTION (Amending WSR 90-05-003, filed 2/9/90, effective 3/12/90)

WAC 460-24A-050 Investment adviser and investment adviser salesperson (representative) registration and examinations. (1) In order for an applicant to become licensed in this state as an investment adviser the individual applicant, an officer of the applicant if the applicant is a corporation, or a general partner of the applicant if the applicant is a partnership, shall:

(a) Pass the uniform investment adviser law examination (series 65); or the uniform combined state law examination (series 66); and

(b)(i) Pass the NASD general securities principal examination (series 24); or

(ii) ((~~Pass the NASD investment company products/ variable contracts principal examination (series 26); or~~

(~~iii~~))) Hold one of the following designations:

(A) Chartered investment counselor;

(B) Chartered financial analyst;

(C) Certified financial planner;

(D) Chartered financial consultant;

(E) Accredited personal financial specialist; and

(c) File a completed Form ADV.

(2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the investment adviser must notify the securities division of a substitute officer or general partner who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.

(3) In order to become licensed in this state as an investment adviser salesperson (representative), an applicant shall:

(a) Pass the uniform investment adviser law examination (series 65); or the uniform combined state law examination (series 66); and

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(b)(i) Pass the NASD general securities representative examination (series 7); or

(ii) ((~~Pass the NASD investment company products/ variable contracts limited representative qualifications examination (series 6); or~~

~~(iii)~~)) Hold one of the following designations:

(A) Chartered investment counselor;

(B) Chartered financial analyst;

(C) Certified financial planner;

(D) Chartered financial consultant;

(E) Accredited personal financial specialist; and

(c) File a completed Form U-4.

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

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

AMENDATORY SECTION (Amending Order SDO-047-88, filed 8/8/88)

WAC 460-24A-055 Effective date of license. All investment adviser and investment adviser salesperson licenses shall be effective until December 31 of the year of issuance at which time the license shall be renewed, or if not renewed, shall be deemed delinquent. For any renewal application postmarked after the expiration date but received by the director on or before March 1, the licensee shall pay a delinquency fee in addition to the renewal fee. No renewal applications will be accepted after that time. The delinquency fee for investment advisers shall be ((~~twenty-five~~)) one hundred dollars. The delinquency fee for investment adviser salespersons shall be ((~~ten~~)) fifty dollars.

AMENDATORY SECTION (Amending Order SDO-124-89, filed 8/17/89, effective 9/17/89)

WAC 460-33A-080 Registration and examination of mortgage broker-dealers. (1) Every person acting as a mortgage broker-dealer, unless otherwise exempt, must first obtain a broker-dealer's license under the provisions of this chapter ((~~460-20A-WAC~~)).

(2) Every applicant under this section shall provide the securities administrator proof of compliance with ((~~either~~)) WAC 460-33A-040 ((~~or 460-20A-100~~)).

(3) Every applicant for registration as a mortgage broker-dealer shall file a completed mortgage broker-dealer application form, together with the applicable filing fee.

(4)(a) Every applicant under this section shall submit to the securities administrator proof that the individual applicant, an officer if the applicant is a corporation, a manager if the applicant is a limited liability company, or a general partner if the applicant is a partnership has passed the uniform securities agent law examination (series 63) within the last two years.

(b) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examination in (a) of this subsection or the Washington state securities examination shall not be required to retake the examination in order for the mortgage broker-dealer to be eligible for registration under this chapter.

NEW SECTION

WAC 460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure, delinquency fees. A license issued to a mortgage broker-dealer shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the administrator within two months of the expiration date, the licensee shall pay a delinquency fee of one hundred dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

AMENDATORY SECTION (Amending Order SDO-124-89, filed 8/17/89, effective 9/17/89)

WAC 460-33A-085 Registration and examination of mortgage securities salespersons. (1) Every person acting as a mortgage securities salesperson, unless otherwise exempt, must first obtain a salesperson's license under the provisions of this chapter ((~~460-20A-WAC~~)) and be employed by a broker-dealer or mortgage broker-dealer.

(2) Every applicant under this section shall file a completed Form U-4, together with the applicable filing fee.

(3) Every applicant under this section shall submit proof of passage of the uniform securities agent law examination (series 63) within the last two years.

NEW SECTION

WAC 460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure, and delinquency fees. A license issued to a mortgage securities salesperson shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but

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received by the administrator within two months of the expiration date, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 460-20A-005	Definitions.
WAC 460-20A-008	Fraudulent practices of broker-dealers and sales agents.
WAC 460-20A-010	Churning.
WAC 460-20A-015	Confirmation of transactions.
WAC 460-20A-020	Disclosure of control of issuer.
WAC 460-20A-025	Disclosure of interest in distributions.
WAC 460-20A-030	Record of transactions in discretionary accounts.
WAC 460-20A-035	Control of the market.
WAC 460-20A-045	Transmission or maintenance of payments received in connection with underwritings.
WAC 460-20A-050	Disclosure and other requirements when extending or arranging credit in certain transactions.
WAC 460-20A-100	Minimum net capital requirement for broker-dealers.
WAC 460-20A-105	Net capital defined.
WAC 460-20A-200	Books and records of broker-dealers.
WAC 460-20A-205	Preservation of records.
WAC 460-20A-210	Notice of changes by broker-dealers.
WAC 460-20A-215	Notice of complaint.
WAC 460-20A-220	Salesperson registration and examination.
WAC 460-20A-230	Broker-dealer registration and examination.
WAC 460-20A-235	Condominium salesmen and broker-dealers.
WAC 460-20A-400	Dual representation and affiliation.
WAC 460-20A-405	Receipt of both securities sales commission and investment adviser fees.
WAC 460-20A-410	Part-time salesman or investment adviser salesman.
WAC 460-20A-415	Broker-dealer financial statement.
WAC 460-20A-420	Dishonest or unethical business practices—Broker-dealers.
WAC 460-20A-425	Dishonest or unethical business practices—Salespersons.

WSR 95-16-030
PERMANENT RULES
LIQUOR CONTROL BOARD
[Filed July 21, 1995, 2:50 p.m.]

Date of Adoption: July 12, 1995.

Purpose: The amendatory action to the existing rule was to clarify the manner in which Class H licensed clubs could conduct a membership drive activity wherein club liquor could be used by nonmembers.

Citation of Existing Rules Affected by this Order: Amending WAC 314-40-040.

Statutory Authority for Adoption: RCW 66.08.030.

Pursuant to notice filed as WSR 95-11-138 on May 24, 1995.

Changes Other than Editing from Proposed to Adopted Version: The word "may" was changed to "must" in respect to advertising. The word "only" was deleted and the word "nonclub" was inserted between "other activity" to more clearly describe the type of activity which was allowable. (The licensee association agreed to these changes since they further clarified the rule.)

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

July 21, 1995
Joe McGavick
Chair

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AMENDATORY SECTION (Amending Order 239, Resolution No. 248, filed 3/16/88)

WAC 314-40-040 Guest and courtesy cards—Visitors. (1) Guest cards may be issued only as follows:

(a) For clubs located within the limits of any city or town, only to those persons residing outside of an area ten miles from the limits of such city or town;

(b) For clubs located outside of any city or town only to those persons residing outside an area fifteen miles from the location of such club: *Provided,* That where such area limitation encroaches upon the limits of any city or town, the entire corporate limits of such city or town shall be included in the prohibited area;

(c) Such guest cards shall be issued for a period not to exceed two weeks and must be numbered serially, with a record of the issuance of each such card to be filed in a manner as to be readily accessible to the agents of the board;

(d) Mileage restrictions in (a) and (b) of this subsection shall not apply to contestants in golf or tennis tournaments conducted on the grounds of a licensed club.

(2) Visitors may be introduced when accompanied at all times by a member and may remain as long as such member is present in the club: *Provided,* That any such visitor may only enjoy the privileges of the club a reasonable number of times in any one calendar year.

(3) Persons who are members in good standing of a national veterans organization may enjoy the privileges of any licensed club affiliated with any national veterans organization, and persons who are members in good standing of a national fraternal organization may enjoy the privileges of any club affiliated with that particular national fraternal organization: *Provided,* That the bylaws of such clubs authorize reciprocal privileges: *Provided further,* That subsections (1) and (2) of this section shall not apply to members of such organizations.

(4) Persons who are members in good standing of organizations licensed as private nonfraternal clubs may enjoy the privileges of other licensed nonfraternal clubs: *Provided,* That the bylaws of such clubs authorize reciprocal privileges: *Provided further,* That subsections (1) and (2) of this section shall not apply to members of such clubs.

(5) Courtesy cards may be issued to the adult members of the immediate family of any member with or without charge upon application being made to the club by the member.

(6) In order to recruit new members and build club membership, a private club may hold ((~~one~~)) a public membership function for one day per calendar year where club liquor may be given or sold to those attending as a part of the membership drive activities. The function must be advertised as a membership drive and may not be held in conjunction with any other nonclub activity or event.

(7) A person issued a guest card by the club manager pursuant to subsection (1) of this section may introduce visitors into the club provided the visitors are accompanied at all times by the sponsoring guest card holder; the visitors remain in the club only as long as the sponsoring guest card holder is present; the house rules or bylaws of the club provide guest card holders the privilege of introducing visitors into the club; and, such house rules or bylaws have been filed with the liquor control board.

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WSR 95-16-031
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed July 21, 1995, 3:28 p.m., effective August 22, 1995]

Date of Adoption: July 21, 1995.

Purpose: To repeal WAC 296-20-17003 in the medical aid rules pertaining to fees for drugs and medications including fees for all oral over the counter (OTC) drugs; and to revise WAC 296-20-01002 in the medical aid rules pertaining to definitions.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-20-17003 Fees; and amending WAC 296-20-01002 Definitions.

Statutory Authority for Adoption: RCW 51.04.030, 70.14.050, and 51.04.020(4).

Pursuant to notice filed as WSR 95-10-092 on May 3, 1995.

Effective Date of Rule: August 22, 1995.

July 21, 1995
Mark O. Brown
Director

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-01002 Definitions. Termination of treatment: When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

Unusual or unlisted procedure: Value of unlisted services or procedures should be substantiated "by report" (BR).

"**By report**": BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

(1) Diagnosis;

(2) Size, location and number of lesion(s) or procedure(s) where appropriate;

(3) Surgical procedure(s) and supplementary procedure(s);

(4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;

(5) Estimated follow-up;

(6) Operative time;

(7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

"**Independent or separate procedure**": Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

Chart notes: This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include but are not limited to:

(1) Date(s) of service;

(2) Patient's name and date of birth;

(3) Claim number;

(4) Name and title of the person performing the service;

(5) Chief complaint or reason for each visit;

(6) Pertinent medical history;

(7) Pertinent findings on examination;

(8) Medications and/or equipment/supplies prescribed or provided;

(9) Description of treatment (when applicable);

(10) Recommendations for additional treatments, procedures, or consultations;

(11) X-rays, tests, and results; and

(12) Plan of treatment/care/outcome.

Attending doctor report: This type of report may also be referred to as a "60 day" or "special" report. The

following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

Consultation examination report: The following information must be included in this type of report. Additional information may be requested by the department as needed.

(1) A detailed history to establish:

(a) The type and severity of the industrial injury or occupational disease.

(b) The patient's previous physical and mental health.

(c) Any social and emotional factors which may effect recovery.

(2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.

(3) A detailed physical examination concerning all systems affected by the industrial accident.

(4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.

(5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:

(a) Due solely to injury.

(b) Preexisting condition aggravated by the injury and the extent of aggravation.

(c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.

(d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).

(6) Conclusions must include:

(a) Type treatment recommended for each pathological condition and the probable duration of treatment.

(b) Expected degree of recovery from the industrial condition.

(c) Probability, if any, of permanent disability resulting from the industrial condition.

(d) Probability of returning to work.

(7) Reports of necessary, reasonable x-ray and laboratory studies to establish or confirm the diagnosis when indicated.

Bundled codes: When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

Fee schedules or maximum fee schedule(s): The fee schedules consist of, but are not limited to the following:

(a) Health Care Financing Administration's Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

Average wholesale price (AWP): A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

Baseline price (BLP): Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

Medical aid rules: The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

Modified work status: The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform

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such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

Regular work status: The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

Total temporary disability: Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

Temporary partial disability: Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary.

All time loss compensation must be certified by the attending doctor based on objective findings.

Permanent partial disability: Any anatomic or functional abnormality or loss after maximum rehabilitation has been achieved, which is determined to be stable or nonprogressive at the time the evaluation is made. When the attending doctor has reason to believe a permanent impairment exists, the department or self-insurer should be notified. Specified disabilities (amputation or loss of function of extremities, loss of hearing or vision) are to be rated utilizing a nationally recognized impairment rating guide. Unspecified disabilities (internal injuries, spinal injuries, mental health, etc.) are to be rated utilizing the category system detailed under WAC 296-20-200 et al. for injuries occurring on or after October 1, 1974. **Under Washington law disability awards are based solely on physical or mental impairment due to the accepted injury or conditions without consideration of economic factors.**

Total permanent disability: Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

Fatal: When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

Doctor: For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and time loss cards except as provided in chapter 296-20 WAC.

Health services provider or provider: For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

Practitioner: For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; physician or osteopathic assistant; and massage therapy.

Physician: For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery.

Acceptance, accepted condition: Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

Authorization: Notification by a qualified representative of the department or self-insurer that specific medically necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

Medically necessary: Those health services are medically necessary which, in the opinion of the director or his or her designee, are:

(a) Proper and necessary for the diagnosis and curative or rehabilitative treatment of an accepted condition; and

(b) Reflective of accepted standards of good practice within the scope of the provider's license or certification; and

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered medically necessary.

Services which are controversial, obsolete, experimental, or investigational are presumed not to be medically necessary, and shall be authorized only as provided in WAC 296-20-03002(6).

Utilization review: The assessment of a claimant's medical care to assure that it is medically necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

Emergent hospital admission: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the worker's health or treatment outcome.

Nonemergent (elective) hospital admission: Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

Attendant care: Those personal care services that assist a worker with dressing, feeding, and personal hygiene to facilitate self-care and are provided in order to maintain the worker in their place of temporary or permanent residence consistent with their needs, abilities, and safety. These services may be provided by but are not limited to, registered nurses, licensed practical nurses, registered nursing assistants, and other individuals such as family members.

Home nursing: Those nursing services that are medically necessary to maintain the worker in their place of temporary or permanent residence consistent with their needs, abilities, and safety. These services may be provided by but are not limited to, home health care, and hospice agencies on either an hourly or intermittent basis.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-20-17003 Fees.

WSR 95-16-048
PERMANENT RULES
DEPARTMENT OF ECOLOGY
[Order 94-39—Filed July 25, 1995, 8:20 a.m.]

Date of Adoption: July 25, 1995.

Purpose: To adopt an amendment to the city of Tumwater and Thurston County shoreline master program.

Citation of Existing Rules Affected by this Order: Amending WAC 173-19-420 and 173-19-4205.

Statutory Authority for Adoption: Chapter 90.58 RCW.

Pursuant to notice filed as WSR 95-11-089 on May 18, 1995.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 2, repealed 0.

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

July 25, 1995
Mary Riveland
Director

AMENDATORY SECTION (Amending Order 94-01, filed 5/4/94, effective 6/4/94)

WAC 173-19-4205 Tumwater, city of. City of Tumwater master program approved May 21, 1976. Revision approved August 30, 1984. Revision approved September 29, 1987. Revision approved May 15, 1990. Revision approved October 2, 1990. Revision approved April 17, 1991. Revision approved April 21, 1991. Revision approved November 2, 1993. Revision approved May 3, 1994. Revision approved July 25, 1995.

AMENDATORY SECTION (Amending Order 91-40, filed 10/29/91, effective 11/29/91)

WAC 173-19-420 Thurston County. Thurston County master program approved May 21, 1976. Revision approved August 27, 1976. Revision approved August 7, 1979. Revision approved September 23, 1981. Revision approved March 4, 1982. Revision approved August 30, 1984. Revision approved September 29, 1987. Revision approved May 15, 1990. Revision approved October 28, 1991. Revision approved July 25, 1995.

WSR 95-16-053
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS
[Filed July 25, 1995, 11:50 a.m.]

Date of Adoption: May 25, 1995.

Purpose: To codify existing department interpretation of eligibility criteria for membership in the public employees' retirement system (PERS), teachers' retirement system (TRS) and the law enforcement officers' and fire fighters' retirement system (LEOFF).

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-011, 415-108-010, and 415-112-015.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 95-09-069 on April 18, 1995.

Changes Other than Editing from Proposed to Adopted Version: This memorandum documents the differences between the department's eligibility WACs for PERS, TRS

and LEOFF published at WSR 95-09-069 and the rules as adopted.

(1) The definitions of "duly executed," "insurable interest," "single life annuity" and "survivor" are deleted. These definitions, which were carried forward from an earlier version of WAC 415-12-015 are no longer necessary.

(2) The sections entitled "Purpose and Scope of Eligibility Rules" found at WAC 415-112-119, 415-108-679 and 415-104-224 were amended to further clarify the purpose and scope of the eligibility rules to codify the department's existing interpretation of statutes and existing administrative practice regarding determining retirement system eligibility.

(3) The subsection designations found in the cross-references in the "defined terms used" subsections of different provisions in the proposed WAC have been deleted. Instead, the cross-reference cites the main statute only. This is to guard against renumbering of the statute caused by future amendments which would then necessitate amendment of the WACs to reflect the new numbering system. The statutory references without the subsections are sufficiently specific to lead a reader to the relevant provision.

(4) The position of "school librarian" was deleted from the list of supervisory or administrative positions and added to the list of education staff associate positions. The change does not affect the fact that certificated school librarians will be included in the membership of TRS. The change was made at the suggestion of Walter Ball of the Washington School Principals Association who indicated that school districts consider school librarians to be educational staff associates rather than persons working in a supervisory or administrative capacity.

(5) WAC 415-108-690 is amended to clarify the application of retroactivity to determinations of position eligibility in PERS. The original versions of the WAC stated that if the history of a position showed that it had been filled five months or more for 70 hours or more per month during two consecutive years, that the position would be declared eligible back to the first month where it required 70 hours per month. Based upon input from the Department of Natural Resources, the department recognized the difficulty of accurately predicting the term of employment for certain seasonal firefighter positions. Accordingly, the department adopted an amendment which stated that in a situation described above, the position would be declared eligible and would have to be reported, but that the eligibility would not be retroactive.

(6) WAC 415-104-0114, the definition of "full time" in LEOFF is amended to indicate that a person is full time if they are "regularly scheduled" to work for a minimum of 160 hours per calendar month. This accounts for the fact that in some months a person may not be scheduled to work 160 hours depending upon when their position starts or stops.

(8) WAC 415-104-225(1), the definition of law enforcement officer, was amended to clarify that certain positions have been included in the definition of law enforcement officer as of January 1, 1994, or January 1, 1993.

(9) WAC 415-104-225(2) is amended to clarify that a person must be in a uniformed firefighter position to be considered a firefighter. The provision was also amended by adding two new provisions to reflect RCW 41.26.030(4). The provisions state that supervisory firefighter personnel qualify as firefighters. The amendment also clarifies that if the employer requires a civil service examination of firefighters, that a person is only a firefighter if they are in a position requiring such an examination.

(10) The definition of "annual leave" as it relates to the calculation of excess compensation under RCW 41.50.150 is left intact in WAC 415-108-010 and 415-108-015. All of the terms currently defined in WAC 415-108-010 and 415-112-015 were deleted from those WACs and reenacted as separate sections. This was done to make it easier to find individual definitions. The exception to the reenactment was the definition of "annual leave." This definition was not reenacted within the proposed eligibility WACs because it will be included in a separate set of WACs.

The department is currently working on WACs regarding the implementation of RCW 41.50.150 which will incorporate the current definition of annual leave word for word. Due in part to the amendments to the rule-making process in chapter 403, Laws of 1995, there will be some delay in adopting the excess compensation WACs. Therefore it is appropriate to leave the definition of annual leave in its original place for the time being. When the excess compensation WACs are filed they will include a provision moving the definition of annual leave from the relevant definition sections to the excess compensation WACs.

A reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests. The subject of the adopted rule is substantially the same as the subject of the proposed published rule; that is, determinations of eligibility for LEOFF, PERS and TRS. The affect of the adopted rule does not differ from the affect of the proposed published rule with the exception of item (5) described above. The change in affect between the adopted rule and the proposed rule is that the determination of position eligibility will not be retroactive in some cases. This change was based explicitly upon input from affected members and does not constitute a substantial difference. Accordingly, the variance between the final rule and the proposed rule is within the standards allowed by RCW 34.05.340.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 54, amended 3, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 54, amended 3, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

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

July 25, 1995
Sheryl Wilson
Director

AMENDATORY SECTION (Amending WSR 93-11-078, filed 5/18/93, effective 6/18/93)

WAC 415-104-011 Definitions. ((~~(1) The~~)) All definitions ((~~listed~~)) in RCW 41.26.030 ((~~shall~~)) apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(~~((2) As used in this chapter, unless a different meaning is required by context:~~

~~(a) "LEOFF" means the law enforcement officers' and fire fighters' retirement system created in chapter 41.26 RCW.~~

~~(b) "LEOFF plan I elected official" means a LEOFF plan I member who is a civil service employee on leave of absence by reason of having been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.~~

~~(c) "Elective employer" means the employer of the LEOFF plan I elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.~~

~~(d) "LEOFF employer" means the employer, as defined in RCW 41.26.030 (2)(a), who employs the member as a law enforcement officer or fire fighter.~~))

NEW SECTION

WAC 415-104-0111 Commissioned—Definition. An employee is "commissioned" if he or she is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

NEW SECTION

WAC 415-104-0112 Director of public safety—Definition. (1) "Director of public safety" means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

(2) "City or town" as used in this definition, includes only a city or town whose population did not exceed ten thousand at the time the person became employed as a director of public safety.

NEW SECTION

WAC 415-104-0113 Elective employer—Definition. "Elective employer" means the employer of the LEOFF Plan I elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

NEW SECTION

WAC 415-104-0114 Full time—Definition. An employee is employed "full time" if the employee is regularly scheduled to earn basic salary from an employer for a minimum of one hundred sixty hours each calendar month.

NEW SECTION

WAC 415-104-0115 Fully compensated—Definition. An employee is "fully compensated" if the employee earns basic salary and benefits from an employer in an amount comparable to the salary received by other full-time employees of the same employer who:

(1) Hold the same or similar rank; and

(2) Are employed in a similar position.

NEW SECTION

WAC 415-104-0117 LEOFF employer—Definition. "LEOFF employer" means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or fire fighter.

NEW SECTION

WAC 415-104-0118 LEOFF Plan I elected official—Definition. "LEOFF Plan I elected official" means a LEOFF Plan I member who is a civil service employee on leave of absence by reason of having been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

NEW SECTION

WAC 415-104-0120 Public safety officer—Definition. (1) "Public safety officer" means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and fire fighter duties.

(2) "City or town" as used in this definition, includes only a city or town whose population did not exceed ten thousand at the time the person became employed as a public safety officer.

NEW SECTION

WAC 415-104-0121 Plan I and Plan II—Definition. (1) "Plan I" means the law enforcement officers' and fire fighters' retirement system, Plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(2) "Plan II" means the law enforcement officers' and fire fighters' retirement system, Plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

NEW SECTION

WAC 415-104-0122 LEOFF—Definition. "LEOFF" means the law enforcement officers' and fire fighters' retirement system established by chapter 41.26 RCW.

MEMBERSHIP

PERMANENT

NEW SECTION

WAC 415-104-224 Purpose and scope of eligibility rules. WAC 415-104-225 through 415-104-240 codify the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in LEOFF Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to the effective dates of these sections.

NEW SECTION

WAC 415-104-225 Am I a member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or fire fighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.-030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Fire fighters.** You are a fire fighter if you are employed in a uniformed fire fighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling or extinguishing fires.

(a) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling or extinguishing fires.

(b) You are a fire fighter if you qualify as supervisory fire fighter personnel.

(c) If your employer requires fire fighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a fire fighter unless you qualify as supervisory fire fighter personnel.

(d) You are a fire fighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(e) You do not qualify for membership as a fire fighter if you are a volunteer fire fighter or resident volunteer fire fighter.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-0111.

(b) "Director of public safety" - WAC 415-104-0112.

(c) "Employer" - RCW 41.26.030.

(d) "Fire fighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-0114.

(f) "Fully compensated" - WAC 415-104-0115.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-0120.

NEW SECTION

WAC 415-104-235 Can I terminate my status as a member? (1) Your membership in the retirement system is terminated if you:

(a) Die;

(b) Separate from service; or

(c) Cease to be employed full time as a law enforcement officer or fire fighter.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Fire fighter" - RCW 41.26.030 and WAC 415-104-225(2).

(b) "Full-time" - WAC 415-104-0114.

(c) "Law enforcement officer" - RCW 41.26.030 and WAC 415-104-225(1).

(d) "Member" - RCW 41.26.030.

(e) "Service" - RCW 41.26.030.

NEW SECTION

WAC 415-104-245 Am I required to meet minimum medical and health standards in order to establish or reestablish Plan I membership? (1) You may be required to meet minimum medical and health standards in order to establish or reestablish Plan I membership.

PERMANENT

You are required to meet minimum medical and health standards codified in WAC 415-104-500 through 415-104-755, if you:

(a) Were first employed as a law enforcement officer or fire fighter on or after August 1, 1971, and before October 1, 1977; and

(b) Have been separated from service for more than six months for reasons other than a disability leave, a disability retirement, or an authorized leave of absence.

(2) **If you are an elected sheriff or an appointed police or fire chief, you are exempt from the age requirement of the standards.**

(3) **If you are required to meet the minimum medical and health standards, your employer will enroll you in Plan I provisionally, depending on the results of your physical examination.**

(a) If you are required to meet the minimum medical and health standards, your employer will begin reporting you in LEOFF Plan I from the first day of your employment. Your enrollment in Plan I, however, is provisional depending upon the results of your medical examination.

(b) Your employer is responsible for having you examined by a physician or surgeon appointed by the local disability board and for paying the cost of your examination. Your employer will send a copy of your examination report to the department along with a certification letter of whether you have met the standards.

(4) **If you are denied Plan I membership because you did not meet minimum medical and health standards, you will enter membership in Plan II.**

(a) The department will review your examination report and if you meet the minimum medical and health standards you will be reported in membership in Plan I.

(b) If you do not meet the standards, your employer must stop reporting you to the department in Plan I and report you in Plan II. The department will transfer your membership from Plan I to Plan II retroactively to the beginning of your term of employment.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Employer" - RCW 41.26.030.

(b) "Fire fighter" - RCW 41.26.030.

(c) "Full time" - WAC 415-104-0114.

(d) "Fully compensated" - WAC 415-104-0115.

(e) "Law enforcement officer" - RCW 41.26.030.

(f) "Member" - RCW 41.26.030.

(g) "Minimum medical and health standards" - WAC 415-104-500 through 415-104-755.

(h) "Plan I and Plan II" - WAC 415-104-0121.

AMENDATORY SECTION (Amending WSR 94-11-009, filed 5/5/94, effective 6/5/94)

WAC 415-108-010 Definitions. (1) All definitions in RCW 41.40.010 apply to terms used in this chapter((~~, unless a different meaning is plainly required by the context~~)). Other terms relevant to the administration of Chapter 41.40 RCW are defined in this chapter.

(2) As used in this chapter, unless a different meaning is plainly required by the context:

"Annual leave" means leave provided by an employer for the purpose of vacation and does not include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work: *Provided, however,* That if an employer authorizes only one type of leave to provide paid leave for vacation and illness as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

((~~"Level of union organization" means a union or a lodge or division of a union;~~

~~"Union" means a labor guild, labor association, and/or labor organization;~~

~~"Union employer" means a union or a union lodge or other division of the union which has verified that it meets the definition of a Plan I employer in RCW 41.40.010.~~))

NEW SECTION

WAC 415-108-0101 Level of union organization—Definition. "Level of union organization" means a union or a lodge or division of a union.

NEW SECTION

WAC 415-108-0102 Normally—Definition. "Normally," as used in the definition of eligible position under RCW 41.40.010, means a position is eligible if it is expected to require at least five months of seventy or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of seventy or more hours of compensated service during at least one year in any two-year period.

NEW SECTION

WAC 415-108-0103 Project position—Definition. "Project position" means a position established by an employer that has a specific goal and end date.

NEW SECTION

WAC 415-108-0104 Report—Definition. "Report" means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly transmittal report.

NEW SECTION

WAC 415-108-0105 Retirement plan—Definition. "Retirement plan," as used in RCW 41.40.023 and in this chapter, means any plan operated wholly or in part by the state or a political subdivision. This includes but is not limited to:

(1) The retirement systems listed under RCW 41.50.030;

(2) The retirement systems of the cities of Seattle, Spokane and Tacoma; or

(3) Any higher education plan authorized under RCW 28B.10.400.

PERMANENT

NEW SECTION

WAC 415-108-0106 Union—Definition. "Union" means a labor guild, labor association, and/or labor organization.

NEW SECTION

WAC 415-108-0107 Union employer—Definition. "Union employer" means a union or a union lodge or other division of the union which has verified that it meets the definition of a Plan I employer in RCW 41.40.010.

NEW SECTION

WAC 415-108-0108 Year—Definition. "Year" means any twelve consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include but is not limited to a school year, calendar year or fiscal year.

Example: An employer has used the twelve consecutive month period from July 1 to June 30 to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the July 1 through June 30 period to define a year for the position.

Example: If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the twelve-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

NEW SECTION

WAC 415-108-0109 System acronyms—Definition. The acronyms used in this chapter are defined as follows:

(1) "PERS" means the public employees' retirement system.

(2) "TRS" means the teachers' retirement system.

NEW SECTION

WAC 415-108-679 Purpose and scope of eligibility rules. WAC 415-108-680 through 415-108-728 codify the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in PERS Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to effective dates of these sections.

NEW SECTION

WAC 415-108-680 Am I eligible for membership? (1) **You are eligible for membership if you are employed in an eligible position.** Your position is eligible under RCW 41.40.010 if the position, as defined by your employer, normally requires at least five months of seventy or more hours of compensated service per month during each year.

(2) **If you leave an eligible position to serve in a project position, you may retain eligibility.** If you are a member and you leave employment in an eligible position to serve in a project position, the project position is eligible if:

(a) The position, as defined by the employer, normally requires at least five months of seventy or more hours of compensated service each month; or

(b) The position requires at least seventy hours per month and you take the position with the understanding that you are expected to return to your permanent eligible position at the completion of the project.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Member" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.
(e) "Normally" - WAC 415-108-0102.
(e) "Project position" - WAC 415-108-0103.
(f) "Year" - WAC 415-108-0108.

NEW SECTION

WAC 415-108-690 How is my eligibility evaluated? (1) **Your eligibility is based on your position.**

In evaluating whether your position is eligible, your employer will determine only whether the position meets the criteria of an eligible position under RCW 41.40.010. Your employer will not consider your membership status or individual circumstances unless you:

(a) Leave employment in an eligible position to serve in a project position (See WAC 415-108-680(2)); or

(b) Work in both a PERS and TRS position during the same school year (See WAC 415-108-728).

(2) **Your employer will evaluate your position's eligibility for a particular year at the beginning of the year.**

(3) **Your employer or the department may reclassify your position's eligibility based upon your actual work history.** If your employer declares your position to be ineligible at the beginning of a year and by the end of the year, you have actually worked five or more months of seventy or more hours, your employer will, at that time, review your position's eligibility. If at the end of the first year:

(a) Your employer believes your position meets the requirements for an eligible position and declares the position as eligible, you will enter membership and your employer will report you to the department effective from the date your employer declares the position as eligible; or

(b) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define your position as ineligible. However, if during the next year the position actually requires you to again work seventy or more hours each month for at least five months, the department will declare your position as eligible. You will enter membership in the retirement system.

(i) Except as provided in (b)(ii) of this subsection, your employer will report you to the department effective from the first month of the first year in which your position required you to work for seventy or more hours.

(ii) If:

PERMANENT

(A) Your employer has monitored the work history of your position for PERS eligibility;

(B) Has notified you in writing when you entered the position that the position was not considered eligible; and

(C) The months of employment in a twelve-month period required by the position are determined by the occurrence or nonoccurrence of natural disasters such as forest fires;

You will enter membership prospectively.

(4) **The department will not reclassify your position's eligibility until history of the position shows that it meets the criteria for an eligible position.** If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least five months of seventy or more hours of compensated employment each month.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Ineligible position" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.
(e) "Project position" - WAC 415-108-0103.
(f) "Report" - WAC 415-108-0104.
(g) "Year" - WAC 415-108-0108.

NEW SECTION

WAC 415-108-700 Can I qualify for membership if I work in more than one ineligible position with the same employer? (1) **All of your monthly work for an employer counts as one position.** If you are employed with the same employer in two ineligible positions during a year which, when combined, equate to an eligible position and your employer expects you to continue in this employment for a second consecutive year, your employer will report the total hours you work in both positions to the department as an eligible position.

Example: A person normally works for one employer as a cook for forty hours each month and as a bus driver for forty hours each month. The person is eligible for membership because he works a total of eighty hours each month for at least five months each year and this is the normal pattern of his employment.

Example: A person normally works for one employer for forty hours each month as a cook. For one year only, she takes on extra duties by also working forty hours per month as a bus driver. Although she worked eighty hours each month for five or more months during one year, she is not eligible for membership because these hours are not the normal pattern of her employment.

Example: A person works for one employer for forty hours each month as a cook and also works for another employer for forty hours each month as a bus driver. The person is not eligible for membership because he cannot combine the hours of employment with these separate employers to establish membership.

(2) **You may be reported in TRS if you work in two positions and one position is covered under TRS.** See WAC 415-108-728.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Ineligible position" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.
(e) "Normally" - WAC 415-108-0102.
(f) "Report" - WAC 415-108-0104.
(g) "Year" - WAC 415-108-0108.

NEW SECTION

WAC 415-108-710 If I work for an employer after I retire, will my retirement benefit be affected? (1) **If you reenter membership after retiring, the department will suspend payment of your benefit.**

(2) **You may work for an employer in some circumstances without reentering membership.** You may enter employment with an employer after retirement without having to reenter membership if:

(a) You are employed in an ineligible position; or

(b) You are employed in an eligible position on a temporary basis for five months or less in a calendar year.

(i) If you enter compensated employment in an eligible position during a month, that month is counted as a month of employment in the calendar year regardless of the number of hours you worked in the month.

(ii) If you are employed in an eligible position for any five months during a calendar year, the department will count your employment as five months of employment, regardless of whether or not the months are consecutive or your employment is with one or more employers.

(3) **You are required to reenter membership if you become reemployed in an eligible position on a temporary basis for more than five months in a calendar year.** If you become reemployed in an eligible position on a temporary basis for more than five months in a calendar year you will reenter membership in the retirement system beginning with the sixth month of your employment. Effective at the beginning of the sixth month of your employment:

(a) Your employer will report you to the department; and

(b) The department will suspend your retirement allowance.

(4) **You are required to reenter membership if you become permanently reemployed in an eligible position.** If you become reemployed in an eligible position on a permanent basis you will immediately become a member. Effective from the date of your reemployment in a permanent eligible position:

(a) Your employer will report you to the department; and

(b) The department will suspend your retirement allowance.

PERMANENT

(5) **Meaning of employment on a temporary or permanent basis.**

(a) "Employed on a temporary basis" under subsection (2) of this section means your employer expects your employment to last for five months or less and not be on a recurring basis.

(b) "Employed on a permanent basis" under subsection (3) of this section means either:

(i) Your employer expects you to continue in your position for more than five months in any calendar year; or

(ii) Your employer expects you to continue in the same position for more than one year on a recurring basis and your employment is for five months or less during each year.

(6) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Ineligible position" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.
(e) "Report" - WAC 415-108-0104.

NEW SECTION

WAC 415-108-720 Participation—Can I be excluded from participating in membership even if I am employed in an eligible position? (1) **You may be exempt from participating in membership even if you meet eligibility criteria.** Even if you are employed in an eligible position you are exempt from participating in PERS if your individual circumstances qualify you for one of the exceptions to membership under RCW 41.40.023.

(2) **If you work for a PERS employer after you retire, you are subject to post-retirement employment restrictions even if you are excluded from participating in membership.** If you become employed in an eligible position after you retire, you are subject to the post-retirement employment restrictions under RCW 41.40.150 and 41.40.690 even if you are excluded from membership.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Ineligible position" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.

NEW SECTION

WAC 415-108-725 If I have retired from another retirement plan or am eligible to retire, am I excluded from participating in PERS? (1) If you have retired or are eligible to retire from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 1, 1976; or

(b) You accrued less than fifteen years of service credit in the other retirement plan.

(2) If you are receiving a disability allowance from any retirement system administered by the department you can not participate in PERS unless you established membership in PERS prior to March 1, 1976.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.
(b) "Retirement plan" - WAC 415-108-0105.
(c) "Service" - RCW 41.40.010.

NEW SECTION

WAC 415-108-726 If I have accrued service credit in another retirement plan, am I excluded from participating in PERS? (1) If you have earned service credit in any retirement plan operated wholly or in part by the state or a political subdivision, you can participate in PERS membership if an agreement exists between PERS and the other plan which permits you to retain service credit in more than one retirement system. See RCW 41.40.023(4). Such an agreement exists between PERS and the following systems:

(a) The retirement systems listed under RCW 41.50.030;

(b) The retirement systems of the cities of Seattle, Spokane and Tacoma; and

(c) The Teachers Insurance & Annuity Association/College Retirement Equity Fund retirement plan.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.
(b) "Retirement plan" - WAC 415-108-0105
(c) "Service" - RCW 41.40.010.

NEW SECTION

WAC 415-108-728 If I work in both a PERS position and TRS position during the same school year, which system will I be in? (1) If you work in both a PERS and TRS position during the same year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either PERS or TRS according to the following table:

PERMANENT

Former TRS Plan I Members [1/]

Type of Concurrent Employment [2/]	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERMANENT

TRS Plan I Members

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

TRS Plan II Members

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. 3/
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERS Members

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125(1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you elect to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions: or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERMANENT

Neither TRS Nor PERS Member

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

1/ "Former TRS I member", as used here, means you terminate your membership by withdrawing your contributions.
2/ "Concurrently" means during the same school year.
3/ EXAMPLE: A TRS II member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS II through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS II.

EXAMPLE: A TRS II member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS II member, School District B employer must report his service and compensation from the PERS position to the Department in TRS II. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).

(c) "Ineligible position" - RCW 41.40.010.

(d) "Member" - RCW 41.40.010.

(e) "Membership" - RCW 41.40.023.

(f) "Report" - WAC 415-108-0104

(g) "Service" - RCW 41.40.010.

AMENDATORY SECTION (Amending WSR 94-11-009, filed 5/5/94, effective 6/5/94)

WAC 415-112-015 Definitions. (1) All definitions in RCW 41.32.010 apply to terms used in this chapter((~~, unless a different meaning is plainly required by the context~~)). Other terms relevant to the administration of chapter 41.32 RCW are defined in this chapter.

(2) As used in this chapter, unless a different meaning is plainly required by the context:

"Annual leave" means leave provided by an employer for the purpose of vacation and does not include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work: *Provided, however,* That if an employer authorizes only one type of leave to provide paid leave for vacation and illness, as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

((~~"Contract period" for Plan I members as used in RCW 41.32.345 means the period from July 1 to June 30 of the following year.~~

~~"Day" for purposes of administering RCW 41.32.570 means seven compensated hours. "Seventy-five days" means five hundred twenty-five cumulative compensated hours;~~

~~"Duly executed" means that all required forms or documents have been completed, signed and notarized, and filed with the department;~~

~~"Insurable interest" means a reasonable expectation of monetary benefit from the continued life of the member; or a relation of the parties to each other by blood or marriage;~~

~~"Pension benefit" means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers;~~

~~"Public educational institution" means a school district, the state school for the deaf, the state school for the blind, educational service districts, institutions of higher education, or community colleges;~~

~~"School year" for Plan I members means the fiscal year running from July 1 to June 30;~~

~~"Single life annuity" means an annuity based solely on the expected remaining life of the member, without regard to any benefits for the member's designated beneficiary or spouse;~~

~~"Spousal consent" means written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on the retirement application, when such application is duly executed and filed with the department, shall constitute "spousal consent";~~

~~"Survivor" means a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement.~~))

NEW SECTION

WAC 415-112-0151 Contract period—Definition. "Contract period" means for Plan I members as used in RCW 41.32.345 means the period from July 1 to June 30 of the following year.

NEW SECTION

WAC 415-112-0152 Day—Definition. "Day" means for purposes of administering RCW 41.32.570 means seven compensated hours. "Seventy-five days" means five hundred twenty-five cumulative compensated hours.

NEW SECTION

WAC 415-112-0154 Ineligible position—Definition. "Ineligible position" means a position which does not qualify as an eligible position under RCW 41.32.010.

NEW SECTION

WAC 415-112-0156 Pension benefit—Definition. "Pension benefit" means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers.

NEW SECTION

WAC 415-112-0157 Public educational institution—Definition. "Public educational institution" means a school district, the state school for the deaf, the state school for the blind, educational service districts, institutions of higher education, or community colleges.

NEW SECTION

WAC 415-112-0158 Public school—Definition. (1) "Public school," as defined in RCW 41.32.010, includes school districts, educational service districts, the state school for the deaf, and the state school for the blind but does not include the office of the superintendent of public instruction.

(2) As applied to other TRS employers, "public school" means an institution employing teachers and whose primary function is to educate students. "Employing teachers" means fifty percent or more of a public school's employees are qualified to teach as defined in WAC 415-112-0159.

NEW SECTION

WAC 415-112-0159 Qualified to teach—Definition. "Qualified to teach," as used under RCW 41.32.010, means either:

(1) Having the authority to provide instruction at a common school as defined under RCW 28A.150.020 pursuant to:

(a) A valid teaching certificate issued by the office of the superintendent of public instruction under WAC 180-75-055; or

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(b) A permit to teach issued by lawful authority of this state under RCW 28A.405.010; or

(2) Being employed under a contract to teach with an institution of higher education as defined in RCW 28A.150.020.

NEW SECTION

WAC 415-112-0161 School year—Definition. (1) "School year" for Plan I members means the fiscal year running from July 1 to June 30.

(2) "School year" for Plan II members means the twelve-month period from September 1 of one year to August 31 of the following year.

NEW SECTION

WAC 415-112-0162 Service in an administrative or supervisory capacity—Definition. As used under RCW 41.32.010 and in this chapter:

(1) "Service in an administrative or supervisory capacity," means:

(a) Service in a managerial role relating to the administration of a public school; or

(b) Service involving the exercise of direction over employees of the public school.

(2) The phrase "service in an administrative or supervisory capacity" includes, but is not limited to, service as: Principal, assistant principal, superintendent, assistant superintendent, personnel manager and business manager.

NEW SECTION

WAC 415-112-0163 Service in an instructional capacity—Definition. "Service in an instructional capacity," means a qualified teacher performing services as a classroom teacher.

NEW SECTION

WAC 415-112-0165 Spousal consent—Definition. "Spousal consent" means written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on the retirement application, when such application is duly executed and filed with the department, shall constitute "spousal consent."

NEW SECTION

WAC 415-112-0167 System acronyms—Definition. The acronyms used in this chapter mean:

(1) "PERS" means the Public Employees' Retirement System.

(2) "TRS" means the Teachers' Retirement System.

NEW SECTION

WAC 415-112-119 Purpose and scope of eligibility rules. WAC 415-112-120 through 415-112-155 codify the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in TRS Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to the effective dates of these sections.

NEW SECTION

WAC 415-112-120 Am I eligible to establish membership? (1) **You must be a teacher.** You are eligible to establish membership as provided under WAC 415-112-125 only if you work as a teacher. You are a teacher if you are qualified to teach and work for a public school in an instructional, administrative or supervisory capacity.

(2) **Nonteaching positions.** Positions which do not require service in an instructional, administrative or supervisory capacity include, but are not limited to, the following: Custodian, groundskeeper, bus driver, cafeteria worker, library technician, administrative assistant, and payroll clerk.

NEW SECTION

WAC 415-112-125 If I am eligible, how can I establish membership? (1) **If you met the conditions in the following table, you established TRS membership.** Your plan status depends upon the date you established membership, as indicated in the following table:

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Period of Service	Type of Employment	Plan
Prior to 10/01/77 [1]	If you were contracted to teach full-time you were mandated into membership. If you were employed under a less than full-time contract and you exercised your option to establish membership prior to 10/01/77, you had the option to apply for membership under RCW 41.32.240, if you worked 90 or more full-time days [2] during a fiscal year.	Plan I
10/01/77 through 06/06/90	If you were contracted to teach full-time you were required to be a member. If you were employed as a substitute teacher or under a less than full-time contract, you have the option to apply for membership under RCW 41.32.240 if you worked a minimum of 90 full-time days [2] during a school year, provided 1 month had at least 90 hours.	Plan II
6/07/90 through 08/31/91	You must have been employed in an eligible position as defined in Section 2, Chapter 274, Laws of 1990, (requiring two or more consecutive months of at least 90 hours of compensated employment each month during a school year). For substitute teachers: If you met the above criteria, you may apply for membership and service credit under RCW 41.32.013 and WAC 415-112-140.	Plan II
9/01/91 forward	You must be employed in an eligible position (requiring at least 5 months of 70 hours or more of compensated employment each month during a school year). For substitute teachers: If you meet the above criteria, you may apply for membership/service credit under RCW 41.32.013 and WAC 415-112-140.	Plan II

[1] If you previously established Plan I membership as detailed above, you may reestablish Plan I membership after October 1, 1977.
[2] "Ninety days of employment," under RCW 41.32.240 and this section means either:
(a) Ninety full-time calendar days, or the equivalent, during a school year if you were employed as a teacher under a contract; or
(b) Ninety full-time days of actual, compensated service, or the equivalent, during a school year if you were employed as a substitute teacher.
(c) The "equivalent" of a full-time day of employment under (a) and (b) of this subsection is the sum of partial days which, when added together, equals one full-time day.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.
(a) "Member" - RCW 41.32.010.
(b) "Eligible position" - RCW 41.32.010.
(c) "Employer" - RCW 41.32.010.
(d) "Full-time" - RCW 41.32.240
(e) "Service" - RCW 41.32.010.
(f) "Substitute teacher" - RCW 41.32.010.
(g) "Teacher" - RCW 41.32.010.
(h) "School year" - WAC 415-112-0161.

NEW SECTION

WAC 415-112-130 If I separate from, and then reenter employment, can I continue to participate in TRS? (1) **If you are a TRS Plan I member, you will participate in TRS Plan I if you become reemployed with a TRS employer.** If you are a Plan I member and have separated from service without withdrawing contributions, you will participate in the system again if you become reemployed with a TRS employer, even if you are not working as a teacher.

(2) **If you terminate TRS Plan I membership, you will not reenter TRS Plan I unless you requalify for membership or repay withdrawn contributions as a dual member.** If you were a Plan I member and have terminated your membership, you can reestablish your membership and be eligible to participate in the system again only if you:

(a) Become reemployed as a teacher in a position or positions meeting the membership eligibility criteria under RCW 41.32.240 and WAC 415-112-125(1); or

(b) Repaid withdrawn contributions as a dual member under portability. See RCW 41.54.020(2).

(3) **If you have service credit in TRS Plan II, you will only reestablish membership if you work as a teacher in an eligible position.** If you were a Plan II member who separated from service, you will reestablish membership and be eligible to participate in the system again only if you:

(a) Become reemployed as a teacher; and

(b) Render service in a position or positions meeting the membership eligibility criteria under WAC 415-112-125(1) or 415-112-140(1).

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Dual member" - RCW 41.54.010 and WAC 415-113-041.

(b) "Eligible position" - RCW 41.32.010.

(c) "Employer" - RCW 41.32.010.

(d) "Member" - RCW 41.32.010.

(e) "Service" - RCW 41.32.010.

(f) "Service in an administrative or supervisory capacity" - WAC 415-112-0162.

(g) "Service in an instructional capacity" - WAC 415-112-0163.

(h) "Teacher" - RCW 41.32.010.

NEW SECTION

WAC 415-112-135 Can I be a member if I work as an educational staff associate? (1) **You are eligible for membership if you are certificated and employed as an educational staff associate.** You are a teacher for purposes of TRS membership if you:

(a) Possess a valid educational staff associate certificate issued by the office of the superintendent of public instruction under WAC 180-75-055(3); and

(b) Serve in an educational staff associate position.

(2) **Positions which qualify as an educational staff associate.** "Educational staff associate," includes but is not limited to a person employed by a public school in any of the following positions: Communications disorder specialist, occupational therapist, physical therapist, reading resource technician, school counselor, school nurse, school psychologist, school social worker and school librarian.

(3) **If you were enrolled in PERS before June 7, 1984, based on your employment as an educational staff associate, you may remain in PERS.** If you were enrolled in the PERS prior to June 7, 1984, based on employment as an educational staff associate, you will remain in PERS unless you choose either to:

(a) Transfer your membership to TRS within the time limits established in RCW 41.32.032; or

(b) Terminate your membership in PERS by withdrawing your accumulated contributions.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Member" - RCW 41.32.010.

(b) "Employer" - RCW 41.32.010.

(c) "Public school" - RCW 41.32.010 and WAC 415-112-0158.

(d) "Service" - RCW 41.32.010.

(e) "Teacher" - RCW 41.32.010.

NEW SECTION

WAC 415-112-140 Am I eligible for membership and service credit as a substitute teacher? (1) **You may apply for membership and service credit in TRS as a substitute teacher if you meet eligibility criteria.**

(a) **TRS Plan I.**

(i) If you are a former Plan I member, you may apply to reestablish Plan I membership if you work ninety or more full-time days during a school year as a teacher.

(ii) If you are a Plan I member, you may apply to the department for service credit in Plan I as a substitute teacher if you work a minimum of twenty full-time days during a school year.

(b) **TRS Plan II.**

(i) You may apply to the department for membership in Plan II if you:

(A) Work at least seventy hours for five or more months during a school year; or

(B) Worked at least ninety hours for two consecutive months during the school year of September 1, 1990, through August 31, 1991.

(ii) If you have previously established membership in Plan II and have not withdrawn your contributions, you may apply to the department for service credit based on any compensated employment you earn as a substitute teacher during a school year.

(2) **To apply, you must submit your employer's quarterly reports to the department at the end of a year.**

(a) To apply for membership and service credit as a substitute teacher, you must submit your employer's quarterly reports to the department no earlier than:

(i) June 30 of the year for which you are applying for Plan I service credit; or

(ii) August 31 of the year for which you are applying for Plan II service credit.

(b) Your employer cannot report your service and earnings history as a substitute teacher to the department through the retirement system monthly reporting system unless you are also employed in a separate, eligible position with the same employer.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Member" - RCW 41.32.010.

(b) "Service" - RCW 41.32.010.

(c) "Substitute teacher" - RCW 41.32.010.

(d) "Teacher" - RCW 41.32.010.

NEW SECTION

WAC 415-112-145 Can I terminate my status as a member? (1) If you are a TRS Plan I member, you will remain a member until you:

(a) Die;

(b) Retire for service or disability; or

PERMANENT

(c) Withdraw your accumulated contributions.

(2) If you are a TRS Plan II member, you will remain a member until you:

(a) Die;

(b) Retire for service or disability; or

(c) Separate from service as a teacher in an eligible position.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.32.010.

(b) "Member" - RCW 41.32.010.

(c) "Service" - RCW 41.32.010.

(d) "Teacher" - RCW 41.32.010.

NEW SECTION

WAC 415-112-155 If I work in both a TRS position and PERS position during the same school year, which system will I be in? (1) If you work in both a TRS and PERS position during the same school year, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either TRS or PERS according to the following tables:

Former TRS Plan I Members 1/

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

TRS Plan I Members

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

PERMANENT

TRS Plan II Members

Type of Concurrent Employment 2/	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. 3/
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERS Members

Type of Concurrent Employment [2]	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only, unless you qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125(1). If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you elect to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions: or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERMANENT

Neither TRS Nor PERS Member

Type of Concurrent Employment [2]	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

[1] "Former TRS I member", as used here, means you terminate your membership by withdrawing your contributions.
[2] "Concurrently" means during the same school year.
[3] EXAMPLE: A TRS II member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS II through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS II.

EXAMPLE: A TRS II member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS II member, School District B employer must report his service and compensation from the PERS position to the Department in TRS II. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.32.010 (TRS); RCW 41.40.010 (PERS).

(b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).

(c) "Full time" - RCW 41.32.240.

(d) "Ineligible position" - WAC 415-112-0154 (TRS); RCW 41.40.010 (PERS).

(e) "Member" - RCW 41.40.010.

(f) "Membership" - RCW 41.40.023.

(g) "Report" - WAC 415-108-0104.

(h) "Service" - RCW 41.40.010.

WSR 95-16-058
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3874—Filed July 26, 1995, 9:48 a.m.]

Date of Adoption: July 26, 1995.

Purpose: Currently, verification of pregnancy follows AFDC criteria which requires written verification from a licensed medical practitioner. AFDC criteria requires written documentation from a licensed medical practitioner so the appropriate estimated date of delivery (and trimester of pregnancy) can be determined. For the purposes of medical eligibility, the trimester need not be determined. Proposed amendment allows department to accept verification of pregnancy from a licensed medical lab in addition to licensed medical practitioner.

Citation of Existing Rules Affected by this Order: Amending WAC 388-508-0820 Pregnant woman—Eligibility.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 95-13-086 on June 20, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

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

July 26, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-508-0820 Pregnant woman—Eligibility. (1) The department shall find a ((~~verifiably~~)) pregnant woman eligible for Medicaid as categorically needy when the pregnant woman meets:

(a) The income requirements under WAC 388-508-0805; and

(b) Social Security number and residence requirements under chapter 388-505 WAC.

(2) For the purposes of determining only medical eligibility, a pregnant woman means a woman whose pregnancy has been confirmed in writing by:

(a) A licensed medical practitioner; or

(b) An authorized employee of a:

(i) Licensed laboratory;

(ii) Community clinic;

(iii) Family planning clinic; or

(iv) Health department clinic.

(3) The department shall determine family income according to AFDC methodology((~~,~~)); except, the department shall:

(a) Exclude the income of the unmarried father of the unborn unless the income is actually contributed; and

(b) Determine eligibility as if the unborn is born.

(((~~3~~))) (4) The department shall consider the provisions of WAC 388-506-0610 (1)(e) in determining countable income for a pregnant minor.

(((~~4~~))) (5) The department shall exempt a pregnant, undocumented alien woman from citizenship, alien status, and Social Security number requirements.

WSR 95-16-062
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed July 26, 1995, 4:20 p.m.]

Date of Adoption: July 26, 1995.

Purpose: To prevent post pasteurization contamination of frozen dessert mixes with harmful microorganisms by establishing requirements for handling and transportation.

Citation of Existing Rules Affected by this Order: Amending chapter 16-144 WAC.

Statutory Authority for Adoption: RCW 15.36.021 and 69.04.398(3).

Adopted under notice filed as WSR 95-12-084 on June 7, 1995.

Changes Other than Editing from Proposed to Adopted Version: Changed cite in WAC 16-144-149 from chapter 16-140 WAC to chapter 16-142 WAC to correct error.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, amended 1, repealed 0.

PERMANENT

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 7, amended 1, repealed 0.

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

July 26, 1995
Jim Jesernig
Director

AMENDATORY SECTION (Amending Order 1069, filed 9/20/67, effective 11/1/67)

WAC 16-144-001 Promulgation and purpose. ((~~I, Donald W. Moos, director of agriculture of the state of Washington, after public notice and hearing held at Olympia, Washington on September 6, 1967, by virtue of authority vested in me under chapters 34.04, 15.32 and 15.36 RCW, do hereby promulgate the following regulations governing frozen desserts.~~)) This chapter is promulgated under the authority of RCW 15.36.021 and 69.04.398(3). The purpose of this rule is to establish requirements for production of frozen desserts.

NEW SECTION

WAC 16-144-145 Requirements for frozen dessert mix processing, handling, transportation and pasteurization. (1) Definitions for terms used in this section may be found in the following sections:

(a) Frozen desserts, WAC 16-144-010.

(b) Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW.

(c) Fluid milk, RCW 15.36.012.

(d) Intrastate commerce in foods, WAC 16-167-050 (1)(r).

(e) Pasteurized milk ordinance adopted in WAC 16-101-700.

(2) Additional definition: Harmful microorganisms are bacteria or other microorganisms which have been shown to be capable of causing disease in humans by consumption or contact.

NEW SECTION

WAC 16-144-146 How may frozen dessert mix be transported without requiring repasteurization? (1) Single service containers which meet the requirements for Grade A milk products under Appendix J of the pasteurized milk ordinance (PMO).

(2) Containers with single service liners which meet the requirements for Grade A milk products under Appendix J of the PMO.

NEW SECTION

WAC 16-144-147 Can frozen dessert mix be transported in milk tank trucks or milk cans? No. Transport of mix in milk trucks or milk cans is not allowed. The risk of post pasteurization contamination is too great without final pasteurization at the plant where the mix is frozen and packaged.

NEW SECTION

WAC 16-144-148 What temperature must frozen dessert mix be held at? Forty-five degrees Fahrenheit or less at all times.

NEW SECTION

WAC 16-144-149 How long may frozen dessert mix be held after pasteurization? (1) Frozen dessert mix containers approved under WAC 16-144-146 must bear a pull date which establishes the last day it may be used. This pull date must meet the requirements for pull dating of perishable packaged food under chapters 69.04 RCW and 16-142 WAC.

(2) Pasteurized frozen dessert mix may be held for up to seventy-two hours in storage tanks before it must be repasteurized.

NEW SECTION

WAC 16-144-150 What ingredients must be added to the mix before final pasteurization? (1) All dairy products including milk solids, whey, nonfat dry milk, condensed milk, cream, skim milk, and other milk products.

(2) Egg products.

(3) Reconstituted or recombined dry mixes including cocoa and cocoa products which are mixed with water or other liquids.

(4) Liquid sweeteners.

(5) Dry sugars.

(6) Emulsifiers or stabilizers which do not meet one of the requirements under WAC 16-144-151.

NEW SECTION

WAC 16-144-151 What ingredients may be added after final pasteurization or at the freezer? (1) Ingredients which have been subjected to prior heat treatment sufficient to kill harmful microorganisms.

(2) Ingredients with 0.85% water activity or less.

(3) High acid ingredients with pH 4.7 or less.

(4) Roasted nuts or confectionery chips (added at the freezer).

(5) Harmless lactic acid forming bacteria cultures.

(6) Fruits and vegetables (added at the freezer).

(7) Ingredients with high alcohol content (i.e., fifteen percent or more by volume).

(8) Ingredients which have been subjected to any other process approved by the director which will ensure that the finished product is free of harmful microorganisms.

WSR 95-16-063
PERMANENT RULES
STATE BOARD OF EDUCATION
[Filed July 27, 1995, 10:43 a.m.]

Date of Adoption: July 21, 1995.

Purpose: To change the equivalency rate from .75 to 1.0 high school credit for five quarter or three semester hours of college or university course work until September 1, 1996.

Citation of Existing Rules Affected by this Order: Amending WAC 180-51-050.

Statutory Authority for Adoption: RCW 28A.230.090 and 28A.305.130.

Other Authority: Chapter 222, Laws of 1994.

Adopted under notice filed as WSR 95-12-025 on May 31, 1995.

Changes Other than Editing from Proposed to Adopted Version: The rule change is limited to an effective period of one school year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

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

July 27, 1995
Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 94-13-017, filed 6/3/94, effective 7/4/94)

WAC 180-51-050 High school credit—Definition. As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve high school programs. One hundred fifty hours of planned in-school instruction;

(2) College and university course work. At the college or university level, except for community college adult high school completion programs, five quarter or three semester hours shall equal .75 high school credit: *Provided,* That five quarter or three semester hours shall continue to equal one high school credit until September 1, ((~~1995~~)) 1996; and

(3) Community college adult high school completion program. Five quarter or three semester hours of community college work shall equal 1.0 high school credit for students in the community college high school completion program.

WSR 95-16-066
PERMANENT RULES
COMMUNITY COLLEGES OF SPOKANE
[Filed July 28, 1995, 1:25 p.m.]

Date of Adoption: July 25, 1995.

Purpose: To implement RCW 28B.10.900 through [28B.10.]903.

Statutory Authority for Adoption: RCW 28B.10.903.

Adopted under notice filed as WSR 95-11-019 on May 8, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 1, amended 0, repealed 0.

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

July 25, 1995
Geoffrey J. Eng
District Director
Affirmative Action
Administrative Services

NEW SECTION

WAC 132Q-04-076 Hazing prohibited Hazing is prohibited. Hazing means any method of initiation into a student organization or living group or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or post-secondary institution. Excluded from this definition are "customary athletic events or other similar contests or competitions."

WSR 95-16-067
PERMANENT RULES
COMMUNITY COLLEGES OF SPOKANE
[Filed July 28, 1995, 1:26 p.m.]

Date of Adoption: July 25, 1995.

Purpose: To implement RCW 28B.10.900 through [28B.10.]903.

Statutory Authority for Adoption: RCW 28B.10.903.

Adopted under notice filed as WSR 95-11-020 on May 8, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 1, amended 0, repealed 0.

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

July 25, 1995
Geoffrey J. Eng
District Director
Affirmative Action
Administrative Services

NEW SECTION

WAC 132Q-04-077 Penalties for hazing Any organization, association or student living group that knowingly permits hazing shall: a) be liable for harm caused to persons or property resulting from hazing and b) be denied recognition by Community Colleges of Spokane as an official organization, association or student living group on this campus. If the organization, association or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for one calendar year.

Forfeiture of state-funded grants, scholarships or awards may continue for an additional calendar year up to and including permanent forfeiture, based upon the seriousness of the violations.

Other sections of the Student Code of Conduct may be applicable to hazing violations.

Hazing violations are also misdemeanors punishable under state criminal law according to RCW 9A.20.021.

WSR 95-16-068
PERMANENT RULES
COMMUNITY COLLEGES OF SPOKANE
[Filed July 28, 1995, 1:27 p.m.]

Date of Adoption: July 25, 1995.

Purpose: To implement RCW 28B.10.900 through [28B.10.]903.

Statutory Authority for Adoption: RCW 28B.10.903.

Adopted under notice filed as WSR 95-11-021 on May 8, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 1, amended 0, repealed 0.

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

July 25, 1995
Geoffrey J. Eng
District Director
Affirmative Action
Administrative Services

NEW SECTION

WAC 132Q-04-078 Sanctions for impermissible conduct not amounting to hazing Impermissible conduct associated with initiation into a student organization or living group or any pastime or amusement engaged in, with respect to the organization or living group, will not be tolerated.

Impermissible conduct which does not amount to hazing may include conduct which causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

Impermissible conduct not amounting to hazing is subject to any sanctions available under the Student Code of Conduct depending upon the seriousness of the violation.

WSR 95-16-069
PERMANENT RULES
LOWER COLUMBIA COLLEGE
[Filed July 28, 1995, 1:29 p.m.]

Date of Adoption: July 25, 1995.

Purpose: To establish rules for refund of tuition and fees when a student withdraws from a college course or program after the start of instruction. To clarify how tuition and fee waivers are to be established.

Citation of Existing Rules Affected by this Order: Amending WAC 132M-108-020.

Statutory Authority for Adoption: RCW 28B.50.-140(13).

Other Authority: SSB 6002 (section 2, chapter 36, Laws of 1995) and amendment to RCW 28B.15.600.

Pursuant to notice filed as WSR 95-13-097 on June 21, 1995.

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

July 25, 1995
Vernon R. Pickett
President

NEW SECTION

WAC 132M-160-050 Refunds. (1) First-time students receiving federal financial aid who officially withdraw from classes shall be provided a *pro rata* refund in accordance with Federal regulations.

(2) A refund of fees and tuition will be made to all other students officially withdrawing from the college according to the following schedule:

(a) One hundred percent. Withdrawal prior to the sixth day of instruction of the quarter.

(b) One hundred percent. Withdrawal as a result of classes being cancelled by the College.

(c) Fifty percent. Withdrawal on or after the sixth day of instruction of the quarter and prior to the twentieth calendar day of the quarter.

(d) No refunds will be made after the twentieth calendar day of the quarter. Exceptions may be made for students inducted into military service and for medical reasons.

(3) Refunds for short courses and courses starting after the first week of the quarter shall be determined by the Associate Dean for Enrollment Services.

(4) Fees, other than tuition and service and activities fees, and not subject to this policy, are not refundable.

(5) Students dismissed for disciplinary reasons are not eligible for refunds.

NEW SECTION

WAC 132M-160-040 Tuition and fee waivers. (1) Lower Columbia College may periodically establish tuition and fee waivers as authorized by state law and by the state board for community and technical colleges.

(2) Upon request of an applicant for a mandatory tuition and fee waiver, individual determinations will be reviewed by the registrar, in a brief adjudicative proceeding pursuant to RCW 34.05.482-.494.

AMENDATORY SECTION [(Amending WSR 92-09-005, filed 4/2/92)]

WAC 132M-108-020 Brief adjudicative procedure. This rule is adopted in accordance with RCW 34.05.482-.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

(a) Appeals from residency classifications made pursuant to RCW 28B.15.013;

(b) Appeals from parking infractions;

(c) Student conduct or disciplinary proceedings;

(d) Outstanding debts of college employees or students;

(e) Loss of eligibility to participate in athletic events;

(f) Challenges to the contents of education records pursuant to WAC 132M-113-055(2);

(g) Mandatory tuition and fee waivers.

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

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

WSR 95-16-076
PERMANENT RULES
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 3:50 p.m.]

Date of Adoption: July 21, 1995.

Purpose: Amend WAC 180-27-05605 to permit supplemental releases of school construction funds to be made at any time during the second year of a biennium if funding authority and excess revenue is available.

Citation of Existing Rules Affected by this Order: Amending WAC 180-27-05605.

Statutory Authority for Adoption: RCW 28A.525.200.

Adopted under notice filed as WSR 95-12-074 on June 6, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

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

July 28, 1995
Larry Davis
Executive Director

PERMANENT

AMENDATORY SECTION (Amending WSR 92-24-027, filed 11/24/92, effective 12/25/92)

WAC 180-27-05605 Additional funding during a period of a priority approval process. Notwithstanding the provisions of WAC 180-27-056, if within any state fiscal year, that is the second year of a biennium, there is funding authority and revenue in excess of what is required for the priority list established pursuant to WAC 180-27-056, then there may be a subsequent priority list established ((~~on March 1 of~~)) in the same state fiscal year for the purpose of funding or encumbering funding only for those projects for which preliminary funded status had been granted prior to July 1 of that state fiscal year. The priority order shall be as per WAC ((~~180-27-058~~)) 180-27-500 through 180-27-535.

WSR 95-16-093
PERMANENT RULES
THE EVERGREEN STATE COLLEGE
[Filed July 31, 1995, 2:47 p.m., effective September 1, 1995]

Date of Adoption: May 15, 1995.

Purpose: To provide for greater efficiency of vehicular parking and traffic control through the development of revised campus parking and traffic regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 174-116-010 through 174-116-127.

Statutory Authority for Adoption: RCW 28B.10.560 (1)(a).

Adopted under notice filed as WSR 95-07-132 on March 22, 1995.

Changes Other than Editing from Proposed to Adopted Version: WAC 174-116-040(2) Academic year: Automobile $65.00, motorcycle $35.00. Added to accommodate faculty and students who park nine months only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 21, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 21, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: September 1, 1995.

July 27, 1995
D. Lee Hoemann
Rules Coordinator

PERMANENT

AMENDATORY SECTION (Amending Order 88-3, Resolution No. 88-32, filed 9/20/88)

WAC 174-116-020 Authority. (1) The Evergreen State College through its board of trustees is authorized to establish traffic and parking regulations as stated in RCW 28B.10.560. The board of trustees reserves the right to add, delete or modify portions of these regulations including the appended fee and fine and penalty schedules in accordance with its regulations and applicable laws. Administration and enforcement of these parking regulations will be delegated to the ((~~security~~)) department of public safety and parking office((~~s~~)).

(2) The Evergreen State College parking office is authorized to issue annual, quarterly, daily, car-pool, and special permits to park upon the campus. Special permits are issued pursuant to the provisions of these regulations. All outstanding campus parking violations must be satisfactorily settled before a special permit will be issued or renewed.

(3) The authority and powers conferred upon the ((~~security chief and~~)) director of ((~~facilities~~)) public safety by these regulations ((~~shall be subject to delegation by him/her~~)) may be delegated to subordinates.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-030 Enforcement. Whenever an unattended vehicle is observed in violation of the regulations herein set forth, the parking or ((~~security personnel~~)) public safety department shall take the registration number and other identifiable information and shall affix to such vehicle a parking infraction in a conspicuously visible location.

AMENDATORY SECTION (Amending Order 88-3, Resolution No. 88-32, filed 9/20/88)

WAC 174-116-040 Parking permits—General information. (1) Parking permits are issued by the parking office following application and the payment of the appropriate fees. All privately-owned motor vehicles parked or left standing unattended on college property are required to display a currently valid Evergreen parking permit during the hours of 7:00 a.m. to ((~~5:00~~)) 9:00 p.m., Monday through Friday throughout the calendar year. The college maintains the authority to sell and require the display of special event parking permits during times and days established by the college. Vehicles parked on campus pursuant to these regulations are required to display valid parking permits at all times and days of the week as established by these rules.

(2) Fees for parking permits are as follows:

	Automobile	Motorcycle
Quarterly	((~~22.00~~	~~11.00~~))
	25.00	12.50
((~~Quarterly mod resident~~	~~22.00~~	~~11.00~~))
Annual	((~~54.00~~	~~27.00~~))
	75.00	37.00
((~~Annual mod resident~~	~~54.00~~	~~27.00~~))
Academic year	65.00	35.00
Daily	((~~.75~~	~~.75~~))
	1.00	1.00
Special event parking	1.00	1.00

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-041 Parking permits—((~~Visitors and guests~~)) Special exceptions. All ((~~visitors, including guests, salespersons, maintenance or service personnel and all other members of the public~~)) persons parking vehicles on campus will park in available space as established by The Evergreen State College parking regulations and will pay the established parking fee except as ((~~noted below~~)) follows:

(1) ((~~Federal, state, county, city, school district, and similar governmental personnel, on official business in~~)) Vehicles with government tax exempt licenses((~~,~~)) will be ((~~admitted~~)) allowed to park without charge.

(2) Vehicles owned by contractors and their employees working on campus construction may be parked within available construction sites or designated areas without charge ((~~but must have a permit to do so~~)) when displaying a construction permit issued by a TESC project manager through the parking office.

(3) Members of the press, television, radio and wire services, on official business, after obtaining a permit from the parking office, may park without charge((~~, and must obtain a permit at the parking booth~~)).

(4) Taxis and commercial delivery vehicles may enter the campus without payment of the parking fee only for pick up and delivery of passengers, supplies and equipment.

(((~~(5) Visitors and guests attending special college events may be parked without charge if prior arrangement has been made with the parking office.~~

~~(6) Visitors invited to the campus for the purpose of rendering uncompensated services to The Evergreen State College may be parked without charge, provided prior notification is given to the parking office.~~

~~(7) Persons utilizing campus facilities may park for up to one hour in the B-lot visitor stalls.~~))

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-042 Parking permits—Special permits. (1) ((~~Physically challenged users must display a valid TESC parking permit and a state of Washington "disabled person parking permit." Temporary permits must be approved by The Evergreen State College affirmative action office.~~)) Permanently and temporarily disabled persons may request parking permits from the parking office. Vehicles parked in handicapped spaces must display a valid paid parking permit and a state of Washington "disabled person parking permit" if the user is permanently disabled.

(2) ((~~Salespersons, maintenance and service personnel, persons serving the college without pay, and other visitors who must frequently visit the campus on college business,~~)) Service providers may be issued a parking permit ((~~from the parking office,~~)) upon request from the division or unit benefiting from the services provided((~~, subject to approval by the parking office~~)). Complimentary parking on campus will not be provided to persons intending to make personal solicitations from, or personal sales to, college employees or students.

(3) ((~~Overnight or~~)) Extended period ((~~permits~~)) parking clearance may be ((~~purchased~~)) obtained from the public safety or parking office for disabled vehicles, vehicles left for field trips, or other valid reasons that may necessitate ((~~the operator's~~)) leaving ((~~the~~)) a vehicle on campus for more than a day.

AMENDATORY SECTION (Amending Order 88-3, Resolution No. 88-32, filed 9/20/88)

WAC 174-116-043 Parking permits—Issuance and display. (1) All parking permits must be ((~~positioned~~)) displayed so that they are clearly visible ((~~and readable~~)) from the outside of the vehicle.

(2) Car pool permits may be purchased by faculty, staff and students. One transferable permit will be issued by the parking office for each car pool. ((~~This~~)) The permit is transferable only among the registered members of the car pool. The permit must be displayed on the dashboard ((~~or in the left corner in front of the driver~~)) of the car pool vehicle being used.

(3) Annual and quarterly parking permits must be ((~~affixed to the vehicle's rear window~~)) displayed in the rear window area of the vehicle with the following exceptions:

(a) ((~~On~~)) Convertible((~~s~~)) and truck((~~s they~~)) permits may be affixed ((~~in~~)) to the lower left corner of the front windshield.

(b) ((~~On station wagons and cars with heated rear windows, permits may be affixed in the left rear side window.~~

~~(c)~~)) Motorcycle permits must be ((~~affixed to the left front fork~~)) displayed so as to be readily visible.

(4) Daily parking permits shall be placed on the dash board with date stamp facing up, so as to be clearly visible from the exterior of the vehicle.

(5) A parking permit application ((~~is required to be on file~~)) must be submitted to the parking office for each vehicle displaying a permit. Ownership of permits is not transferable except when approved by the parking office. If ((~~the~~)) a registered vehicle is sold, ((~~and for any reason a replacement permit is requested, the old permit must be removed and presented to the parking office to be eligible for a replacement or a refund~~)) the permit must be removed and surrendered to the parking office for a replacement or any refunds.

(6) ((~~Faculty, staff and students who do not live in campus housing may be issued a duplicate car permit for another vehicle~~)) Persons not residing on campus may apply for a duplicate permit for a second car either personally ((~~owned~~)), family ((~~owned~~)), or ((~~owned by their~~)) employer owned. Proof of ownership or appropriate authorization ((~~from the owner for all vehicles~~)) must be presented prior to issuance of a second permit. ((~~However,~~)) Two vehicles bearing the same numbered permit may not be parked on campus at the same time unless one also displays a valid daily permit.

(7) Vehicles displaying a valid permit may be parked in any designated campus parking lot ((~~with the exception of the modular housing lot. Only mod resident permits are valid for that lot. Mod residents, upon proof of residency, may purchase these decals, honored in all lots on campus~~)). Vehicle parking in the modular housing area and F parking lot is restricted to residents. F lot parking permits are valid in B, C and F lots: Modular housing permits are valid in all of the campus parking lots.

(8) ((~~Any~~)) Permit holders may obtain a complimentary temporary permit at the parking booth ((~~without charge for another vehicle when the vehicle for which a permit was purchased is unavailable due to repair or for another valid reason~~)) for a vehicle being used as a temporary replacement.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-044 Parking permits—Validity periods. (1) Annual parking permits shall be valid from the date of issue until the first day of the following fall academic quarter.

(2) Quarterly parking permits shall be valid from the date issued ((~~each academic quarter~~)) until the first day of the following academic quarter.

(3) Daily parking permits shall be valid from the time purchased until ((~~5:00~~)) 9:00 p.m. on the date of purchase.

AMENDATORY SECTION (Amending Order 83-4, Resolution No. 83-42, filed 9/22/83)

WAC 174-116-046 Parking permits—Revocations. Parking permits are licenses and remain the property of the college((~~, and~~)). Parking permits may be recalled for any of the following reasons:

(1) When the purpose for which the permit was issued changes or no longer exists.

(2) When a permit is used ((~~by~~)) in an unauthorized ((~~individual~~)) manner.

(3) Falsification ((~~on~~)) of a second car parking permit application.

(4) Counterfeiting or altering ((~~of~~)) a permit((~~s~~)).

((~~(5)~~)) Appeals of permit revocations must be made in accordance with the institutional hearing procedures outlined in infraction review committee's governing document.

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AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-050 Responsibility and presumption in reference to illegal parking. (1) The registered owner or permit holder shall be responsible for all parking violations involving the vehicle on which the permit is displayed.

(2) In any review, appeal or hearing alleging the violation of any parking regulation, proof that the particular vehicle described was ((~~stopping~~)) stopped, standing or parked in violation of ((~~any~~)) such regulation together with proof that the person named in the complaint or infraction at the time of such violation was the registered owner or permit holder of such vehicle shall constitute in evidence a prima facie presumption that the registered owner or permit holder was the person who parked or placed such vehicle in the location the violation occurred.

AMENDATORY SECTION (Amending Order 83-4, Resolution No. 83-42, filed 9/22/83)

WAC 174-116-060 Designated and assigned parking areas. (1) The motor vehicle laws of the state of Washington and any rules stated herein shall be applicable at all times in areas covered under the scope of this policy including all college-owned property.

(2) The college assumes no liability for vehicles operated or parked on college properties. No bailment, but only a license, is created by the purchase and/or issuance of any permit.

((~~(1)~~)) (3) No vehicle shall be parked on the campus except in those areas set aside and designated as parking areas.

((~~(2)~~)) (4) No vehicle shall be parked in any parking area without a permit for that area.

((~~(3)~~)) (5) Vehicles may ((~~only~~)) park only within marked spaces provided in each parking lot.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-071 Parking—Prohibited places and fines. (1) No ((~~person~~)) vehicle shall stop, stand or park ((~~any vehicle~~)) so as to obstruct traffic along or upon any street or sidewalk or in any parking lot.

(2) No vehicle shall park, stop or stand in a location likely to interfere with traffic flow except momentarily to pick up or discharge passengers.

(3) No vehicle shall be parked on any lawn or grass areas except as required for maintenance or construction authorized by the director of facilities.

(4) The following schedule of fines for violations is hereby established:

(a) No valid permit	((~~5.00~~)) 10.00
(b) Overtime parking	((~~5.00~~)) 10.00
(c) Improper position	((~~5.00~~)) 10.00
(d) ((~~Parked where signs prohibited~~	~~10.00~~
~~(e) Parked within fifteen feet of hydrant~~	~~15.00~~
~~(f) Handicapped zone~~	~~15.00~~
~~(g) Blocking driveway~~	~~10.00~~
~~(h)~~)) Unauthorized parking in disabled space	25.00
(e) Parked at painted curb	10.00
((~~(i)~~)) (f) Parked in prohibited zone	10.00
((~~(j)~~)) (g) Obstructing traffic	10.00
((~~(k)~~)) (h) Parked in bus zone	((~~15.00~~)) 25.00
((~~(l)~~)) (i) Parked in fire lane	((~~15.00~~)) 25.00
(m) Altered permit	25.00

(5) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the violator to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

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

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-072 Impounding of vehicles. (1) No disabled or inoperative vehicle shall be parked on the campus for a period in excess of ((~~ninety-six~~)) seventy-two hours. Vehicles which have been parked for periods in excess of ((~~ninety-six~~)) seventy-two hours and which appear to be disabled or inoperative may be impounded and stored at the expense of the registered owner. Neither the college nor its employees shall be liable for loss or damage of any kind resulting from impounding and/or storage services provided by a private vendor. Notice of intent to impound will be posted on the vehicle twenty-four hours prior to impound. In any case, the owner or operator of a disabled vehicle should notify the ((~~security~~)) public safety or parking office of the vehicle's location and estimated time of removal or repair.

(2) Any vehicle parked upon property of The Evergreen State College in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington, may be impounded ((~~or immobilized and taken~~)) and removed to such place for storage as the ((~~chief of security and director of facilities~~)) director of public safety selects. The expense of such impounding and storage shall ((~~be charged to~~)) rest solely on the owner or operator of the vehicle ((~~and paid by him/her prior to its release~~)). Vehicles in violation of campus regulations or state traffic laws may also be impounded in place. Release from in-place impounds is contingent on payment of all outstanding fines and charges prior to release of the impounded/immobilized vehicle. The college and its employees shall not be liable for loss or damage of any kind resulting from such impounding and/or storage services provided by a private vendor.

AMENDATORY SECTION (Amending Order 83-4, Resolution No. 83-42, filed 9/22/83)

WAC 174-116-080 Access. Privately owned motor vehicles shall be driven only on those roadways designed and built for their use. Marked "service" drives shall be used only by college employees conducting official business, emergency vehicles, and authorized delivery vehicles. ((~~Any~~ and)) All other vehicles are prohibited from traveling or parking in these areas.

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Brick-paved and other designated areas are for pedestrian and bicycle traffic only, except as needed for emergency vehicles or for maintenance of buildings or grounds.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-091 Special parking and traffic regulations and restrictions authorized. No person without authorization from the director of facilities or the director of public safety shall move, deface, or in any way change a sign, barricade, structure, marking or direction so placed, or previously placed, for the purpose of regulating traffic or parking.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-092 Parking of motorcycles. (1) Motorcycles are, for the purpose of these regulations, considered to be motor vehicles and are subject to all parking regulations.

(2) Motorcycles may be parked in designated areas in addition to the regular parking lots.

(3) Motorcycles are not permitted on paths, sidewalks, in buildings or in pedestrian areas at any time.

AMENDATORY SECTION (Amending Order 88-3, Resolution No. 88-32, filed 9/20/88)

WAC 174-116-119 Fines. (1) Payment.

(a) Persons cited for violation of these regulations ((~~may respond by paying~~)) are required to pay a fine within ten days of the date of notice of infraction. ((~~However, persons cited for "no valid permit" or for "overtime parking" which are designated as five dollar fines, may pay a reduced fine of two dollars, if the citation is attached to the two dollar payment and deposited in the parking booth drop box on the same day the citation is issued. Such payment shall constitute a waiver of the right to request a review as described in WAC 174-116-121.~~))

(b) All fines((~~, excepting reduced fines,~~)) are payable ((~~to The Evergreen State College cashier~~)) at the parking office. Fines may be paid in person during normal business hours or by mail ((~~by sending the notice of infraction and amount of fine to The Evergreen State College cashier. The cashier will not discuss the appropriateness of the fine with the payor~~)). The notice of infraction must accompany any fine payment.

(2) Unpaid fines.

If any fine remains unpaid after ninety days from the date of the notice of infraction, the account will be referred to the controller's office for collection and the following actions may be taken ((~~by The Evergreen State College~~)):

(a) All services on campus may be withheld including academic registration for the following ((~~quarter~~)) academic period.

(b) Transcripts may be withheld for any persons having outstanding unpaid fines.

(c) ((~~Unless payment of the fine has been made, the amount of the fine may be deleted from an employee's paycheck after notice from the controller.~~)) The college has authority to contract with collection agencies in order to collect public debts according to RCW 19.16.500.

(d) A vehicle accumulating three or more unpaid citations with one or more being ninety days delinquent in payment, may be impounded in-place until the outstanding fines are paid.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-121 Election to pay or contest a notice of infraction. The notice of infraction issued pursuant to these regulations shall direct the alleged violator that he/she may elect either to pay the fine applicable to the violation(((~~s~~))) charged or to request a review with the infraction review committee within ten calendar days of the date of the infraction.

(1) If the alleged violator chooses to contest, a written request for a review will be filed with the chairperson of the infraction review committee, through the parking office. Requests for review forms are available at the parking office and at the parking booth. Requests for a review may be submitted without posting of the fine within ten calendar days after date of infraction.

(2) The infraction review committee will review the written request for review and notify the appellant by mail of its decision.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-122 Appeal/hearing procedure. (1) If the decision of the infraction review committee is not supportive of the alleged violator's request, the alleged violator may request ((~~a~~)) one hearing before the review committee to present his/her case in person. The infraction review committee will meet a minimum of once a month (((~~usually the first Wednesday of the month~~))) to hear such appeals.

(2) Persons requesting a hearing before the infraction review committee must make such requests to the chairperson of the ((~~said~~)) committee in writing within ten ((~~class~~)) calendar days of notification of the initial review decision.

(3) The appellant will be notified by the chairperson of the infraction review committee of the time and date of such hearing. Decisions rendered by the infraction review committee on appeals heard shall be binding.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-123 Establishment of infraction review committee. The Evergreen State College infraction review committee is hereby established, the members of which shall be composed of the following:

(1) One faculty member ((~~chosen~~)) appointed by the vice-president and provost;

(2) One exempt staff member ((~~chosen~~)) appointed by the president;

(3) One classified staff member ((~~chosen~~)) appointed by the ((~~vice-president for development and administrative services~~)) executive vice-president for finance and administration;

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(4) Two currently enrolled students ((~~chosen by the vice-president for student affairs;~~

~~(5) A nonvoting secretary chosen by the director of facilities~~)) appointed by the student communications center under the direction of the vice-president for student affairs.

AMENDATORY SECTION (Amending Order 83-4, Resolution No. 83-42, filed 9/22/83)

WAC 174-116-124 Jurisdiction of the infraction review committee. The infraction review committee established by these regulations shall have jurisdiction to hear and review parking infractions involving alleged violations of these rules and to render a judgment as to the validity of such infractions.

AMENDATORY SECTION (Amending Order 87-2, Resolution No. 87-13, filed 6/24/87)

WAC 174-116-127 Appeal/hearing—Mitigation and suspension of fines. Upon the showing of good cause or mitigating circumstances, the infraction review committee may impose any lesser fine than those established in WAC 174-116-260 of these regulations or may dismiss the fine. The chairperson may grant an extension of time within which to comply with the review and/or appeal decision. A person charged with a parking infraction who deems himself or herself aggrieved by the final decision in an internal adjudication may, within ten calendar days after written notice of the final decision, appeal further by filing a written notice ((~~thereof~~)) with the parking office indicating their intention to pursue the infraction through the civil courts. Documents relating to the appeal shall ((~~immediately be forwarded to the district court in the county in which the offense was committed, which court shall have jurisdiction over such offense and such appeal shall be heard de novo~~)) be maintained for such court process.

WSR 95-16-097
PERMANENT RULES
COLUMBIA RIVER GORGE COMMISSION

[Filed July 31, 1995, 3:20 p.m., effective September 1, 1995]

Date of Adoption: July 25, 1995.

Purpose: Amend an existing rule to streamline and clarify the process for investigating alleged violations of the National Scenic Area Act.

Citation of Existing Rules Affected by this Order: Amending 350-30.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150 and 16 USC § 544 et. seq.

Adopted under notice filed as WSR 95-12-045 on June 2, 1995.

Changes Other than Editing from Proposed to Adopted Version: Add wording to 350-30-025(2) "...members of the Commission want further review of the violation, they shall request it in writing within 14 days of issuance of the summary." The added wording clarifies how the request shall be made.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 1, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: September 1, 1995.

July 27, 1995
Jan Brending
Rules Coordinator

COLUMBIA RIVER GORGE COMMISSION

Chapter 350
Division 30

Enforcement

Amended July 25, 1995

350-30-005 Purpose.

The purpose of this division is to establish procedures and criteria for enforcement of P.L. 99-663 by the Commission as set forth in section 15 of the Scenic Area Act.

350-30-010 Definitions.

For the purpose of this division the following definitions apply unless the context requires otherwise:

(1) "Commission" means the Columbia River Gorge Commission established by Chapter 499, Washington Laws of 1987 and Chapter 14, Oregon Laws of 1987.

(2) "Continuing violation" means continuing activity which violates any law, rule, implementation measure, ordinance or order under P.L. 99-663. For example, continued operation of a rock quarry after receipt of a notice of alleged violation is a continuing violation.

(3) "De minimis violation" means a violation of the law that is essentially minor, readily correctable, not repeated and with cooperative parties.

(4) "Director" means the Executive Director of the Columbia River Gorge Commission or staff designee.

(5) "Implementation measure" means any ordinance, regulation or order adopted by the Columbia River Gorge Commission or a county which carries out the Act, the management plan or a land use ordinance.

(6) "Interim guidelines" means the guidelines adopted pursuant to section 10(a) of P.L. 99-663.

(7) "Land use ordinance" means any ordinance adopted by a county or the Commission pursuant to P.L. 99-663, and

includes any amendment to, revision of, or variance from such ordinance.

(8) "Management plan" means the scenic area management plan adopted pursuant to section 6 of P.L. 99-663.

(9) "Violation" means failure to comply with any law, rule, implementation measure, ordinance or order under P.L. 99-663.

350-30-015 Civil Penalty.

(1) Any person who willfully violates any of the following may incur a civil penalty:

(a) P.L. 99-663;

(b) the management plan;

(c) a land use ordinance;

(d) an implementation measure; or

(e) any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15 (a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person alleged [by the Commission] to have violated one of the measures listed in subsection (1) of this section.

(3) Each day of continuing violation is a separate and distinct violation.

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

350-30-020 Investigation.

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division.

(2) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

(3) If the Director determines a violation has occurred, he shall follow the procedures in 350-30-030, unless it is de minimis. If it is de minimis, he shall follow the procedures in 350-30-025.

350-30-025 De Minimis Violation.

(1) If the Director determines a violation has occurred but it is of a de minimis nature, readily correctable, not repeated and with cooperative parties, a summary describing the matter shall be sent to the Commission. The summary shall analyze the relevant factors and present a final resolution.

(2) If any three members of the Commission want further review of the violation, they shall request it in writing within 14 days of issuance of the summary. The Director shall follow the procedures in 350-30-030 to set the matter for hearing before the Commission.

(3) If no further review is requested, the Director shall finalize disposition of the violation.

350-30-030 Notice of Alleged Violation.

(1) The Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

(a) a plain statement describing the alleged violation;

(b) the provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;

(c) the legal and common description of the subject property;

(d) the proposed disposition of the matter through either 350-30-050 through 350-30-060 or 350-30-070 including the recommended penalty to be imposed (if any) and the criteria from 350-30-090 upon which the penalty is based;

(e) a statement that the alleged violator shall file an answer within 14 days after receipt of the notice of violation;

(f) a copy of 350-30-040 which prescribes how to file an answer; and

(g) a statement that if resolution is not reached through 350-30-050 through 350-30-060 the Commission will consider the alleged violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record, whether or not the alleged violator participates.

(2) Service shall be deemed complete three days after written notice is mailed to:

(a) the alleged violator; or

(b) any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

350-30-040 Answer.

(1) The alleged violator shall file an answer within 14 days of receipt of a notice of violation but it must be received by the Director within the 14 days allowed.

(2) The answer shall agree or disagree with all factual matters and shall affirmatively allege any and all affirmative claims or defenses and the reasoning in support thereof. The answer may include proposed measures for resolution of the matter through 350-30-050 through 350-30-060 or 350-30-070 and any reason the Commission should modify the penalty recommended.

350-30-050 Resolution Through Agreement.

The Director may seek to resolve or settle a alleged violation. Any proposed resolution must be presented to and approved by the Commission as provided in 350-30-060.

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.

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350-30-060 Hearing on Proposed Resolution Through Agreement.

(1) The hearing shall be conducted using the following procedure:

(a) Counsel for the Director shall provide a brief summary of the nature of the case, the proposed resolution and the key legal issues.

(b) The Director shall provide any other information required along with his recommendation.

(c) The alleged violator shall be present and have the opportunity to address the Commission.

(d) The Commission may request further information from the Director or the alleged violator.

(e) The Commission shall decide whether to accept, reject or modify the proposed resolution.

(f) If rejected, the matter shall be reset for a contested case hearing under 350-30-070.

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350-30-070. Hearing on Contested Case.

(1) A violation that is not resolved through 350-30-050 to 350-30-060 shall be conducted as a contested case.

(2) The rules governing the Commission's administrative procedure (350-16) shall govern the case.

350-30-080 Order.

(1) The Commission shall issue a final order. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) The order shall specify:

(a) the resolution of the violation (including any consent decree);

(b) whether a penalty is imposed and the amount of such penalty; and

(c) any other conditions or requirements.

(3) The order shall be final for purposes of judicial review under the applicable laws of Oregon and Washington.

350-30-090 Penalty Criteria.

(1) In determining the amount of a civil penalty, the following factors shall be considered:

(a) whether the person or entity has violated the P.L. 99-663 management plan, a land use ordinance, an implementation measure or an order in the past;

(b) whether the person or entity has undertaken measures to remedy the violation or mitigate harm resulting from the violation;

(c) the nature and seriousness of the violation; and

(d) whether the violation is repeated or continuous, or the person or entity has had prior violations.

(2) No penalty assessed under this division may exceed $10,000 for each violation.

350-30-100 Summary Order.

Where an imminent threat exists to resources protected under the law and/or to public health, safety or welfare, the Director may issue a summary order requiring the alleged violator to promptly stop work or take other necessary action pending a notice of alleged violation and a contested case hearing before the Commission under 350-30-070.

WSR 95-16-102
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed August 1, 1995, 8:32 a.m.]

Date of Adoption: July 25, 1995.

Purpose: To amend chapter to reflect the processes due to joining with the Western Regional Examining Board (WREB).

Citation of Existing Rules Affected by this Order: Amending WAC 246-815-020, 246-815-050, 246-815-060, 246-815-070, 246-815-100, and 246-815-990.

Statutory Authority for Adoption: Chapter 18.29 RCW.

Other Authority: RCW 18.20.150(4).

Adopted under notice filed as WSR 95-13-110 on June 21, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 6, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 6, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 6, repealed 0.

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

July 31, 1995
Bruce Miyahara
Secretary

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-815-020 Dental hygiene examination eligibility. (1) To be eligible to take the Washington dental hygiene examination, the applicant must meet the following requirements:

(a) The applicant must have successfully completed a dental hygiene education program approved by the secretary of the department of health pursuant to WAC 246-815-030.

(b) The applicant must have completed the AIDS prevention and information education required by WAC 246-815-040.

(c) The applicant must demonstrate((~~, by affidavit,~~)) knowledge of Washington law pertaining to the practice of dental hygiene.

(d) The applicant must complete the required application materials and pay the required nonrefundable fee.

(2) Applications for the dental hygiene examination are available from the department of health((~~, professional licensing services,~~)) dental hygiene program. The completed application must be received by the department of health sixty days prior to the examination. The application must include:

(a) The required nonrefundable examination fee.

(b) Either the national board IBM card reflecting a passing score or a notarized copy of the national board certificate.

(c) Two photographs of the applicant taken within one year preceding the application.

(3) An official transcript or certificate of completion constitutes proof of successful completion from an approved dental hygiene education program. Applicants who will successfully complete the dental hygiene education program within forty-five days preceding the examination for which they are applying may provide documentation of successful completion by inclusion of their names on a verified list of students successfully completing the program from the dean or director of the education program. No other proof of successful completion is acceptable. An applicant may complete the application and be scheduled for the examination, but will not be admitted to the examination if the department of health has not received the required proof of successful completion.

(((~~(4) By check-in on the first day of the examination, applicants must provide to the department of health documentary evidence of malpractice liability insurance covering their performance during the examination.~~)))

AMENDATORY SECTION (Amending WSR 95-07-003, filed 3/2/95, effective 4/2/95)

WAC 246-815-050 Examination. (1) The dental hygiene examination will consist of both written and practical tests((~~:~~

~~(a) Written tests - The written tests will include:~~

~~(i) Successful completion of the dental hygiene national board examination.~~

~~(ii) Washington state written test. All applicants must successfully complete a written test covering anesthesia, restorative dentistry, and other subjects related to dental hygiene practice.~~

~~(b) Practical tests - The practical tests will include:~~

~~(i) Patient evaluation test which will include a health history, extra-oral and intraoral examination, periodontal charting and radiographs.~~

~~(ii) Prophylaxis test which will include a clinical demonstration of a prophylaxis to consist of the removal of deposits from and the polishing of the surfaces of the teeth.~~

~~(iii) Anesthesia test which will include applicants demonstrating the administration of a local anesthetic.~~

~~(iv) Restorative test which will include demonstrating the insertion, condensation and carving of amalgam restorations.~~

~~(2) Each applicant must furnish a patient for the patient evaluation test, prophylaxis test and anesthesia test. Patients must be at least eighteen years of age with a minimum of twenty-four teeth. A patient shall not be a dentist, dental student, or dental hygiene student. The state dental hygiene examining committee and the school of dentistry assume no responsibility regarding the work done on patients. Candidates will be required to furnish documentary evidence of malpractice and liability insurance for the examination~~)) approved by the committee. An applicant seeking licensure in Washington by examination must successfully complete all of the following:

(a) The dental hygiene national board examination.

(b) The Washington written examination.

(c) The Washington restorative examination.

(d) The Western Regional Examining Board (WREB) dental hygiene patient evaluation/prophylaxis and local anesthetic examinations.

(2) The successful completion of the WREB dental hygiene examinations from May 8, 1992, and thereafter will be accepted.

(3) The committee may, at its discretion, give a test in any other phase of dental hygiene. Candidates will receive information concerning each examination.

(4) The applicant will comply with all written instructions provided by the department of health.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-815-060 Dismissal from examination. Any applicant whose conduct interferes with the evaluation of professional competency by the committee may be dismissed from the examination and all of his or her work will be rejected. Such conduct will include but not be limited to the following:

(a) Giving or receiving aid, either directly or indirectly, during the examination process.

(b) Failure to follow directions relative to the conduct of the examination, including termination of procedures.

(((~~(c) Endangering the life or health of a patient.~~)))

AMENDATORY SECTION (Amending WSR 95-02-056, filed 1/3/95, effective 2/3/95)

WAC 246-815-070 Examination results. (((~~(1) In order to pass the examination the applicant must:~~

~~(a) Submit proof of successful completion of the national board of dental hygiene examination;~~

~~(b) Successfully complete the patient evaluation practical test;~~

~~(c) Successfully complete the prophylaxis practical test;~~

~~(d) Successfully complete the anesthetic practical test;~~

~~(e) Successfully complete the restorative practical test; and,~~

~~(f) Successfully complete the Washington state written test.~~

~~(2)~~)) An applicant may elect to retake only the tests failed: *Provided,* That if the applicant has not passed all tests within the next two consecutive examination administrations offered then the entire examination must be retaken. ((~~The tests are:~~

~~(a) Patient evaluation practical;~~

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~~(b) Prophylaxis case practical;~~
~~(c) Anesthetic practical;~~
~~(d) Restorative practical; and,~~
~~(e) Washington state written test.~~))

AMENDATORY SECTION (Amending Order 332, filed 2/24/93, effective 3/27/93)

WAC 246-815-100 Licensure by interstate endorsement of credentials. A license to practice as a dental hygienist in Washington may be issued pursuant to RCW 18.29.045 provided the applicant meets the following requirements:

(1) The applicant has successfully completed a dental hygiene education program which is approved by the secretary of the department of health pursuant to WAC 246-815-030.

(2) The applicant has been issued a valid, current, nonlimited license by successful completion of a dental hygiene examination in another state. The other state's current licensing standards must be substantively equivalent to the licensing standards in the state of Washington. The other state's examination must have included the following portions and minimum level of competency standards. ((~~Each portion must be independently graded and successfully completed:~~))

(a) Written tests - the written tests include:

(i) The National Board of Dental Hygiene examination.

(ii) A state written test covering ((~~local anesthesia, nitrous oxide analgesia, restorative dentistry and asepsis~~)) the current dental hygiene subjects that are tested for Washington state.

(b) Practical tests - all portions shall be graded anonymously by calibrated practicing dental hygienists or dental hygienists and dentists. The calibration process shall consist of training sessions which include components to evaluate and confirm each examiners ability to uniformly detect known errors on pregraded patients and/or dentoforms. Examiners will be calibrated to the established standard of minimum level of competency. The examination must have equivalent patient selection criteria for the patient evaluation, prophylaxis and anesthesia portions. The current Washington state patient selection criteria for examination will be used as the basis of comparison at the time of application for licensure by interstate endorsement of credentials. The practical tests include:

(i) Patient evaluation clinical competency test which includes ((~~a health history, extra-oral and intra-oral examination, periodontal charting and radiographs. The entire patient evaluation test shall be done on an approved patient of which the candidate has no previous knowledge~~)) what is currently tested for the Washington state dental hygiene examination.

(ii) Prophylaxis clinical competency test which includes ((~~a clinical demonstration of a prophylaxis to consist of the removal of deposits from and the polishing of the surfaces of the teeth~~)) what is currently tested for the Washington state dental hygiene examination.

(iii) Anesthesia clinical competency test which includes ((~~a clinical demonstration of the administration of a local anesthetic~~)) what is currently tested for the Washington state dental hygiene examination.

(iv) Restorative test which includes ((~~a clinical demonstration of the application of a matrix and a wedge, the insertion, condensation, and carving of amalgam on a prepared Class II dentoform tooth and polishing on a condensed, carved and unpolished MOD amalgam restoration on a molar dentoform tooth~~)) what is currently tested for the Washington state dental hygiene examination.

(3) The applicant holds a valid current license, and has been currently engaged in clinical practice at any time within the previous year as a dental hygienist in another state or in the discharge of official duties in the United States Armed Services, Coast Guard, Public Health Services, Veterans' Bureau, or Bureau of Indian Affairs. Verification of licensure must be obtained from the state of licensure, and any fees for verification required by the state of licensure must be paid by the applicant.

(4) The applicant has not engaged in unprofessional conduct as defined in the Uniform Disciplinary Act in RCW 18.130.180 or is not an impaired practitioner under RCW 18.130.170 in the Uniform Disciplinary Act.

(5) The applicant has completed the AIDS prevention and information education required by WAC 246-815-040.

(6) The applicant demonstrates to the secretary((~~, by affidavit,~~)) knowledge of Washington law pertaining to the practice of dental hygiene.

(7) The applicant completes the required application materials and pays the required nonrefundable application fee. Applications for licensure by interstate endorsement are available from the department of health((~~, professional licensing services,~~)) dental hygiene program.

(8) ((~~Applicants shall request the state of licensure to submit to the Washington state department of health the current standards and criteria for the other states examination and licensing on a form provided in the licensure application package by the Washington state department of health.~~

~~(9)~~)) If the secretary of the department of health finds that the other state's licensing standards are substantively equivalent except for a portion(s) of the examination, the applicant may take that portion(s) to qualify for interstate endorsement. That portion(s) of the exam must be successfully completed to qualify for interstate endorsement and an additional nonrefundable examination fee as well as the licensure by interstate endorsement nonrefundable fee shall be required.

AMENDATORY SECTION (Amending WSR 94-02-059, filed 1/3/94, effective 3/1/94)

WAC 246-815-990 Dental hygiene fees. The following nonrefundable fees shall be charged:

Title of Fee	Fee
Application examination and reexamination	((~~$200.00~~)) $100.00
Renewal	60.00
Late renewal penalty	50.00
Credentialing application	300.00
Temporary license application	115.00
Duplicate license	15.00
Certification	25.00
Education program evaluation	200.00

All fees shall be payable, in U.S. funds, by check or money order to "Washington state treasurer" or "department of health".

(({~~The new fees shall be effective March 1, 1994.~~}))

WSR 95-16-106
PERMANENT RULES
DEPARTMENT OF
GENERAL ADMINISTRATION
[Filed August 1, 1995, 11:37 a.m.]

Date of Adoption: August 1, 1995.

Purpose: To repeal chapter 236-15 WAC, Parking program for state facilities off the state capitol grounds in Thurston County. SSB 5084, passed by the legislature in 1995, transferred authority for setting parking fees off the capitol grounds from general administration to individual state agencies. Repeal of chapter 236-15 WAC prevents parking fees set by general administration from taking effect.

Citation of Existing Rules Affected by this Order: Repealing chapter 236-15 WAC.

Statutory Authority for Adoption: RCW 46.08.172 and chapter 43.01 RCW.

Pursuant to notice filed as WSR 95-13-108 on June 21, 1995.

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

August 1, 1995
Grant Fredricks
Deputy Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 236-15 WAC Parking program for state facilities off the state capitol grounds in Thurston County.

WSR 95-16-107
PERMANENT RULES
DEPARTMENT OF
GENERAL ADMINISTRATION
[Filed August 1, 1995, 11:40 a.m.]

Date of Adoption: August 1, 1995.

Purpose: To amend chapter 236-12 WAC, State capitol grounds traffic and parking regulations. ESB 5873, passed by the legislature in 1995, established a monetary penalty of $175 for parking in a stall reserved for disabled persons without the appropriate Department of Licensing disabled plate or placard. The amendments bring chapter 236-12 WAC into compliance with the new legislation.

Citation of Existing Rules Affected by this Order: Amending chapter 236-12 WAC.

Statutory Authority for Adoption: RCW 46.08.150 as amended by ESB 5873 in 1995.

Pursuant to notice filed as WSR 95-13-107 on June 21, 1995.

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

August 1, 1995
Grant Fredricks
Deputy Director

Chapter 236-12 WAC
STATE CAPITOL GROUNDS TRAFFIC AND PARKING REGULATIONS

AMENDATORY SECTION (Amending WSR 92-04-036, filed 1/30/92, effective 3/1/92)

WAC 236-12-015 Definitions. As used in this chapter, the following terms shall mean:

(1) "Barrel"/"barrelling" defined. A large cylindrical container that is attached to a motor vehicle in order to prevent movement of that motor vehicle.

(2) "Campus security patrol" defined. The Washington state patrol as provided under chapter 43.43 RCW.

(3) "Director" defined. The director of the department of general administration.

(4) "Impound"/"impoundment" defined. To take and hold an unauthorized vehicle in legal custody at the direction of the director or designee, subject to the procedures outlined in this chapter and in chapter 46.55 RCW. Such definition includes towing of an unauthorized vehicle.

(5) "Presiding officer" defined. Pursuant to RCW 34.05.485, a "presiding officer" is an individual(s) who is appointed by the director to preside over administrative hearings and render a decision regarding the imposition of parking fees, barrelling of vehicles, suspension or revocation of parking privileges and removal, suspension, or revocation from parking waiting list under this chapter.

(6) "Reviewing officer" defined. Pursuant to RCW 34.05.491, a "reviewing officer" is an individual(s) who is appointed by the director to review the decisions by the presiding officer and is authorized to grant appropriate administrative relief upon review.

(7) "State capitol grounds" defined. Those grounds owned by the state and otherwise designated as state capitol grounds, including the west capitol campus, the east capitol campus, Sylvester Park, the Old Capitol Building and Capitol Lake, ways open to the public and specified adjoining lands and roadways.

(8) "Unauthorized vehicle defined." An "unauthorized vehicle" is a vehicle which is parked for any length of time on state capitol grounds and:

(a) Does not display the permit required for that area; and/or

(b) Is not otherwise authorized to park in that area; and/or

(c) Is parked in a metered parking area for a consecutive period longer than the time permitted for parking in that area; and/or

(d) Is parked in a metered parking area with insufficient payment to use the space it occupies; and/or

(e) Is parked in a parking space designated for disabled individuals and such vehicle does not display ((~~the required vehicle license identification authorizing parking in such spaces~~)) a valid special license plate or placard; and/or

(f) Is parked in a parking space reserved for use by another vehicle; and/or

(g) Is parked in an area not designated for parking.

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(9) "Vehicle" defined. All mechanical transportation devices defined as vehicles in the motor vehicle laws and of the state of Washington including motorcycles and motor-driven cycles.

(10) "Way open to the public defined." Any road, alley, lane, parking area, parking structure, path, or any place private or otherwise adapted to and fitted for travel that is in common use by the public with the consent expressed or implied of the owner or owners, and further shall mean public play grounds, school grounds, recreation grounds, parks, park ways, park drives, park paths.

(11) "Employee defined." Any person assigned to a state facility, including state employees and the staff of vendors, concessionaires, contractors and consultants, who are performing duties that are similar to the duties of state employees or that are in direct support of the state agency functions performed at the facility.

(12) "Disabled defined." Any person who has made application to the department of licensing in accordance with WAC 308-96A-310, and displays a valid permit in accordance with WAC 308-96A-310 and 308-96A-315.

(13) "Visitor defined." Any person parking at a state facility who is not employed at that facility.

AMENDATORY SECTION (Amending WSR 92-04-036, filed 1/30/92, effective 3/1/92)

WAC 236-12-360 Parking fees, barrelling, and/or towing. Any unauthorized vehicle, as defined in this chapter, shall be subject to parking fees, barrelling, and/or towing, as described below:

(1) For parking a motor vehicle without a valid special license plate or placard in a parking place reserved for physically disabled persons shall be:	$175 parking fee, except that if a person produces the required special license plate or placard within 20 days of receiving the notice, the person shall not be determined to have committed an infraction.
(2) All other unauthorized vehicles:	
First occurrence	$8.00 parking fee
Second occurrence within a 12-month period	$8.00 parking fee
Third occurrence within a 12-month period	Vehicle barrelled with $50.00 removal charge and payment of all outstanding parking fees.
Fourth and subsequent occurrences within a 12-month period	Vehicle may be immediately towed. Registered owner or authorized person must pay towing costs and all outstanding parking fees.

AMENDATORY SECTION (Amending WSR 92-04-036, filed 1/30/92, effective 3/1/92)

WAC 236-12-361 Suspension and/or revocation of parking privileges. Repeated use of assigned parking spaces by unauthorized vehicles or for nonofficial purposes or for the storage of personal property and/or the repeated transfer of parking permits from one vehicle to another may result in the suspension or revocation of parking privileges. Fees for parking by unauthorized vehicles shall be paid within twenty days of notice or within ten days of final disposition of any appeals. Failure to pay within these periods may result in suspension and/or revocation of any permits issued to the violator and/or removal, suspension, and/or revocation from the parking waiting list for parking on state capitol grounds.

AMENDATORY SECTION (Amending WSR 92-04-036, filed 1/30/92, effective 3/1/92)

WAC 236-12-362 Parking fee and barrel removal payments for unauthorized vehicles—Method of payment. Parking fees and barrel removal payments for unauthorized vehicles shall be made to the Cashier, Department of General Administration, P.O. Box 41008, Olympia, Washington 98504-1008 or Office of Parking Services, Department of General Administration, P.O. Box 41025, Olympia, Washington 98504-1025. Payment shall be required regardless of whether a contested hearing is requested. Payment may be made in cash, by check, or, for state employees, through payroll deduction. Checks returned for insufficiency of funds shall be subject to a ten-dollar charge. The office of parking services may deny payment by check if prior checks are returned because of insufficiency of funds or stop payment.

WSR 95-16-122
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed August 2, 1995, 10:40 a.m., effective September 1, 1995]

Date of Adoption: July 24, 1995.

Purpose: Dental fees, creates new fee chapter and reduces the application fees for dentists.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-816-990 and 246-818-991.

Statutory Authority for Adoption: RCW 43.70.040.

Adopted under notice filed as WSR 95-12-067 on June 6, 1995.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: In accordance with RCW 34.05.380(3) we request that the effective date of this fee reduction rule go into effect less than thirty-one days after filing, for an effective date of September 1, 1995. The initial filing of the proposed fees was done prior to the implications of regulatory reform and only later was a question raised as to the filing or effective date. The application fee reductions will provide less restriction into the profession for dentists licensed in other states and seeking Washington state licensure. The reductions will also provide a relief to the already significant financial burden for exam candidates who must pay an

additional exam fee to the regional exam entity. Implementation of this fee schedule in less than the thirty-one day time frame will cause no hardship to the public, the profession or to the budget of the dental program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 1, amended 0, repealed 0.

Effective Date of Rule: September 1, 1995.

August 2, 1995
Bruce A. Miyahara
Secretary

NEW SECTION

WAC 246-817-990 Dentist fees. The following fees shall be charged by the department of health:

Title of Fee	Fee
Original application by examination*	
Initial application	$ 325.00
Faculty license application	325.00
Resident license application	60.00
Renewal:	
Annual birthdate renewal	215.00
Surcharge - impaired dentist	5.00
Late renewal penalty	110.00
Original application - License without examination	
Initial application	350.00
Initial license	350.00
Duplicate license	15.00
Certification	25.00
Anesthesia permit	
Initial application	50.00
Renewal - (three-year renewal cycle)	50.00
Late renewal penalty	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

All fees shall be made payable by check or money order, in U.S. funds, to the "department of health."

All application and renewal fees are nonrefundable.

New fees shall become effective September 1, 1995.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-816-990 Dental anesthesia permit fees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-818-991 Dentist fees.

WSR 95-16-130
PERMANENT RULES
OFFICE OF THE SECRETARY OF STATE
[Filed August 2, 1995, 11:44 a.m.]

Date of Adoption: August 1, 1995.

Purpose: To make administrative procedures governing fees and hours of service consistent with other filings in the Corporations Division and to extend expedited counter services to additional types of filings.

Citation of Existing Rules Affected by this Order: Amending WAC 434-55-065 and 434-110-075.

Statutory Authority for Adoption: RCW 43.07.120.

Adopted under notice filed as WSR 95-12-099 on June 7, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 1, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 2, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

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

August 1, 1995
Donald F. Whiting
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

WAC 434-55-065 In-person or expedited counter service—Special fees. (1) The corporations division counter is open to in-person requests from 8:00 a.m. to ((~~5:00~~)) 4:00 p.m. each business day. Staff provides expedited, same-day processing of corporate documents or requests received prior to ((~~4:30~~)) 3:30 p.m. on that day. These services are available for the following transactions:

(a) Charter document review and filing;

(b) Name reservation review and filing;

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(c) Document certification;
(d) Document copying and status certificates;
(e) Status change filings;
(f) Service of process;
(g) International student exchange agency registration.

(2) The fee for same-day service is twenty dollars for single or multiple transactions within each new or existing limited partnership file or each new or existing limited liability partnership file. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

(a) Reinstatements;

(b) In-person inspection or review of limited partnership files or other public documents located in the corporations division office;

(c) Documents left at the counter for processing with mail-in documents received the same day; or

(d) A search for nonactive limited partnership files less than twenty years old.

(4)(a) If staff cannot complete the expedited service request before the end of the same day, the transaction will be completed first on the following business day.

(b) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the form of the filing. When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees before emergency services are provided.

(5) Over-the-counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per day. Documents submitted by courier services or document-handling companies may receive twenty-four-hour service. A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 94-19-004, filed 9/8/94, effective 10/9/94)

WAC 434-110-075 Miscellaneous fees. (1) For photocopies, fees are as follows:

(a) Each annual report, five((-))dollars;

(b) ((~~Articles of incorporation~~)) Application for registration or any single document, ten dollars;

(c) ((~~Amendments to articles and mergers~~)) Application and amended notices, twenty dollars;

(d) ((~~All charter documents, thirty dollars;~~

~~(e) All trademark registrations, assignments or cancellations, fifty cents per page;~~

~~(f)~~)) Copy of annual notice, five dollars;

(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment (number of pages determined by weight of copies);

(2) For certificates of existence fees are as follows:

(a) With complete historical data, under embossed seal, thirty-dollars;

(b) Computer generated, under embossed seal, twenty-dollars;

(c) Duplicate certificate, under gold or embossed seal, twenty dollars.

(3) For verifying the signature of a notary or public official for an ((~~apostil~~)) apostille or certification authenticating a sworn document, the fee is ten dollars in addition to the fee for the ((~~apostil~~)) apostille or certificate under RCW 43.07.120 (1)(b).

(4) For each certified copy of any document the fee is ten-dollars plus ((~~the~~)) a ten-dollar copy fee per document.

(5) For any service of process the fee is fifty dollars.

(6) Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be cancelled and all other late filing fees and penalties will be instituted.

WSR 95-16-131
PERMANENT RULES
OFFICE OF THE SECRETARY OF STATE
[Filed August 2, 1995, 11:45 a.m.]

Date of Adoption: August 1, 1995.

Purpose: To implement chapter 337, Laws of 1995, and provide administrative procedures for these filings that are consistent with other filings in the Corporations Division.

Statutory Authority for Adoption: RCW 43.07.120.

Adopted under notice filed as WSR 95-12-101 on June 7, 1995.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 14, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 14, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

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

August 1, 1995
Donald F. Whiting
Assistant Secretary of State

Chapter 434-135 WAC
LIMITED LIABILITY PARTNERSHIPS

NEW SECTION

WAC 434-135-010 Purpose and authority. These rules are adopted under authority of chapter 25.04 RCW, the Washington Limited Liability Partnership Act.

NEW SECTION

WAC 434-135-020 Official address and telephone number. (1) The address for all correspondence is the Corporations Division, Office of the Secretary of State, P.O. Box 40234, Olympia, Washington, 98504-0234.

(2) In-person transactions may be made at the Corporations Division Office, 505 East Union, Second Floor, Olympia, Washington. There is an expedited in-person fee of twenty dollars for single or multiple transactions within each filing.

(3) The telephone number is (360) 753-7115 or (360) 753-7120. Callers will hear a menu of five prerecorded messages. For direct access to an information officer press number five at the beginning of the recorded message.

NEW SECTION

WAC 434-135-030 Office hours. (1) Business hours of the corporations division are 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. Over-the-counter service is available to provide same-day service for individual requests brought in before 4:00 pm. and telephone service is available from 8:00 a.m. to 5:00 p.m.

(2) Documents delivered after normal working hours will be deemed to be received on the next working day. The secretary assumes no responsibility for any form of delivery other than that received personally by an employee of the office of the secretary of state.

NEW SECTION

WAC 434-135-040 Telephone services. (1) The telephone numbers of the corporations information unit are (360) 753-7115 and (360) 753-7120, which are open from 8:00 a.m. to 5:00 p.m. Information on limited liability partnerships and on filing a document relating to new limited liability partnership which is available at this number includes the following:

(a) Exact name of limited liability partnership on file in the secretary of state's records;

(b) Unified business identifier (UBI) number;

(c) Date registered on the secretary of state's records;

(d) Expiration date of registration;

(e) Name and address of registered agent if any;

(f) Scheduled dissolution date (if any);

(g) Principal office address;

(h) Status of limited liability partnership;

(i) Filing date of most recent annual notice;

(j) Number of partners;

(k) State of registration;

(l) Requirements for filing documents with the secretary of state's office.

(2) Customers may also request that forms be mailed to them by using the menu system and pressing one (1).

NEW SECTION

WAC 434-135-050 Filing requirements. (1) Duplicate copies of any documents to be filed under this chapter shall be submitted to the secretary of state. One copy must bear an original signature. The second copy may be signed with an original signature, photocopied, or be a conformed copy.

(2) Document must contain all the elements required by this chapter. It may contain other information as well.

(3) All documents shall be of no larger size than standard legal paper (8 1/2 x 14). The documents shall be submitted in form and quality which is suitable for photocopying, microfilming, or reproduction by a similar photographic process. Documents must be typed or printed in ink legibly.

NEW SECTION

WAC 434-135-060 Execution of document. Documents submitted for filing to the secretary of state must be executed by:

(1) A majority in interest of the partners; or

(2) One or more partners authorized to execute the document.

The person(s) executing the documents shall print or type beneath or beside their signature their name and title indicating in what capacity they are signing.

NEW SECTION

WAC 434-135-070 Filing duty of secretary of state. (1) If the secretary of state determines that the documents conform to the filing provisions of this chapter and all required filing fees have been paid, he or she shall:

(a) Endorse each signed original and duplicate copy the word "filed" and the date of its acceptance.

(b) Retain the signed original as the official copy in the secretary of state's files.

(c) Return the duplicate original to the person who filed it or the person's representative.

(2) If the secretary of state refuses to file a document under this chapter the secretary of state shall return it to the domestic or foreign limited liability partnership or its representative stating the reason(s).

(3) The duties of the secretary of state in filing documents under this chapter are ministerial.

NEW SECTION

WAC 434-135-080 Filed date. Documents received that conform to the requirements of this chapter shall be filed as of the date of receipt in the secretary of state's office. If the secretary of state is unable to process the documents immediately upon receipt, the documents shall be dated as of the date of receipt when processed.

NEW SECTION

WAC 434-135-090 Annual notice—Due date—Whom notified. Each limited liability partnership shall file an annual notice by the last day of the month of its original registration as a limited liability partnership. The corporations division shall notify each limited liability partnership

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of its annual notice date forty-five days in advance by mailing to the partnership at its principal office or, if its principal office is not in this state, to its registered agent in care of the registered office address, in either case, as listed on the records of the secretary of state and provide the annual notice form. Failure to receive an annual notice form with such notice is insufficient reason for failure to file the statutory required annual notice.

NEW SECTION

WAC 434-135-120 Limited liability partnership name. The name of a limited liability partnership shall contain the words "limited liability partnership," "L.L.P.," or "LLP."

NEW SECTION

WAC 434-135-150 Initial registration—Form of content. (1) Any domestic or foreign limited liability partnership registering under this chapter shall file its registration on the form provided by the secretary of state. The information that shall be provided is:

(a) The name of the limited liability partnership;

(b) Principal office of the limited liability partnership in Washington or if no principal office is located in this state, the registered office address and name and address of the registered agent for service of process in this state;

(c) Number of partners of the limited liability partnership;

(d) Brief statement of the business in which the partnership engages;

(e) That the partnership thereby applies for status as a limited liability partnership; and

(f) Any other matters the partnership determines to include.

(2) Application shall be executed by a majority in interest of the partners or one or more authorized partners.

NEW SECTION

WAC 434-135-160 Annual notice—Form of content. Any limited liability partnership filing under this chapter shall file its annual notice on the form provided by the secretary of state. The information that shall be filed on the annual notice is as follows:

Section 1.

(a) Limited liability partnership name;

(b) Principal office of the limited liability partnership in Washington or if no principal office is located in this state, the registered office address and name and address of registered agent for service of process in this state;

(c) Unified business identification number;

(d) Internal account number;

(e) Date registered in Washington;

Section 2.

(a) If there has been a change in the address of principal place of business in Washington or, if the limited liability partnership's principal place of business is not located in this state, the address of the registered office and name and address of the registered agent, the correct address and name;

(b) Any other material changes in the information included in limited liability, partnership application or subsequent annual notices;

(c) Number of partners; and

Section 3. Signature of either a majority in interest of the partners or one or more authorized partners. The registration application shall include beneath or beside the signature the name and title of the person(s) signing the document.

NEW SECTION

WAC 434-135-170 Amended notice—Form of content. (1) A limited liability partnership may, but is not required to, file an amended notice to notify the secretary of state of any material changes on the application or annual notice. These changes may include the following:

(a) Change of limited liability partnership name;

(b) Change of principal office address;

(c) Change of registered agent or registered office address;

(d) Change in the number of partners;

(e) Change in the type of business the partnership engages; or

(f) The addition of any information the partnership determines to include.

(2) The amended notice must be signed by a majority of interest of the partners or by one or more authorized partners. The amended notice shall include beneath or beside the signature the printed name and title of the person(s) signing the document.

NEW SECTION

WAC 434-135-190 Filing fees. For Washington registered domestic and foreign limited liability partnerships, fees are as follows:

(1) Application for registration, both domestic and foreign, one hundred seventy-five dollars;

(2) Amended notice, both domestic and foreign, thirty dollars;

(3) Annual notice with required information, fifty dollars;

(4) Annual notice with required information filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the notice fee of fifty dollars;

(5) Resignation of registered agent, twenty dollars;

(6) Registered agent's consent to appointment to act as agent or agent's resignation if appointed without consent, no fee;

(7) Voluntary withdrawal, administrative dissolution or dissolution by judicial decree, no fee;

(8) Service of process, per defendant, fifty dollars;

(9) Reservation of name, thirty dollars; and

(10) Any other statement or form, ten dollars.

PERMANENT

WSR 95-14-119
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3869—Filed June 30, 1995, 4:50 p.m., effective July 1, 1995, 12:01 a.m.]

Date of Adoption: June 30, 1995.

Purpose: WAC 388-96-010, to amend definitions of terms to conform to the new legislation ("resident day," "client day," "recipient day," "rebased rate," and "cost rebased rate"); to remove obsolete language; and clarify.

WAC 388-96-032, to implement the new legislation regarding security for all debts to the department upon termination of a Medicaid nursing provider contract; to authorize obtaining security from a contractor for debts to the department reaching fifty thousand dollars and additional security for each increase of twenty-five thousand dollars; to authorize withholding payments for services in the absence of acceptable security.

WAC 388-96-108, to extend time for repayment of debt to the department relating to failure to submit a final cost report from thirty to sixty days to be consistent with the new legislation.

WAC 388-96-204, to substitute requirement of periodic department audits for requirement of audits every three years of a nursing facility's cost reports, accounts and resident trust funds, in accordance with the new legislation; to provide for a ten working day advance notice for such audits consistent with the new legislation.

WAC 388-96-210, to reflect in language addressing scope of nursing facility audits the one-time, three-year rate setting cycle provided in the new legislation.

WAC 388-96-216, repealed to eliminate deadline for completion of audits after submission of a nursing facility's cost report, consistent with broad authority of department to perform audits periodically as deemed necessary under the new legislation.

WAC 388-96-220, to provide that field audit findings shall be evaluated and that a final Medicaid settlement for a nursing facility shall be issued upon completing of the audit if performed, including any administrative review, but not including any judicial review, consistent with the new legislation

WAC 388-96-221, to allow twenty-eight days to request review of a preliminary settlement (replacing thirty days) and limit such reviews to settlement issues, prohibiting consideration of rate setting or audit issues, consistent with the new legislation.

WAC 388-96-224, to repeat requirement that a final settlement be issued upon completion of an audit and any administrative review, but not including any judicial review; to eliminate procedure for issuing partial settlements when an audit appeal is pending; to repeat prohibition of pursuing audit and rate issues in an administrative review of a settlement, to amend appeal period from thirty to twenty-eight days, consistent with the new legislation.

WAC 388-96-229, to require the department to make preliminary or final settlement payments owed to a contractor within sixty days; to require the department to pay interest at one percent per month on any balance existing after sixty days; to require a contractor to pay preliminary or final settlement amounts owed to the department within sixty days after receipt of the settlement; to provide that an administrative or judicial review shall not delay recovery; to allow the department to recover amounts owed from security held and to recoup from service payments in the event of nonpayment; to require the department to adjust interest owed if a contractor is successful on final administrative or judicial review, consistent with the new legislation.

WAC 388-96-384, to require nursing facilities to send the personal funds of deceased residents held in trust to the department's office of financial recovery in the event they were recipients of Medicaid; requires funds to be sent by cashier's check, consistent with the new legislation.

WAC 388-96-501, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-585, to make costs Medicaid unallowable if they will not be incurred in a period to be covered by the rate due to statutory exemption, consistent with the new legislation.

WAC 388-96-704, to clarify that Medicaid nursing facility rates shall be set or adjusted consistent with the amendments to chapter 74.46 RCW contained in the new legislation.

WAC 388-96-709, to remove reference to old biennial rate system being replaced; to provide how rates will be adjusted to reflect a reduction in licensed beds at a nursing facility to reflect the new minimum occupancy requirements of ninety percent or eighty-five percent, as applicable, consistent with the new legislation.

WAC 388-96-710, to remove reference to old biennial rate system being replaced; to clarify how new contractor rates will be set under the new payment system; to provide that minimum occupancy of eighty-five percent will be used for July 1, 1995, rates for a new contractor whose facility occupancy increased by at least five percent during 1994; to provide procedure for setting a new contractor's rate for facilities receiving certificate of need approval before June 30, 1988, and commencing operations on or after January 1, 1995, consistent with new legislation.

WAC 388-96-713, to update language and remove reference to old biennial system being replaced, consistent with new legislation.

WAC 388-96-716, to reflect new minimum occupancy rates of ninety percent or eighty-five percent, as applicable, in calculating rates, consistent with the new legislation.

WAC 388-96-719, to establish rate setting and adjustment principles for Medicaid nursing facility rates for July 1, 1995, July 1, 1996, and July 1, 1997; to provide that July 1, 1995, rates will be cost rebased but July 1, 1996, and July 1, 1997, rates will not be cost rebased; to establish sources and time periods for determining rate adjustments for economic trends and conditions for these rates; to establish procedures for obtaining measures of increase or decrease to be applied to rates; to establish a minimum occupancy level of ninety percent for rate setting effective July 1, 1995, and following, consistent with the new legislation.

WAC 388-96-722, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in nursing services will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to

provide that July 1, 1996, and July 1, 1997, component rates in nursing services will not be cost rebased but will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-727, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, component rates in food will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, component rates in food will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-735, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, administrative component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, administrative component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-737, to remove obsolete references to old biennial system being replaced; to provide that July 1, 1995, operational component rates will be cost rebased on 1994 adjusted costs adjusted by the 1994 IPD index; to provide that July 1, 1996, and July 1, 1997, operational component rates will be the preceding June 30 component rates adjusted by the 1994 and 1996 HCFA index, respectively; to clarify how previously granted current funding will be treated in setting these rates, consistent with the new legislation.

WAC 388-96-745, to remove obsolete references to old biennial system being replaced; to provide for minimum resident occupancy levels of ninety percent and eighty-five percent for nursing facilities, as applicable, for calculating property component rates;

WAC 388-96-753, repealed to delete provisions conflicting with new legislation; subsection not conflicting moved to another section.

WAC 388-96-754, to reflect new minimum nursing facility occupancy levels of ninety percent and eighty-five percent, as applicable, in calculating return on investment rate component; to clarify how current previously-granted current funding in other rate components will be treated in calculating return on investment rate component, consistent with the new legislation.

WAC 388-96-763, to remove obsolete references to the old biennial rate system being replaced, consistent with the new legislation.

WAC 388-96-765, to conform language to clarifying legislative enactment, consistent with new legislation.

WAC 388-96-769, to provide that filing an administrative or judicial review will not delay recovery of payments made to a contractor in error; to provide that the department must pay a contractor amounts owed under errors and omissions within sixty days, consistent with the new legislation.

WAC 388-96-776, to provide that rates for the initial period following new construction requiring state or federal certificate of need approval or costing in excess of $1.2 million shall utilize a minimum occupancy of eighty-five percent, consistent with the new legislation.

WAC 388-96-813, to grant the department authority to recoup amounts owed from service payments to a contractor if debts to the department from any source reach or exceed fifty thousand dollars and adequate security is not provided by the contractor; to provide that neither commencement of administrative or judicial review will delay suspension of payment, consistent with the new legislation.

WAC 388-96-901, to prohibit the administrative review process made available to Medicaid nursing facilities from being used to challenge the validity of rules, statutes or contract provisions relating to the Medicaid payment system; to prohibit the process from being used to bring a case under federal law (whether to obtain a ruling on the merits or to make a record for subsequent judicial review); to avoid unnecessary use of state staff resources; to require contractors to bring such cases de novo in a court of proper jurisdiction, consistent with the new legislation.

WAC 388-96-902, repealed to eliminate provisions limiting recoupment to undisputed preliminary or final settlement amounts owed the department, consistent with the new legislation which authorizes recoupment of both disputed and undisputed amounts.

WAC 388-96-904, to establish an administrative review procedure, including time frames for each stage, that allows Medicaid nursing facility providers an opportunity to submit evidence and obtain prompt administrative review conducted by the department relating to payment issues, consistent with federal requirements for nursing facility providers in the Medicaid program (42 CFR 447.253(e)); to speed up the process of obtaining final agency and court decisions on Medicaid payment issues affecting nursing facilities; to remove one layer from the current review process (judges employed by the department's office of appeals will conduct the adjudicative proceedings in place of judges of the Office of Administrative Hearings (a separate state agency) and the department judges will render the final agency decision — this will have the effect of eliminating the administrative petition and review decision function currently conducted by the department's office of appeals); to avoid unnecessary use of state staff resources; to allow direct review in state court of payment issues on a stipulated record, consistent with authority granted under the new legislation.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-216 Deadline for completion of audits, 388-96-753 Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-776, and 388-96-777, and 388-96-902 Recoupment of undisputed overpayments; and amending chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Statutory Authority for Adoption: RCW 74.46.800.

Other Authority: WAC 388-96-010 is E2SHB 1908, section 90; WAC 388-96-032 is E2SHB 1908, section 113; WAC 388-96-108 is E2SHB 1908, section 95; WAC 388-96-204 is E2SHB 1908, section 91; WAC 388-96-210 is E2SHB 1908, sections 98, 99; WAC 388-96-216 is E2SHB 1908, section 91; WAC 388-96-220 is E2SHB 1908, section 93; WAC 388-96-221 is E2SHB 1908, section 94; WAC 388-96-224 is E2SHB 1908, section 94; WAC 388-96-229 is E2SHB 1908, section 95; WAC 388-96-384 is E2SHB 1908, sections

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66, 69; WAC 388-96-501 is E2SHB 1908, section 96; WAC 388-96-585 is E2SHB 1908, section 97; WAC 388-96-704 is E2SHB 1908, sections 98, 99; WAC 388-96-709 is E2SHB 1908, sections 100, 101, 102; WAC 388-96-710 is E2SHB 1908, sections 70, 101; WAC 388-96-713 is E2SHB 1908, sections 98, 99; WAC 388-96-716 is E2SHB 1908, section 100; WAC 388-96-719 is E2SHB 1908, sections 90, 99, 100; WAC 388-96-722 is E2SHB 1908, section 104; WAC 388-96-727 is E2SHB 1908, section 105; WAC 388-96-735 is E2SHB 1908, section 106; WAC 388-96-737 is E2SHB 1908, section 107; WAC 388-96-745 is E2SHB 1908, sections 102, 108; WAC 388-96-753 is E2SHB 1908, section 99; WAC 388-96-754 is E2SHB 1908, section 109; WAC 388-96-763 is E2SHB 1908, section 99; WAC 388-96-765 is E2SHB 1908, section 96; WAC 388-96-769 is E2SHB 1908, section 111; WAC 388-96-776 is E2SHB 1908, section 102; WAC 388-96-813 is E2SHB 1908, section 112; WAC 388-96-901 is E2SHB 1908, section 114; WAC 388-96-902 is E2SHB 1908, section 95; and WAC 388-96-904 is E2SHB 1908, section 115.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Statutory (chapter 74.76 RCW) corresponding to chapter 388-96 WAC has been amended by the state legislature (1995 1st sp. sess.) (E2SHB 1908) changes effective July 1, 1995. The department finds that this state law requires immediate adoption of the following rules effective July 1, 1995.

Effective Date of Rule: July 1, 1995, 12:01 a.m.

June 30, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-010 Terms. Unless the context clearly requires otherwise, the following terms shall have the meaning set forth in this section when used in this chapter.

(1) "Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

(a) Decision-making;

(b) Planning;

(c) Evaluating performance;

(d) Controlling resources and operations; and

(e) External financial reporting to investors, creditors, regulatory authorities, and the public.

(2) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when earned, regardless of when collected, and expenses are reported in the period in which incurred, regardless of when paid.

(3) "Administration and management" means activities employed to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

(4) "Allowable costs" - See WAC 388-96-501.

(5) "Ancillary care" means services required by the individual, comprehensive plan of care provided by qualified therapists or by support personnel under their supervision.

(6) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who have adverse bargaining positions in the marketplace.

(a) Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter.

(b) Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(7) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. "Assets" also include certain deferred charges that are not resources but are recognized and measured in accordance with generally accepted accounting principles.

(8) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(9) "Beds" means, unless otherwise specified, the number of set-up beds in the nursing home, not to exceed the number of licensed beds.

(10) "Beneficial owner" means any person who:

(a) Directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(b) Directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest, or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter.

(c) Subject to subsection (4) of this section, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

Except that, any person who acquires an ownership interest or power specified in subsection (10)(c)(i), (ii), or (iii) of this section with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power.

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(d) In the ordinary course of business, is a pledgee of ownership interest under a written pledge agreement and shall not be deemed the beneficial owner of such pledged ownership interest until the pledgee takes:

(i) Formal steps necessary required to declare a default; and

(ii) Determines the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised provided the pledge agreement:

(A) Is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subsection (10)(b) of this section; and

(B) Prior to default, does not grant the pledgee the power to:

(I) Vote or direct the vote of the pledged ownership interest; or

(II) Dispose or direct the disposition of the pledged ownership interest, other than the grant of such power or powers pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(11) "Capitalization" means the recording of an expenditure as an asset.

(12) "Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

(13) "Cash method of accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

(14) "Change of ownership" means a substitution of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility; or a substitution of control of such operating entity.

(a) Events which constitute a change of ownership include but are not limited to the following:

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

(ii) Ownership of the nursing home business enterprise is transferred by the contractor to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(iii) If the contractor is a partnership, any event occurs which dissolves the partnership;

(iv) If the contractor is a corporation, and the corporation is dissolved, merges with another corporation which is the survivor, or consolidates with one or more other corporations to form a new corporation;

(v) If the operator is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock is transferred to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having held less than five percent of the stock before the initial transaction; or

(vi) Any other event or combination of events which results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services.

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

(i) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(ii) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

(15) "Charity allowances" means reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

(16) "Contract" means a contract between the department and a contractor for the delivery of ((~~SNF or ICF~~)) nursing facility services to medical care recipients.

(17) "Contractor" means an entity which contracts with the department to deliver ((~~care~~)) nursing facility services to medical care recipients in a facility. The entity is responsible for operational decisions.

(18) "Courtesy allowances" means reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

(19) "CSO" means the local community services office of the department.

(20) "Department" means the department of social and health services (DSHS) and employees.

(21) "Depreciation" means the systematic distribution of the cost or other base of tangible assets, less salvage, over the estimated useful life of the assets.

(22) "Donated asset" means an asset the contractor acquired without making any payment for the asset in the form of cash, property, or services.

(a) An asset is not a donated asset if the contractor made even a nominal payment in acquiring the asset.

(b) An asset purchased using donated funds is not a donated asset.

(23) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(24) "Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

(25) "Exceptional care recipient" means a medical care recipient determined by the department to require exceptionally heavy care.

(26) "Facility" means a nursing home or facility licensed in accordance with chapter 18.51 RCW, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(27) "Fair market value" means:

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(a) Prior to January 1, 1985, the price for which an asset would have been purchased on the date of acquisition in an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell; or

(b) Beginning January 1, 1985, the replacement cost of an asset, less observed physical depreciation, on the date the fair market value is determined.

(28) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles and the provisions of chapter 74.46 RCW and this chapter including, but not limited to:

(a) Balance sheet;

(b) Statement of operations;

(c) Statement of changes in financial position; and

(d) Related notes.

(29) "Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

(30) "Gain on sale" means the actual total sales price of all tangible and intangible nursing home assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

(31) "Generally accepted accounting principles (GAAP)" means accounting principles approved by the financial accounting standards Board (FASB).

(32) "Generally accepted auditing standards (GAAS)" means auditing standards approved by the american institute of certified public accountants (AICPA).

(33) "Goodwill" means the excess of the price paid for:

(a) A business over the fair market value of all other identifiable, tangible, and intangible assets acquired; and

(b) An asset over the fair market value of the asset.

(34) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

(35) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(36) "Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

(37) "Joint facility costs" means any costs representing expenses incurred which benefit more than one facility, or one facility and any other entity.

(38) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee shall not be considered modification of a lease term.

(39) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(40) "Medical care recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(41) "Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

(42) "Net book value" means the historical cost of an asset less accumulated depreciation.

(43) "Net invested funds" means the net book value of tangible fixed assets, excluding assets associated with central or home offices or otherwise not on the nursing facility premises, employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles and not in excess of any lids or reimbursement limits set forth in this chapter, plus an allowance for working capital as provided in this chapter.

(44) "Nonadministrative wages and benefits" means wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

(45) "Nonallowable costs" means the same as "unallowable costs."

(46) "Nonrestricted funds" means funds which are not restricted to a specific use by the donor, e.g., general operating funds.

(47) "Nursing facility" means a home, place, or institution, licensed under chapter 18.51 or 70.41 RCW, where ((~~skilled~~)) nursing ((~~and/or intermediate~~)) care services are delivered.

(48) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(49) "Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of five percent or more of a corporation's outstanding stock.

(50) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form the beneficial ownership takes.

(51) "Patient day" or "resident day" means a calendar day of ((~~patient~~)) care provided to a nursing facility resident. In computing calendar days of care, the day of admission is always counted. The day of discharge is counted only when the patient was admitted on the same day. A patient is admitted for purposes of this definition when the patient is assigned a bed and a patient medical record is opened. A "client day" or "recipient day" means a calendar day of care provided to a medical care recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(52) "Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

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(53) "Professionally designated real estate appraiser" means an individual:

(a) Regularly engaged in the business of providing real estate valuation services for a fee;

(b) Qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the:

(i) Writing of real estate valuation reports;

(ii) Passing of written examination on valuation practice and theory; and

(iii) Requirement to subscribe and adhere to certain standards of professional practice as the organization prescribes.

(54) "Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients. The rate is used to compute the maximum participation of the department in the contractor's costs.

(55) "Qualified therapist":

(a) An activities specialist having specialized education, training, or at least one year's experience in organizing and conducting structured or group activities;

(b) An audiologist eligible for a certificate of clinical competence in audiology or having the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional, either a qualified therapist or a therapist, approved by the department having specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker graduated from a school of social work;

(f) A speech pathologist eligible for a certificate of clinical competence in speech pathology or having the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW;

(h) An occupational therapist graduated from a program in occupational therapy, or having the equivalent of education or training, and meeting all requirements of state law; or

(i) A respiratory care practitioner certified under chapter 18.89 RCW.

(56) "Rebased rate" or "cost rebased rate" means a facility-specific rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year.

(57) "Recipient" means a medical care recipient.

(((~~57~~))) (58) "Records" means data supporting all financial statements and cost reports including, but not limited to:

(a) All general and subsidiary ledgers;

(b) Books of original entry;

(c) Invoices;

(d) Schedules;

(e) Summaries; and

(f) Transaction documentation, however maintained.

(((~~58~~))) (59) "Regression analysis" means a statistical technique through which one can analyze the relationship between a dependent or criterion variable and a set of independent or predictor variables.

(((~~59~~))) (60) "Related care" includes:

(a) The director of nursing services;

(b) Activities and social services programs;

(c) Medical and medical records specialists; and

(d) Consultation provided by:

(i) Medical directors;

(ii) Pharmacists;

(iii) Occupational therapists;

(iv) Physical therapists;

(v) Speech therapists; and

(vi) Other therapists; and

(vii) Mental health professionals as defined in law and regulation.

(((~~60~~))) (61) "Related organization" means an entity under common ownership and/or control, or which has control of or is controlled by, the contractor. Common ownership exists if an entity has a five percent or greater beneficial ownership interest in the contractor and any other entity. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution, whether or not the power is legally enforceable and however exercisable or exercised.

(((~~61~~))) (62) "Relative" includes:

(a) Spouse;

(b) Natural parent, child, or sibling;

(c) Adopted child or adoptive parent;

(d) Stepparent, stepchild, stepbrother, stepsister;

(e) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(f) Grandparent or grandchild; and

(g) Uncle, aunt, nephew, niece, or cousin.

(((~~62~~))) (63) "Restricted fund" means a fund for which the use of the principal and/or income is restricted by agreement with or direction of the donor to a specific purpose, in contrast to a fund over which the contractor has complete control. Restricted funds generally fall into three categories:

(a) Funds restricted by the donor to specific operating purposes;

(b) Funds restricted by the donor for additions to property, plant, and equipment; and

(c) Endowment funds.

(((~~63~~))) (64) "Secretary" means the secretary of the department of social and health services (DSHS).

(((~~64~~))) (65) "Start-up costs" means the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start-up costs include:

(a) Administrative and nursing salaries;

(b) Utility costs;

(c) Taxes;

(d) Insurance;

(e) Repairs and maintenance; and

(f) Training costs.

Start-up costs do not include expenditures for capital assets.

(((~~65~~))) (66) "Title XIX" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

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(((~~66~~))) (67) "Unallowable costs" means costs which do not meet every test of an allowable cost.

(((~~67~~))) (68) "Uniform chart of accounts" means a list of account titles identified by code numbers established by the department for contractors to use in reporting costs.

(((~~68~~))) (69) "Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

(((~~69~~))) (70) "Working capital" means total current assets necessary, ordinary, and related to patient care from the most recent cost report minus total current liabilities necessary, ordinary, and related to patient care from the most recent cost report.

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

AMENDATORY SECTION (Amending Order 2270, filed 8/19/85)

WAC 388-96-032 Termination of contract. (1) When a contract is terminated for any reason, the old contractor shall submit final reports in accordance with WAC 388-96-104.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts owed to the department, as authorized by chapter 74.46 RCW, regardless of source, including but not limited to, civil fines, third-party liabilities and interest owed the department.

(3) The old contractor shall provide security, in a form deemed adequate by the department, ((~~in~~)) equal to the total amount of determined and estimated overpayments and all other debts owed to the department from any source, whether or not the overpayments or debts are the subject of good-faith dispute. Security shall consist of:

(a) Withheld payments for one or more months of service due the contractor; or

(b) A surety bond issued by a bonding company acceptable to the department; or

(c) An assignment of funds to the department; or

(d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment; or

(f) A promissory note secured by a deed of trust; or

(g) Any combination of (a), (b), (c), (d), ((~~or~~)) (e), or (f) of this subsection.

(4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to the total of determined or estimated overpayments and all other debts owed to the department from any source, including interest, whether or not the subject of good-faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: *Provided,* That the bond or assignment shall initially be for a term of five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment ((~~in dispute~~)) and debt liability as determined by the department.

(d) Provide the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor ((~~at~~)) from settlement or from any other source of debt owed to the department, including interest, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund and debt within sixty days following receipt of written demand ((~~or the conclusion of administrative or judicial proceedings to contest settlement issues~~)) for payment from the contractor to the department.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments and other debt, including interest.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after all overpayments, erroneous payments and debts determined in connection with final settlement, or otherwise, including accumulated interest owed the department, have been paid by the contractor. ((~~If the contractor contests the settlement determination in accordance with WAC 388-96-224, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.~~))

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(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) The department may accept an assignment of funds if the assignment meets the requirements of subsections (3) and (4) of this section.

(11) ((~~If a contract is terminated solely in order for the same owner to contract with the department to deliver SNF or ICF services to a different class of medical care recipients at the same nursing home, the contractor is not required to submit final reports, and security shall not be required~~)) Regardless of whether a contractor intends to terminate its Medicaid contract or contracts, if a contractor's net Medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars.

(12) Security authorized by subsection (11) of this section shall meet the criteria set forth in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department is authorized to withhold and shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not received. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(13) Subsections (11) and (12) of this section shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover, and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995.

(14) When a contract is terminated, any accumulated liabilities which are assumed by a new owner shall be reversed against the appropriate accounts by the old contractor.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-108 Failure to submit final reports. (1) If a contract is terminated, the old contractor shall submit a final report as required by WAC 388-96-032(1) and 388-96-104(2). Such final reports must be received by the department within one hundred twenty days after the contract is terminated or prior to the expiration of any department-approved extension granted pursuant to WAC 388-96-107. If a final report is not submitted, all payments made to the contractor relating to the period for which a report has not been received shall be returned to the department within ((~~thirty~~)) sixty days after receiving written demand from the department.

(2) Effective ((~~thirty~~)) sixty days after written demand for payment is received by the contractor, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

AMENDATORY SECTION (Amending Order 2970, filed 4/17/90, effective 5/18/90)

WAC 388-96-204 Field audits. (1) The department shall conduct a field audit of all cost reports for calendar year 1982.

(2) The department may have auditors employed by the department or under contract field audit cost reports for years subsequent to 1982.

(3) Beginning with field audits for calendar year 1983, the department shall audit up to one hundred percent of submitted contractor cost reports and patient care trust fund accounts.

(4) The department may audit any or all schedules of a facility's cost report. The department shall audit the cost ((~~report at least once every three years~~)) reports, receivables and resident trust fund accounts of each nursing facility participating in the Medicaid payment rate system periodically as determined necessary by the department.

(5) Beginning with audits of cost reports, receivables and resident trust fund accounts for calendar year ((~~1983~~)) 1993, facilities selected for audit shall be notified ((~~within one hundred twenty days after submission of a complete and correct cost report~~)) of the department's intent to audit((~~. Such audits shall be completed within one year after notification of the department's intent to audit unless the contractor fails to allow access to records and documentation or otherwise prevents the audit from being completed in a timely manner~~)) at least ten working days before commencement of an audit of a facility's cost report or resident trust fund accounts.

(6) To assure the accuracy of cost reports, the department or an auditor under contract with the department may require a contractor to submit for departmental review any underlying financial statements or other records including income tax returns relating to the cost report directly or indirectly.

(7) The department shall audit all submitted contractor cost reports of such facilities as follows:

(a) The department shall audit facilities terminating their Medicaid service contracts with the department when the audits are conducted for the calendar year in which the contract is terminated. Schedule preference will be given to conduct closing audits as soon as possible;

(b) The department shall audit facilities contracting in any given calendar year for that partial or full year, and facilities contracting for the first time for the first full calendar year;

(c) The department shall audit facilities under investigation by the Internal Revenue Service, Securities Exchange Commission, Department of Health and Human Services, Medicaid fraud control unit, or any other federal, state, or municipal agency for alleged fiscal and/or patient account impropriety for:

(i) The year such investigation is commenced;

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(ii) Each year the investigation is continued;

(iii) The year the investigation is concluded; and

(iv) Two full calendar years following the year the investigation is terminated.

(d) The department shall audit facilities that the manager, residential rate program, aging and adult services, requests be audited.

(8) If a facility has a home or central office and such central office or any associated facility meets any of the criteria set forth in subsection (7) of this section, the department shall audit such facility as provided in subsection (7) of this section.

(9) When an audit discloses material discrepancies, undocumented costs, or mishandling of patient trust funds, the department auditors may re-open a maximum of two prior unaudited cost reporting or trust fund periods and/or select future periods for audit in order to discover similar problems, if any, and take appropriate action.

(10) The department may select for audit on a random or other basis reported costs and trust fund accounts of facilities.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-210 Scope of field audits. (1) Auditors will review the contractor's recordkeeping and accounting practices and, where appropriate, make written recommendations for improvements.

(2) The audit will result in a schedule summarizing adjustments to the contractor's cost report whether such adjustments eliminate costs reported or include costs not reported. These adjustments shall include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Auditors will examine the contractor's financial and statistical records to verify that:

(a) Supporting records are in agreement with reported data;

(b) Only those assets, liabilities, and revenue and expense items the department has specified as allowable have been included by the contractor in computing the costs of services provided under its contract;

(c) Allowable costs have been accurately determined and are necessary, ordinary, and related to ((~~patient~~)) resident care;

(d) Related organizations and beneficial ownerships or interests have been correctly disclosed;

(e) Recipient trust funds have been properly maintained; and

(f) The contractor is otherwise in compliance with provisions of this chapter and chapter 74.46 RCW.

(3) In determining allowable costs for each ((~~contractor~~)) nursing facility for each cost report year selected for field audit, auditors shall consider and include in their adjustments, as appropriate, all peer group cost center limit adjustments as provided in subsections (4) and (5) of this section and other desk review adjustments previously made to the reported costs being audited((~~, that is, made to such costs for the purpose of establishing a contractor's July 1 Medicaid rate following the cost report period under audit~~)).

(4) ((~~Beginning with~~)) For audits of 1992 ((~~audits, in auditing cost reports for all calendar years ending six months before the start of each new biennium~~)) and 1994 cost reports, auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center without inflating or deflating such limits ((~~by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium~~)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1993 and July 1, 1995 prospective rates.

(5) ((~~Beginning with~~)) For audits of 1993 ((~~audits, in auditing cost reports for all calendar years ending six months after the start of each new biennium~~)), 1995, and 1996 cost reports auditors shall disallow costs in excess of the nursing facility's peer group median cost plus percentage limit in each cost center, calculated on adjusted cost report data for the ((~~preceding~~)) report year ((~~ending six months prior to the start of the new biennium~~)) last used to cost-rebase the following July 1 rates but inflated or deflated ((~~by the IPD Index change used to adjust prospective rates for the first fiscal year of the biennium~~)) for economic trends and conditions authorized by this chapter, as applicable, for July 1, 1994, July 1, 1996, and July 1, 1997 prospective rates.

(6) Auditors will prepare draft audit narratives and summaries and provide them to the contractor before final narratives and summaries are prepared.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-220 Principles of settlement. (1) For each cost center, a settlement shall be calculated at the lower of prospective reimbursement rate or audited allowable costs, except as otherwise provided in this chapter.

(2) Each contractor shall complete a proposed preliminary settlement by cost center as part of the annual cost report and submit it by the due date of the annual cost report. After review of the proposed preliminary settlement, the department shall issue by cost center a preliminary settlement report to the contractor.

(3) If a field audit is conducted, the audit findings shall be evaluated by the department after completion of the audit ((~~and~~)), including exhaustion or termination of any administrative review requested by the contractor, but not judicial review as may be available to and commenced by the contractor. A final settlement by cost center, including any allowable shifting or cost savings, shall then be issued which takes account of such findings and evaluations.

(4) Pursuant to preliminary or final settlement and the procedures set forth in this chapter, the contractor shall refund overpayments to the department and the department shall pay underpayments to the contractor.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-221 Preliminary settlement. (1) In the proposed preliminary settlement submitted under WAC 388-96-220(2), a contractor shall compare the prospective rates at which the contractor was paid during the report period, weighted by the number of patient days reported for the period each rate was in effect, to the contractor's allowable costs for the reporting period. The contractor shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis.

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(2) Within one hundred twenty days after a proposed preliminary settlement is received, the department shall:

(a) Review proposed preliminary settlement for accuracy, and

(b) Either accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement shall become the preliminary settlement report. If rejected, the department shall issue, by cost center, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(3) A contractor shall have ((~~thirty~~)) twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the ((~~thirty~~)) twenty-eight-day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

(4) If no audit is scheduled by the department or if a scheduled audit is not performed within two years of the scheduled date, the department shall perform the preliminary settlement review described in this section with the following exceptions:

(a) For cost centers, the department shall:

(i) Use desk-reviewed costs as the contractor's allowable costs for the reporting period;

(ii) Disallow all costs in excess of the nursing facility's peer group median cost limit as described under WAC 388-96-210; and

(iii) For 1992 and 1993 settlements only, nursing facilities qualifying for the nursing services exception described in WAC 388-96-722(9) will have their 1992 and 1993 nursing services costs limited by the product of their 1992 or 1993 total days, respectively, times their June 30, 1993 nursing services rate.

(b) The department shall calculate the variable portion of return on investment as calculated in the prospective rate;

(c) The department shall base the financing allowance portion of return on investment on audited costs in compliance with provisions contained in this chapter. If audited costs are not available, the department shall use the financing allowance used for rate setting. If an audited financing allowance is later determined, the department shall revise the final settlement to reflect audited financing allowance if payment is changed by $1,000 or more; and

(d) When a complete audit was not performed and audited information is needed for purposes of calculating return on investment, the department may do a partial audit of current or prior year cost report.

(5) Beginning with preliminary settlements for report year 1988, if the department intends to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon reported costs. If the department does not intend to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon desk-reviewed costs utilizing the procedure under subsection (4) of this section.

(6) If the facility prevents, hinders, or otherwise delays completion of a full field audit, that facility's preliminary settlement issued on reported costs may be reopened to substitute desk-reviewed costs.

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-224 Final settlement. (1) If an audit is conducted, the department shall issue a final settlement report to the contractor after completion of the audit process, including exhaustion or ((~~mutual~~)) termination of any administrative review((~~s~~)) and appeal((~~s~~)) of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor. The department shall prepare the final settlement by cost center and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. For the final settlement report, the department shall compare:

(a) The prospective rate the contractor was paid for the facility in question during the report period, weighted by the number of ((~~patient~~)) resident days reported for the period each rate was in effect as verified by audit, to

(b) The contractor's audited allowable costs for the reporting period.

The department shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis. ((~~If the contractor is pursuing in good faith an administrative or judicial review or appeal of audit findings or determinations, the department may issue a partial final settlement report in order to recover overpayments based on audit findings or determinations not in dispute on review or appeal.~~

~~(2) For the 1981 cost report period, the department shall issue one settlement for the year composed of two parts:~~

~~(a) One relating to January 1, 1981, through June 30, 1981; and~~

~~(b) One relating to July 1, 1981, through December 31, 1981.~~

~~(3) For the first six months of 1981, the department shall compute the settlement in accordance with the court order and agreement between the department and Medicaid contractors for the UNH II and III period (January 1, 1978, through June 30, 1981).~~

~~(4) For the second six months of 1981, the department shall compute the settlement in accordance with principles and instructions contained in regulations applicable to 1981 settlements, except for the requirement that a settlement cover an entire cost report year.~~

~~(5)~~)) (2) A contractor shall have ((~~thirty~~)) twenty-eight days after receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the ((~~thirty~~)) twenty-eight-day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine rate or audit issues.

(((~~6~~))) (3) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from an audit performed pursuant to RCW 74.46.105. The department may also reopen a final settle-

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ment to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medical care recipients, pursuant to RCW 74.46.180(5).

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-229 Procedures for overpayments and underpayments. (1) Within sixty days after the preliminary or final settlement is received by the contractor, the department shall make payment of underpayments to which a contractor is entitled as determined by ((~~preliminary or final settlement within thirty days after the preliminary or final settlement report is submitted to the contractor~~)) the department under the provisions of chapter 74.46 RCW and this chapter.

(2) The department shall pay interest to a contractor at the rate of one percent per month on any preliminary or final settlement balance still due the contractor sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to a contractor prior to this date. Any increase in a preliminary or final settlement amount due a contractor resulting from a final administrative or judicial decision shall also bear interest until paid at the rate of one percent per month, accruing from sixty days after the preliminary or final settlement was received by the contractor. The department shall pay no interest on amounts due a contractor other than amounts determined by preliminary or final settlement as authorized by this subsection.

(3) A contractor found, under a preliminary or final settlement issued by the department, to have received overpayments or payments in error, as determined by ((~~preliminary or final settlement~~)) the department pursuant to the provisions of chapter 74.46 RCW and this chapter, shall refund such payments to the department within ((~~thirty~~)) sixty days after receipt of the preliminary or final settlement report as applicable. Contractors shall refund to the department funds reimbursed in the enhancement cost center, but not spent in the legislatively authorized manner. For all preliminary or final settlements issued on and after July 1, 1995, regardless of what period a settlement covers, neither a timely-filed request to pursue administrative review as provided in this chapter nor commencement of judicial review, as may be available to a contractor in law, contesting the settlement, erroneous payments or underpayments shall delay recovery of amounts due the department by any authorized means, including recoupment from current payments due a contractor.

(((~~3~~))) (4) If a contractor fails to ((~~comply with subsection (2) of this section~~)) make repayment of amounts due the department as determined by preliminary or final settlement, the department shall:

(a) Deduct from current monthly amounts due the contractor the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month; or

(b) If the contract has been terminated:

(i) Deduct from any amounts due the old contractor the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month; ((~~or~~))

(ii) Recover the refund due the department and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month from security posted by the old contractor or otherwise obtained by the department; and/or

(iii) Pursue, as authorized by law and regulation, recovery of the refund due and accrued interest as authorized in this section on the unpaid balance at the rate of one percent per month.

(((~~4) A facility pursuing a timely filed administrative or judicial remedy in good faith regarding a proposed settlement report need not refund overpayments.~~)))

(5) A contractor shall pay interest to the department at the rate of one percent per month on any preliminary or final settlement balance still due the department at the expiration of sixty days after the contractor receives the preliminary or final settlement. Interest shall commence to accrue after such sixty-day period and no interest shall accrue or be paid to the department prior to this date. The department shall adjust interest owed by a contractor or refund all or a portion of interest collected from the contractor, as applicable, in the event a final administrative or judicial decision reduces or eliminates a preliminary or final settlement amount owed by the contractor.

(6) For all erroneous payments and overpayments determined by preliminary or final settlements issued before July 1, 1995:

(a) The department shall not withhold from current amounts due the facility any refund or interest the department claims to be due from the facility, provided the refund is specifically disputed by the contractor on review or appeal((~~.~~));

(b) Portions of refunds due the department, not specifically disputed by the contractor on review or appeal, are subject to recovery thirty days after the preliminary or final settlement is received by the contractor and assessment of interest ((~~as provided in subsection (3) of this section.~~)) at the rate of one percent per month on any unpaid balance accruing thirty days after the preliminary or final settlement report is received by the contractor until paid in full; and

(c) If the administrative or judicial remedy sought by the facility is not granted or is granted only in part after exhaustion or mutual termination of all appeals, the facility shall refund all amounts due the department within sixty days after the date of decision or termination plus interest as payable on judgments from the date the review was requested pursuant to WAC 388-96-901 and 388-96-904 to the date the repayment is made.

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall promptly convey the resident's personal funds held by the facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate.

(a) If the deceased resident was a recipient of long-term care services paid for in whole or in part by the state of

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Washington then the personal funds held by the facility and the final accounting shall be sent to the state of washington, department of social and health services, office of financial recovery (or successor office).

(b) The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the forty-fifth day after the date of the resident's death.

(i) When the personal funds of the deceased resident are to be paid to the state of Washington, those funds shall be paid by the facility with a certified check or cashiers check made payable to the secretary, department of social and health services, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(ii) The certified check or cashier's check shall contain the name and social security number of the deceased individual from whose personal funds account the monies are being paid.

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

(i) Friends,

(ii) Relatives,

(iii) Police,

(iv) The guardian, and

(v) The community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;

(b) Provide the new operator with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

AMENDATORY SECTION (Amending Order 1613, filed 2/25/81)

WAC 388-96-501 Allowable costs. (1) Allowable costs are documented costs which are necessary, ordinary and related to the care of medical care recipients, and are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

(2) Beginning with the July 1, 1995 rate period, allowable costs shall not include costs reported by a nursing facility for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the prospective rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-585 Unallowable costs. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items covered by the Medicaid program but not included in the Medicaid nursing facility daily payment rate. Items and services covered by the Medicaid nursing facility daily payment rate are listed in chapters 388-86 and 388-88 WAC;

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space);

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or violating principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

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

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care;

(r) Fund-raising expenses, except expenses directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of any employee benefit not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs, e.g., key-man insurance, other insurance, or retirement plans;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses for membership in professional organizations and all expenses of maintaining professional licenses, e.g., nursing home administrator's license;

(bb) Costs related to agreements not to compete;

(cc) Goodwill and amortization of goodwill;

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds;

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs;

(jj) Beginning January 1, 1985, interest costs;

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care;

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year;

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

(nn) For rates effective after June 30, 1993, depreciation expense in excess of four thousand dollars per year for each passenger car or other vehicles primarily used for the administrator, facility staff, or central office staff;

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of health at the time of such pool personnel use;

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel;

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year;

(rr) For all partial or whole rate periods after July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA;

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(ss) Effective for July 1, 1991, and all following rates, compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensations which would have been paid for such hours of nursing care services had they been paid at the combined regular and overtime average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification of registered nurse, licensed practical nurse, or nursing assistant at the same nursing facility, as reported on the facility's filed cost report for the most recent cost report period;

(tt) Outside consultation expenses required pursuant to WAC 388-88-135;

(uu) Fees associated with filing a bankruptcy petition under chapters VII, XI, and XIII, pursuant to the Bankruptcy Reform Act of 1978, Public Law 95-598;

(vv) All advertising or promotional costs of any kind, except reasonable costs of classified advertising in trade journals, local newspapers, or similar publications for employment of necessary staff;

(ww) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-704 Prospective reimbursement rates. (1) The department ((~~will~~)), as provided in chapter 74.46 RCW and this chapter, shall determine or adjust prospective ((~~reimbursement~~)) Medicaid payment rates for nursing facility services provided to medical care recipients. Each rate represents ((~~the contractor's~~)) a nursing facility's maximum compensation for one ((~~patient~~)) resident day of care ((~~of~~)) provided a medical care recipient determined by the department to both require and be eligible to receive nursing facility care.

(2) A contractor may also be assigned an individual prospective rate for a specific medical care recipient determined by the department to require exceptional care.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds. (1) The department will revise a contractor's prospective rate when the contractor reduces the number of its licensed beds and:

(a) Notifies the department in writing thirty days before the licensed bed reduction; and

(b) Supplies a copy of the new bed license and documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any; and

(c) Requests a rate revision.

(2) The revised prospective rate shall comply with all the provisions of rate setting contained in this chapter including all lids and maximums unless otherwise specified in this section and shall remain in effect until ((~~a prospective rate can be set according to WAC 388-96-713~~)) an adjustment can be made for economic trends and conditions as authorized by chapter 74.46 RCW and this chapter.

(3) The revised prospective rate shall be effective the first of a month determined by where in the month the effective date of the licensed bed reduction occurs or the date the contractor complied with subsections 1(a), (b), and (c) of this section as follows:

(a) If the contractor complied with subsection (1)(a), (b), and (c) of this section and the effective date of the reduction falls:

(i) Between the first and the fifteenth of the month, then the revised prospective rate is effective the first of the month in which the reduction occurs; or

(ii) Between the sixteenth and the end of the month, then the revised prospective rate is effective the first of the month following the month in which the reduction occurs; or

(b) When the contractor fails to comply with subsection 1(a) of this section, then the date the department receives from the contractor the documentation that is required by subsection (1)(b) and (c) of this section shall become the effective date of the reduction for the purpose of applying subsection (3)(a)(i) and (ii) of this section.

(4) For ((~~the first fiscal year of a state biennium, if a contractor's prospective rate is based on either WAC 388-96-710(4) or WAC 388-96-719(2)~~)) all prospective Medicaid payment rates from July 1, 1995 through June 30, 1998, the department shall revise ((~~the contractor's~~)) a nursing facility's prospective rate to reflect a reduction in licensed beds as follows:

(a) ((~~For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

~~(b) For property, administrative, and operational cost centers; and return on investment rate, the department will use the reduced total of licensed beds to determine occupancy level under WAC 388-96-719(10). If the department computed the contractor's occupancy level of licensed beds on the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs and the occupancy level:~~

~~(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:~~

~~(A) Not change the administrative and operational rate;~~

~~(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

~~(ii) Was below eighty-five percent and changes to at or above eighty-five percent after the reduction, then the department will recompute rates for:~~

~~(A) Administrative and operational cost centers using actual patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs; and~~

~~(B) Property and return on investment cost centers using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

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~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will recompute rates for:~~

~~(A) Administrative and operational cost centers using the change in patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level; and~~

~~(B) Property and return on investment cost centers using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(5) For the second fiscal year of a state biennium, the department shall revise the contractor's prospective rate, as identified under subsection (4) of this section, as follows:~~

~~(a) For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;~~

~~(b) For property and return on investment rates and to determine a new occupancy level under WAC 388-96-719(10), the department will use the reduced total of licensed beds and the cost report from the prior calendar year;~~

~~(c) If the occupancy level prior to the bed reduction:~~

~~(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and~~

~~(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.~~

~~(ii) Was below eighty-five percent and changes to eighty-five percent or above after the reduction, then the department will:~~

~~(A) Not revise the administrative or operational rates; and~~

~~(B) Revise property and return on investment using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.~~

~~(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will:~~

~~(A) Not revise administrative or operational rates; and~~

~~(B) Revise the property and return on investment rates using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.~~

~~(6) If a contractor's prospective rate is based on either a sample or budget per WAC 388-96-710, the department shall revise the contractor's prospective rate by applying subsection (4)(a) and (b) or (5)(a) and (b) of this section as applicable and:~~

~~(a) Using the days from the timely received budget per WAC 388-96-026(2) and using occupancy as "selected" by the department when the initial rate was set; or~~

~~(b) If the budget was not received timely in accordance with WAC 388-96-026(2), using the product of the statewide average occupancy as reported on all nursing facilities' prior calendar year Medicaid cost reports multiplied by the number of calendar days in the calendar year following the decrease licensed bed capacity multiplied by the number of licensed beds on the new license~~)) The department shall use the reduced total number of licensed beds to determine occupancy used to calculate the nursing services, food, administrative and operational rate components per WAC 388-96-719. If actual occupancy from the 1994 cost report was:

(i) At or over ninety percent before the reduction and remains at or above ninety percent, there will be no change to the components;

(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute the components using actual 1994 resident days;

(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute the components using the change in resident days from the 1994 cost report resulting from the reduced number of licensed beds used to calculate the ninety percent.

(b) The department shall use the reduced number of licensed beds to determine occupancy used to calculate the property and return on investment (ROI) components per WAC 388-96-719. If actual occupancy from the cost report from the calendar year immediately prior to the bed reduction was:

(i) At or over ninety percent before the reduction and remains at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;

(ii) Less than ninety percent before the reduction and changes to at or above ninety percent, then recompute property and ROI to reflect the new asset basis using actual days from the cost report for the prior calendar year;

(iii) Less than ninety percent before the reduction and remains below ninety percent, then recompute property and ROI to reflect the new asset basis using the change in resident days from the cost report for the prior calendar year resulting from the reduced number of licensed beds used to calculate the ninety percent.

(c) Reported occupancy must represent at least six months of data.

(d) The department will utilize a minimum of eighty-five percent occupancy in subsections (a), (b), and (c) of this section for those facilities authorized in chapter 74.46 RCW and this chapter.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-710 Prospective reimbursement rate for new contractors. (1) The department shall establish an initial prospective ((~~reimbursement~~)) Medicaid payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) within sixty days following receipt by the department of a properly completed projected budget (see

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WAC 388-96-026). The rate shall take effect as of the effective date of the contract and shall comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth ((~~in this chapter~~)). The rate shall remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate shall be cost rebased as provided in this subsection only once during the period July 1, 1995 through June 30, 1998.

(2) To set the initial prospective ((~~reimbursement~~)) Medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department shall:

(a) Determine whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency;

(b) Select all nursing facilities from the department's records of all the current Medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained;

(c) Based on the information for the nursing facilities selected under subsection (2)(b) of this section and available to the department on the day the new contractor began participating in the ((~~program~~)) Medicaid payment rate system at the facility, rank from the highest to the lowest the component rates in nursing services, food, administrative, and operational cost centers and based on this ranking:

(i) Determine the ((~~rate in the~~)) middle of the ranking((~~, above and below which lie an equal number of rates (median)~~)) and then identify the rate immediately above the median for each cost center identified in subsection (2)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center; and

(ii) Set the new contractor's nursing facility component rates for each cost center identified in subsection (2)(c) at the lower of the "selected rate" or the budget rate; and

(iii) Set the property rate in accordance with the provisions of this chapter; and

(iv) Set the return on investment rate in accordance with the provisions of this chapter. In computing the financing allowance, the department shall use for the nursing services, food, administrative, and operational cost centers the rates set pursuant to subsection (2)(c)(i) and (ii) of this section.

(d) Any subsequent revisions to the rate components of the sample members will not impact a "selected rate" component of the initial prospective rate established for the new contractor under this subsection; *unless*, a "selected rate" identified in subsection (2)(c) is at the median cost limit established for July 1, then the median cost limit established after October 31 for that "selected rate" component becomes the component rate for the new contractor.

(3) ((~~If the department has not received a properly completed projected budget from the new contractor as defined under WAC 388-96-026 (1)(a) or (b) at least sixty days prior to the effective date of the new contract,~~)) The department shall establish rates for:

(a) Nursing services, food, administrative and operational cost centers based on the "selected rates" as determined under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(b) Property in accordance with the provisions of this chapter using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received.

(c) Return on investment rate in accordance with the provisions of this chapter using the "selected rates" established under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program, to compute the working capital provision and variable return for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component will remain zero until the information is received.

(4) The initial prospective reimbursement rate for a new contractor as defined under WAC 388-96-026 (1)(c)((~~,~~)) shall be the last prospective reimbursement rate paid by the department to the Medicaid contractor operating the nursing facility immediately prior to the effective date of the new contract. If the WAC 388-96-026 (1)(c) contractor's initial rate:

(a) Was set before January 1, 1995, its July 1, 1995 rate will be set by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the 1994 cost report year and its July 1, 1996 and July 1, 1997 rates will not be cost rebased;

(b) Was set between January 1, 1995 and June 30, 1995, its July 1, 1995 rate will be set by using the old contractor's 1994 twelve months' cost report data and its July 1, 1996 and July 1, 1997 rates will not be cost rebased; or

(c) Is set on or after July 1, 1995, its July 1, 1996 and July 1, 1997 rates will not be cost rebased.

(5) ((~~If the new contractor as defined under WAC 388-96-026 (1)(a), (b), or (c) began participating in the program beginning in the first year of a state fiscal biennium or had its first year of a state fiscal biennium rate set under WAC 388-96-710(6), its July 1 prospective reimbursement rate for the second year of that state fiscal biennium shall:~~

~~(a) Be the initial prospective rate set in accordance with WAC 388-96-710 inflated in accordance with WAC 388-96-719; and~~

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~~(b) Remain in effect until a prospective rate can be set under WAC 388-96-713~~)) A prospective rate set for a new contractor shall be subject to adjustments for economic tends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

(6) ((~~If the new contractor began participating in the program beginning in the second year of a state fiscal biennium, its July 1 prospective reimbursement rate for the first year of the next state fiscal biennium will be set for the new contractor defined under:~~

~~(a) WAC 388-96-026 (1)(a) and (b), by applying WAC 388-96-710 (2) and (3) using the July 1 rate components established for the first year of the state's fiscal biennium following the second year of the state's fiscal biennium in which the new contractor began participating in the program; or~~

~~(b) WAC 388-96-026 (1)(c), by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the cost report year prior to the first year of the state fiscal biennium for which the rate is being set and applying WAC 388-96-719 through 388-96-754 to set the component rates~~)) A new contractor whose Medicaid contract was effective in calendar year 1994 and whose nursing facility occupancy during calendar year 1994 increased by at least five percent over that of the prior operator, shall have its July 1, 1995 component rates for the nursing services, food, administrative, operational and property cost centers, and its the return on investment (ROI) component rate, based upon a minimum occupancy of eighty-five percent.

(7) ((~~For July 1, 1993 rate setting only, if a new contractor as defined under WAC 388-96-026(1) is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such contractor shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same contractor's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719~~)) Notwithstanding any other provision in this chapter, for rates effective July 1, 1995 and following, for nursing facilities receiving original certificate of need approval prior to June 30, 1988, and commencing operations on or after January 1, 1995, the department shall base initial nursing services, food, administrative,and operational rate components on such component rates immediately above the median for facilities in the same county. Property and return on investment rate components shall be established as provided in chapter 74.46 RCW and this chapter.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-713 Rate determination. (1) Each ((~~contractor's reimbursement~~)) nursing facility's Medicaid payment rate for services provided to medical care recipients will be determined prospectively ((~~once each state biennium~~)) as provided in this chapter and in chapter 74.46 RCW to be effective July 1 of ((~~the first fiscal year of each biennium. Rates shall be adjusted as provided in this chapter to be effective July 1 of the second year of each biennium~~)) 1995, 1996, and 1997 and may be adjusted more frequently to take into account program changes.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Beginning with rates effective July 1, 1984, contractors submitting correct and complete cost reports by March 31st, shall be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-716 Cost areas or cost centers. (1) A ((~~contractor's overall reimbursement~~)) nursing facility's total per resident day Medicaid payment rate for services provided to medical care recipients shall consist of ((~~the total of~~)) six component rates, ((~~each covering one~~)) five relating to cost areas or cost centers and a return on investment (ROI) component rate. The ((~~six~~)) five cost areas or cost centers are:

(((~~1~~))) (a) Nursing services;
(((~~2~~))) (b) Food;
(((~~3~~))) (c) Administrative;
(((~~4~~))) (d) Operational;
(((~~5~~))) (e) Property((~~; and~~
~~(6) Return on investment~~))

(2) For prospective rates from July 1, 1995 through June 30, 1998, the maximum component rates for the nursing services, food, administrative, operational and property cost centers and the return on investment (ROI) component rate for each nursing facility shall be calculated utilizing a minimum licensed bed occupancy of ninety percent, unless a minimum occupancy of eighty-five percent is specifically authorized under certain circumstances by chapter 74.46 RCW and this chapter.

(3) The minimum ninety percent facility occupancy shall be used to calculate individual nursing facility component rates in all cost centers, to calculate the median cost limits (MCLs) for the metropolitan statistical area (MSA) and nonmetropolitan statistical area (non-MSA) peer groups, and to array facilities by costs in calculating the variable return portion of the return on investment (ROI) component rate.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-719 Method of rate determination. (1) ((~~The principles contained in this section are inherent in rate setting effective with July 1, 1993 and following nursing facility prospective rates.~~

~~(2) Reimbursement~~)) Effective July 1, 1995 through June 30, 1998, nursing facility Medicaid payment rates shall be ((~~established~~)) rebased or adjusted for economic trends and conditions annually and prospectively, on a per ((~~patient~~)) resident day basis, ((~~once each calendar year, to be effective July 1, and shall follow a two-year cycle corresponding to each state fiscal biennium; provided that, a nursing facility's rate for the first fiscal year of any biennium,~~)) in accordance with the principles and methods set forth in chapter 74.46 RCW and this chapter, to take effect July 1st of each year. Unless the operator qualifies as a "new contractor" under the provisions of this chapter, a

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nursing facility's rate for July 1, 1995 must be established upon its own ((~~prior~~)) calendar year cost report data for 1994 covering at least six months.

(((~~(3) A contractor's~~))) (2) July 1, 1995 component rates in the nursing services, food, administrative((~~,~~)) and operational cost centers ((~~for the first year of the state fiscal biennium (first fiscal year)~~))) shall be ((~~adjusted downward or upward for economic trends and conditions when set effective July 1 of the first fiscal year in accordance with subsections (4), (5) and (6) of this section, and adjusted again downward or upward for economic trends and conditions effective July 1 of the second year of the state fiscal biennium (second fiscal year) in accordance with subsections (7), (8) and (9) of this section~~)) cost-rebased utilizing desk-reviewed and adjusted costs reported for calendar year 1994, for all nursing facilities submitting at least six months of cost data. Such component rates for July 1, 1995 shall also be adjusted upward or downward for economic trends and conditions as provided in RCW 74.46.420 and in this section. Component rates in property and return on investment (ROI) shall be reset annually as provided in chapter 74.46 RCW and in this chapter.

(((~~(4) The~~))) (3) July 1, 1995 ((~~cost center~~)) component rates ((~~referenced in subsection (3) of this section shall, for the first fiscal year of each biennium,~~)) in the nursing services, food, administrative and operational cost centers shall be adjusted by the change in the Implicit Price Deflator for Personal Consumption Expenditures Index ((~~published by the United States Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis~~)) ("IPD index"). (((~~(5)~~))) The period used to measure the ((~~change in the~~)) IPD ((~~Index~~)) increase or decease to be applied to these July 1, 1995 rate components shall be ((~~the~~)) calendar year ((~~preceding the July 1 commencement of the state fiscal biennium (first calendar year). The change in the IPD Index shall be calculated by:~~

~~(a) Consulting the latest quarterly IPD Index available to the department no later than February 28 following the first calendar year to determine, as nearly as possible, the applicable expenditure levels as of December 31 of the first calendar year;~~

~~(b) Subtracting from the expenditure levels taken from the quarterly IPD Index described in subsection (5)(a) of this section the expenditure levels taken from the IPD Index for the quarter occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section; and~~

~~(c) Dividing the difference by the level of expenditures from the quarterly IPD Index occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section.~~

~~(6)~~))) 1994.

(4) July 1, 1996 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1996, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index). The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1996 component rates for July 1, 1996 rate setting shall be calendar year 1994.

(5) July 1, 1997 component rates in the nursing services, food, administrative and operational cost centers shall not be cost-rebased, but shall be the component rates in these cost centers assigned to each nursing facility in effect on June 30, 1997, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the Health Care Financial Administration of the United States Department of Health and Human Services (HCFA index), multiplied by a factor of 1.25. The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1997 component rates for July 1, 1997 rate setting shall be calendar year 1996.

(6) The 1994 change in the IPD index to be applied to July 1, 1995 component rates in the nursing services, food, administrative and operational costs centers, as provided in subsection (3) of this section, shall be calculated by:

(a) Consulting the latest quarterly IPD index available to the department no later than February 28, 1995 to determine, as nearly as possible, applicable expenditure levels as of December 31, 1994;

(b) Subtracting from expenditure levels taken from the quarterly IPD index described in subsection (6)(a) of this section expenditure levels taken from the IPD index for the quarter occurring one year prior to it; and

(c) Dividing the difference by the level of expenditures from the quarterly IPD index occurring one year prior to the quarterly IPD index described in subsection (6)(a) of this section.

(7) In applying the change in the IPD index to establish ((~~first fiscal year~~)) July 1, 1995 component rates in the nursing services, food, administrative and operational cost ((~~center rates~~)) centers for a contractor having at least six months, but less than twelve months, of cost report data from ((~~the prior~~)) calendar year 1994, the department shall prorate the downward or upward adjustment by a factor obtained by dividing the contractor's actual calendar days ((~~of~~)) from 1994 cost report data by two, adding three hundred sixty-five, and dividing the resulting figure by five hundred forty-eight.

(((~~(7) For the second year of each state fiscal biennium, a contractor's July 1 cost center rates referenced in subsection (2) of this section shall be the July 1 component rates for the first year of the state fiscal biennium, adjusted downward by any decrease, or upward by one and one-half times any increase, in the Nursing Home Input Price Index without Capital Costs published by the Health Care Financing Administration of the United States Department of Health and Human Services ("HCFA Index").~~)))

(8) ((~~The period used to measure the change in the HCFA Index shall, subject to subsection (9) of this section, be the calendar year preceding the July 1 commencement of the state fiscal biennium (first fiscal year).~~)) The change in the HCFA index to be applied to each nursing facility's June 30, 1996 and June 30, 1997 component rates in nursing services, food, administrative and operational cost centers, as provided in subsections (4) and (5) of this section, shall be calculated by:

(a) Consulting the latest quarterly HCFA index available to the department no later than February 28 following the

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((~~first~~)) applicable calendar year to be used to measure the change to determine, as nearly as possible, the applicable price levels as of December 31 of the ((~~first~~)) applicable calendar year;

(b) Subtracting from the price levels taken from the quarterly HCFA index described in subsection (8)(a) of this section the price levels taken from the HCFA Index for the quarter occurring one year prior to ((~~the quarterly HCFA Index described in subsection (8)(a) of this section~~)) it; and

(c) Dividing the difference by the price levels from the quarterly HCFA Index occurring one year prior to the quarterly HCFA Index described in subsection (8)(a).

(9) If either the Implicit Price Deflator for Personal Consumption Expenditures (IDP) index or the Health Care Financing Administration (HCFA) index specified in this section ceases to be available, the department shall select and use in its place or their place one or more measures of change utilizing the same or comparable time periods specified in this section.

(10) The department shall compute the occupancy level for each facility ((~~in accordance with the following:~~

~~(a) For the first fiscal year of a state biennium,~~)) by dividing the actual number of ((~~patient~~)) resident days ((~~from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of that state biennium~~)) by the product of the number((~~s~~)) of licensed beds ((~~multiplied by~~)) and calendar days in the 1994 cost report period. If a facility's occupancy ((~~level~~)) is((~~:~~

~~(i) At or above eighty five~~)) below ninety percent, the department shall compute per ((~~patient~~)) resident day ((~~prospective rates and limits for~~)) nursing services, food, administrative((~~,~~)) and operational((~~, property and return on investment components using actual patient days;~~

~~(ii) Below eighty five percent, the department shall compute per patient day~~)) prospective component rates and limits ((~~for:~~

~~(A) Nursing and food components using actual patient days; and~~

~~(B) Administrative, operational, property and return on investment components using patient~~)) utilizing resident days at the ((~~eighty five~~)) ninety percent occupancy level. ((~~(b) For the second fiscal year of a biennium,~~)) The department shall ((~~compute the~~)) use actual occupancy level ((~~by dividing the actual number of patient days from the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that biennium by the product of the number of licensed beds multiplied by calendar days in that report period. The department shall:~~

~~(i) Compute the per patient day return on investment rate and prospective property rate when a facility's occupancy level is:~~

~~(A)~~)) for facilities at or above ((~~eight five~~)) ninety percent occupancy ((~~level, using actual patient days; or~~

~~(B) Below eighty five percent using patient days at the eighty five percent occupancy level.~~

~~(ii) Not adjust nursing, food, administrative and occupational rates for any change to actual patient days, calendar days, and/or occupancy as reported on the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that state biennium. For bed increases or decreases the department shall use WAC 388-96-709 and other applicable WACs to determine occupancy level.~~

~~(c) For new contractors as defined under WAC 388-96-026 (a) or (b), occupancy shall be based on a minimum of eighty five percent for administrative, operations, property and return on investment~~)) for 1994. The higher of ninety percent occupancy or actual facility occupancy for 1994 shall be used in establishing these component rates for July 1, 1995, July 1, 1996, and July 1, 1997. The department shall compute per resident day property and return on investment prospective component rates utilizing resident days at the higher of ninety percent occupancy or actual facility occupancy for the prior calendar year for July 1, 1995, July 1, 1996, and July 1, 1997.

(11) If a nursing ((~~home provides residential care to individuals~~)) facility has full-time residents other than those receiving nursing facility care:

(a) The facility may request in writing, and

(b) The department may grant in writing an exception to the requirements of subsection (10) of this section by including such other full-time residents in computing occupancy. Exceptions granted shall be revocable effective ninety days after written notice of revocation is received from the department. The department shall not grant an exception unless the contractor submits with the annual cost report a certified statement of occupancy including all residents of the facility and their status or level of care.

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

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-722 Nursing services cost area rate. (1) The nursing services cost center shall include for reporting and auditing purposes all costs relating to the direct provision of nursing and related care, including fringe benefits and payroll taxes for nursing and related care personnel and for the cost of nursing supplies. The cost of one-to-one care shall include care provided by qualified therapists and their employees only to the extent the costs are not covered by Medicare, part B, or any other coverage.

(2) In addition to other limits contained in this chapter, the department shall subject nursing service costs to a test for nursing staff hours according to the procedures set forth in subsection (3) of this section.

(3) The test for nursing staff hours referenced in subsection (2) of this section shall use a regression of hours reported by facilities for registered nurses, licensed practical nurses, and nurses' assistants, including:

(a) Purchased and allocated nursing and assistant staff time; and

(b) The average patient debility score for the corresponding facilities as computed by the department. The department shall compute the regression ((~~every two years which shall be effective for the entire biennium, beginning July 1, 1993,~~)) only once for determination of rates from July 1, 1995 through June 30, 1998 and shall take data for the regression from:

(i) Correctly completed 1994 cost reports; and

(ii) Patient assessments completed by nursing facilities and transmitted to the department in accordance with the

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minimum data set (MDS) format and instructions, as may be corrected after departmental audit or other investigation, for the corresponding calendar report year and available at the time the regression equation is computed. Effective January 1, 1988, the department shall not include the hours associated with off-site or class room training of nursing assistants and the supervision of such training for nursing assistants in the test for nursing staff hours. The department shall calculate and set for each facility a limit on nursing and nursing assistant staffing hours at predicted staffing hours plus 1.75 standard errors, utilizing the regression equation calculated by the department. The department shall reduce costs for facilities with reported hours exceeding the limit by an amount equivalent to:

(A) The hours exceeding the limit;

(B) Times the average wage rate for nurses and assistants indicated on cost reports for the year in question, including benefits and payroll taxes allocated to such staff. The department shall provide contractors' reporting hours exceeding the limit the higher of their January 1983 patient care rate or the nursing services rate computed for them according to the provisions of this subsection, plus applicable inflation adjustments.

(4) For all rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement (commonly referred to as "nursing pool" services), in excess of the amount of compensation which would have been paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(5) Staff of like classification shall mean only the nursing classifications of registered nurse, licensed practical nurse or nurse assistant. The department shall not recognize particular individuals, positions or subclassifications within each classification for whom pool staff may be substituting or augmenting. The department shall derive the facility average hourly wage for each classification by dividing the total allowable regular and overtime salaries and wages, including related taxes and benefits, paid to facility staff in each classification divided by the total allowable hours worked for each classification. All data used to calculate the average hourly wage for each classification shall be taken from the cost report on file with the department's rates management office for the most recent cost report period.

(6) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the nursing services cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be those nursing facilities:

(i) Located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Not located within such an area (non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted nursing services cost from the ((~~prior~~)) 1994 cost report year, ((~~which shall include all costs of nursing supplies and purchased and allocated medical records,~~)) regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be included in costs arrayed. Costs current-funded by rate add-ons commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 shall be excluded from costs arrayed.

(c) The median or fiftieth percentile nursing facility cost in nursing services for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted nursing services cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the nursing services cost area prior to issuing new July 1 rates.

(7) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, nursing services component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day nursing services cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing services cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(8) Rate add-ons made to current fund nursing services costs, pursuant to WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on any calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1, 1995 nursing services rate higher than that provided in subsection (7) of this section.

(9) ((~~For July 1, 1993 rate setting only, if a nursing facility is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such facility shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same facility's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date,~~

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~~inflated by any increase in the IPD Index authorized by WAC 388-96-719.~~

~~(10) For July 1, 1993 rate setting only, nursing services rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's nursing services rate established under subsection (7) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add nursing services rate add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium,~~)) to a nursing facility's rate in nursing services, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(((~~(11)~~))) (10) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted nursing services cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 component rate ((~~for the first fiscal year~~)) in nursing services based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's nursing services component rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(((~~(12)~~))) (11) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated using October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(((~~(13)~~))) (12) Neither the per patient day peer group median plus twenty-five percent limit for nursing services cost nor the test for nursing staff hours authorized in this section shall apply to the pilot facility designated to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan. The AIDS pilot facility shall be the only facility exempt from these limits.

((~~(14) Beginning with July 1, 1994 prospective rates, a nursing facility's rate in nursing services for the second fiscal year of each biennium shall be that facility's nursing services rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(15) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 nursing services rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~))

(13) For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996, pursuant to RCW 74.46.460, WAC 388-96-774, and 388-96-777.

(14) For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997 nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services component rate as of June 30, 1997, excluding any rate adjustments granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-727 Food cost area rate. (1) The food cost center shall include for cost reporting purposes all costs of bulk and raw food and beverages purchased for the dietary needs of the nursing facility residents.

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the food cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted food cost from the ((~~prior~~)) 1994 cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, in costs arrayed. The department shall exclude costs current-funded by rate add-ons granted under the authority of WAC 388-96-777 and commencing January

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1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility food cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted food cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the food cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, food component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day food cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility food cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund food costs, pursuant to WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year of a state biennium~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on any calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1, 1995 food rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate setting only, food rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's food rate established under subsection (3) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add food rate add-ons, granted under authority of WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium~~)), to a nursing facility's rate in food, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted food cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 component rate ((~~for the first fiscal year~~)) in food based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's food rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's rate in food for the second fiscal year of each biennium shall be that facility's food rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 food rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in food shall be that facility's food component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460 and WAC 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in food shall be that facility's food component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460 and WAC 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-735 Administrative cost area rate. (1) The administrative cost center shall include for cost reporting purposes all administrative, oversight, and management costs, whether incurred at the facility or allocated in accordance with a department-approved joint cost allocation methodology. ((~~Such costs shall be identical to the cost report line items categorized on the 1992 calendar year report under "general and administrative" within the administration and operations (A&O) combined cost center existing for reporting purposes prior to January 1, 1993, with the exception of nursing supplies and purchased and allocated medical records. The department shall issue cost reporting instructions identifying administrative costs for 1993 and following cost report years.~~))

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993~~

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~~prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the administrative cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted administrative cost from the ((~~prior~~)) 1994 cost report year((~~, excluding the costs of nursing supplies and purchased and allocated medical records~~)), regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year((~~,~~)) in costs arrayed. The department shall exclude costs current-funded by rate add-ons granted under the authority of WAC 388-96-777 and commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility administrative cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted administrative cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the administrative cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, administrative component rates for facilities within each peer group shall be set for the ((~~first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day administrative cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility administrative cost for the facility's peer group using the 1994 calendar year report data plus ten percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund administrative costs, pursuant to WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year of a state biennium~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on the calculation or consideration of any such ((~~prior~~)) 1994 report year adjustment, a July 1, 1995 administrative rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate setting only, administrative rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's administrative rate established under subsection (3) of this section.~~)) For all rate setting beginning July 1, 1995 and following, the department shall add administrative rate add-ons, granted under authority of WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium,~~)) to a facility's administrative rate, but only up to the facility's peer group median cost plus ten percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based on the most recent adjusted administrative cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1, 1995 administrative component rate ((~~for the first fiscal year~~)) based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's administrative rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted administrative cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995 the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's administrative rate for the second fiscal year of each biennium shall be that facility's administrative rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 administrative rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1996, excluding any rate

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increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460 and WAC 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460 and WAC 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-737 Operational cost area rate. (1) The operational cost center shall include for cost reporting purposes all allowable costs having a direct relationship to the daily operation of the nursing facility (but not including nursing services and related care, food, administrative, or property costs), whether such operating costs are incurred at the facility or are allocated in accordance with a department-approved joint cost allocation methodology.

(2) ((~~Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective~~)) For July 1, 1995 rate setting only, the department shall determine peer group median cost plus limits for the operational cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a metropolitan statistical area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per ((~~patient~~)) resident day adjusted operational cost from the ((~~prior~~)) 1994 cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the ((~~prior~~)) 1994 cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be included in costs arrayed. The department shall exclude costs current-funded by rate add-ons commencing January 1 through June 30 ((~~following the prior cost report year~~)), 1995 from costs arrayed.

(c) The median or fiftieth percentile nursing facility operational cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted operational cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the operational cost area prior to issuing new July 1 rates.

(3) ((~~Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates~~)) For July 1, 1995 rate setting only, operational component rates for facilities within each peer group shall be set ((~~for the first fiscal year of each state biennium~~)) at the lower of:

(a) The facility's adjusted per patient day operational cost from the ((~~most recent prior~~)) 1994 report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility operational cost for the facility's peer group using the 1994 calendar year report data plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) Rate add-ons made to current fund operational costs, pursuant to WAC 388-96-774 and WAC 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year, shall be reflected in ((~~first fiscal year~~)) July 1, 1995 prospective rates only by their inclusion in the costs arrayed. A facility shall not receive, based on the calculation or consideration of any such ((~~prior~~)) 1994 report year rate add-ons, a July 1 operational rate higher than that provided in subsection (3) of this section.

(5) ((~~For July 1, 1993 rate setting only, operational rate adjustments, granted under authority of WAC 388-96-774 and commencing January 1, 1993 through June 30, 1993, shall be added to a facility's operational rate established under subsection (3) of this section.~~)) For ((~~all rate setting beginning~~)) July 1, 1995 and following rate settings, the department shall add operational rate add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-777 ((~~and commencing from January 1 through June 30 preceding the start of a state biennium~~)) to a facility's operational rate, but only up to the facility's peer group median cost plus twenty-five percent limit as follows:

(a) For July 1, 1995, add-ons commencing in the preceding six months;

(b) For July 1, 1996, add-ons commencing in the preceding eighteen months; and

(c) For July 1, 1997, add-ons commencing in the preceding thirty months.

(6) Subsequent to issuing ((~~the first fiscal year~~)) July 1, 1995 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted operational cost report information in departmental records as of October 31 ((~~of the first fiscal year of each biennium~~)), 1995. For any facility which would have received a higher or lower July 1 operational component rate ((~~for the first fiscal year~~)) based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's operational rate reflecting the recalculation, retroactive to July 1 ((~~of the first fiscal year~~)), 1995.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted ((~~administrative~~)) operational cost information as of October 31 ((~~of the first fiscal year of the biennium~~)), 1995 the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs, once calculated

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utilizing October 31, 1995 adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) ((~~Beginning with July 1, 1994 prospective rates, a nursing facility's operational rate for the second fiscal year of each biennium shall be that facility's operational rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.~~

~~(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 operational rates occurring within each biennium shall be followed in the same order for each succeeding biennium~~)) For rates effective July 1, 1996, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1996, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1996, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1996, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

(9) For rates effective July 1, 1997, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1997, reduced or inflated as authorized by RCW 74.46.420 and WAC 388-96-719. The July 1, 1997, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1997, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-745 Property cost area reimbursement rate. (1) The department shall determine the property cost area component rate for each facility annually, to be effective July 1, ((~~regardless of whether the July 1 rate is for the first or second year of the biennium~~)) 1995, 1996, and 1997 in accordance with this section and any other applicable provisions of this chapter. For July 1, 1995, July 1, 1996, and July 1, 1997 rates, funding granted under the authority of WAC 388-96-776 shall be annualized and subsumed in each of these July 1 prospective rates.

(2) The department shall divide the allowable prior period depreciation costs subject to the provisions of this chapter, adjusted for any capitalized addition or replacements approved by the department, plus

(a) The retained savings from the property cost center as provided in WAC 388-96-228, by

(b) The greater of:

(i) Total ((~~patient~~)) resident days for the facility in the ((~~prior~~)) calendar year cost report period ending six months prior to each July 1, property component rate commencement date; or

(ii) Resident days for the facility as calculated on ninety or eight-five percent facility occupancy, as applicable in accordance with the provisions of this chapter and chapter 74.46 RCW.

(3) Allowable depreciation costs are defined as the costs of depreciation of tangible assets meeting the criteria specified in WAC 388-96-557, regardless of whether owned or leased by the contractor. The department shall not reimburse depreciation of leased office equipment.

(4) If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the calendar year following the capitalized addition or replacement, ((~~patient~~)) resident days from the cost report for the calendar year immediately prior to the capitalized addition or replacement that were used in computing the property component rate will be adjusted to the product of the occupancy level derived from the cost report used to compute the property component rate at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license. For rate computation purposes the minimum occupancy for the initial property component rate period following the increase in licensed bed capacity shall be eighty-five percent; and for each rate period thereafter that will be rebased, commencing July 1, it shall be ninety percent. If a capitalized addition, replacement, or retirement results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

(5) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need, the department shall determine actual and allocated allowable land cost and building construction cost. Reimbursement for such allowable costs, determined pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection and in subsections (4), (5), and (6) of this section. The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the *Marshall and Swift Valuation Service* published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(6) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of Medicaid reimbursement;

(i) Other items included by the *Marshall and Swift Valuation Service* when deriving the calculator method costs.

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(7) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from one of the three tables which follow. The department shall derive the limit from the accompanying table which corresponds to the number of total nursing home beds for the proposed new construction, remodel or expansion. The limit will be the sum of the basic construction cost limit plus the common use area limit which corresponds to the type and class of the new construction, remodel or expansion. The limits calculated using the tables shall be adjusted forward from September 1990 to the average date of construction, to reflect the change in average construction costs. The department shall base the adjustment on the change shown by relevant cost indexes published by Marshall and Swift Publication Company. The average date of construction shall be the midpoint date between award of the construction contract and completion of construction.

BASE CONSTRUCTION COST LIMITS **COMMON-USE AREA COST LIMITS**

74 BEDS & UNDER

Building Class	Base per Bed Limit	Base Limit
A-Good	$50,433	$278,847
A-Avg	$41,141	$227,469
B-Good	$48,421	$267,718
B-Avg	$40,042	$221,392
C-Good	$35,887	$198,421
C-Avg	$27,698	$153,143
C-Low	$21,750	$120,258
D-Good	$33,237	$183,765
D-Avg	$25,716	$142,182
D-Low	$20,298	$112,227

BASE CONSTRUCTION COST LIMITS **COMMON-USE AREA COST LIMITS**

75 TO 120 BEDS

Building Class	Base Limit	Add per Bed Over 74	Base Limit	Add per Bed Over 74
A-Good	$3,732,076	$48,210	$278,847	$2,808
A-Avg	$3,044,442	$39,327	$227,469	$2,291
B-Good	$3,583,131	$46,286	$267,718	$2,696
B-Avg	$2,963,112	$38,277	$221,392	$2,230
C-Good	$2,655,654	$34,305	$198,421	$1,998
C-Avg	$2,049,668	$26,477	$153,143	$1,542
C-Low	$1,609,531	$20,792	$120,258	$1,211
D-Good	$2,459,506	$31,771	$183,765	$1,851
D-Avg	$1,902,956	$24,582	$142,182	$1,442
D-Low	$1,502,048	$19,403	$112,227	$1,130

BASE CONSTRUCTION COST LIMITS **COMMON-USE AREA COST LIMITS**

121 BEDS AND OVER

Building Class	Base Limit	Add per Bed Over 120	Base Limit	Add per Bed Over 120
A-Good	$5,949,745	$42,359	$408,015	$2,106
A-Avg	$4,853,505	$34,555	$332,855	$1,718
B-Good	$5,712,287	$40,669	$391,734	$2,022
B-Avg	$4,723,848	$30,142	$323,972	$1,672
C-Good	$4,233,692	$23,264	$290,329	$1,499
C-Avg	$3,267,618	$18,268	$224,092	$1,157
C-Low	$2,565,943	$27,916	$175,971	$ 908
D-Good	$3,920,989	$21,599	$268,911	$1,388
D-Avg	$3,033,727	$17,048	$208,493	$1,081
D-Low	$2,394,592	$19,403	$164,220	$ 848

(8) When some or all of a nursing home's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance shown in the attached tables for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limit in the table. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes from the Marshall and Swift Publication.

(9) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

(a) Actual cost per square foot, including allocations; or

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments.

(10) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsection (3), (4), and (5) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of their financial impact with the request.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-754 A contractor's return on investment. (1) The department shall establish for each Medicaid nursing facility a return on investment (ROI) component rate composed of a financing allowance and a variable return allowance. The department shall determine a facility's ROI rate annually in accordance with this section, to be effective July 1, ((~~regardless of whether the rate is for the first or second fiscal year of a state biennium~~)) 1995, July 1, 1996, and July 1, 1997.

(2) The department shall rebase a nursing facility's financing allowance annually and shall determine the financing allowance by:

(a) Multiplying the net invested funds of each facility by ten percent and dividing by the ((~~contractor's~~)) greater of:

(i) A nursing facility's total ((~~patient~~)) resident days from the most recent cost report period, to which the provisions of WAC 388-96-719 and RCW 74.46.420 shall apply((~~, and corresponding~~)); or

(ii) Resident days calculated on ninety percent or eighty-five percent resident occupancy at the facility, as determined by the provisions of this chapter. Resident day calculations

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from the most recent cost report shall correspond to the following:

(A) If the nursing facility cost report covers twelve months, annual ((~~patient~~)) resident days from the contractor's most recent twelve month cost report period; or

(B) If the nursing facility cost report covers less than twelve months but more than six months, annualized ((~~patient~~)) resident days and working capital costs based upon data in the cost report; or

(C) If a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the total ((~~patient~~)) resident days from the cost report immediately prior to the capitalized addition or replacement that were used in computing the financing and variable return allowances will be adjusted to the product of the occupancy level derived from the cost report used to compute the financing and variable return allowances at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license; or

(D) If a capitalized addition or retirement of an asset results in a ((~~different~~)) decreased licensed bed capacity WAC 388-96-709 will apply((~~;~~)).

(b) For ((~~the first fiscal year of a state biennium~~)) July 1, 1995 rate setting, the working capital portion of net invested funds at a nursing facility shall be five percent of the sum of a contractor's costs from the cost report year used to establish the contractor's prospective component rates in the nursing services, food, administrative, and operational cost centers that have been adjusted for economic trends and conditions under authority of WAC 388-96-719 and RCW 74.46.420 and five percent of allowable property cost.

(c) For ((~~the second fiscal year of a state biennium~~)) July 1, 1996 rate setting, the working capital portion of net invested funds shall be five percent of the sum of the July 1, 1996 prospective component rates, excluding any rate increases granted from January 1, 1996 to June 30, 1996 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777, for ((~~the first fiscal year in~~)) the nursing services, food, administrative, and operational cost centers multiplied by ((~~the patient~~)) resident days as defined in subsection (2)(a)((~~(i),~~)) (ii)((~~, (iii), or (iv)~~)) (A), (B), (C), and (D) of this section from ((~~the~~)) calendar year ((~~immediately prior to the second fiscal year of a state biennium~~)) 1995, adjusted for economic trends and conditions granted under authority of WAC 388-96-719 plus the desk reviewed property costs from the cost report ((~~of the prior~~)) for calendar year 1995;

((~~(c)~~)) (d) For July 1, 1997 rate setting, the working capital portion of net invested funds shall be five percent of the sum of the July 1, 1997 prospective component rates, excluding any rate increases granted from January 1, 1997 to June 30, 1997 pursuant to RCW 74.46.460, WAC 388-96-774 and 388-96-777, for the nursing services, food, administrative and operational cost centers multiplied by resident days as defined in subsection (2)(a)(ii)(A), (B), (C), and (D) of this section from calendar year 1996, adjusted for economic trends and conditions granted under authority of WAC 388-96-719 plus the desk reviewed property costs from the cost report for calendar year 1996;

(e) For ((~~either the first or second year of a state biennium~~)) July 1, 1995, July 1, 1996, and July 1, 1997 rate setting, in computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in this chapter, including owned and leased assets, shall be used, except the capitalized cost of land upon which a facility is located and other such contiguous land which is reasonable and necessary for use in the regular course of providing ((~~patient~~)) resident care shall also be included. As such, subject to provisions contained in this chapter, capitalized cost of leased land, regardless of the type of lease, shall be the lessor's historical capitalized cost. Subject to provisions contained in this chapter, for land purchases before July 18, 1984 (the enactment date of the Deficit Reduction Act of 1984 (DEFRA)), capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased on or after July 18, 1984, capitalized cost of land shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable or unwilling to provide necessary information to determine net invested funds, the department may determine an amount to be used for net invested funds based upon an appraisal conducted by the department of general administration per this chapter; and

((~~(d)~~)) (f) A contractor shall retain that portion of ROI rate payments at settlement representing the contractor's financing allowance only to the extent reported net invested funds, upon which the financing allowance is based, are substantiated by the department.

(3) The department shall determine the variable return allowance according to the following procedure:

(a) ((~~Once every two years at the start of each biennium, beginning with~~)) For July 1, ((~~1993~~)) 1995 rate setting only, the department shall, without utilizing the MSA and Non-MSA peer groups used to calculate other Medicaid component rates, rank all facilities in numerical order from highest to lowest based upon the combined average ((~~per diem~~)) resident day allowable costs, as adjusted by desk review and audit, for the nursing services, food, administrative, and operational cost centers taken from the ((~~prior~~)) 1994 cost report period. The department shall use adjusted costs taken from 1994 cost reports having at least six months of data, shall not include adjustments for economic trends and conditions granted under authority of WAC 388-96-719 and RCW 74.46.420, and shall include costs current-funded under authority of WAC 388-96-774 and 388-96-777 and commencing in the ((~~prior~~)) 1994 cost report year. The adjusted costs of each facility shall be calculated based upon a minimum facility occupancy of ninety percent. In the case of a new contractor, nursing services, food, administrative, and operational cost levels actually used to set the initial rate shall be used for the purpose of ranking the new contractor.

(b) The department shall compute the variable return allowance by multiplying the sum of the July 1, 1995 nursing services, food, administrative and operational rate components for each nursing facility by the appropriate percentage which shall not be less than one percent nor greater than four percent. The department shall divide the facilities ranked according to subsection (3)(a) of this section

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into four groups, from highest to lowest, with an equal number of facilities in each group or nearly equal as is possible. The department shall assign facilities in the highest quarter a percentage of one, in the second highest quarter a percentage of two, in the third highest quarter a percentage of three, and in the lowest quarter a percentage of four. The per patient day variable return allowance in the initial rate of a new contractor shall be the same as that in the rate of the preceding contractor, if any.

(c) The percentages so determined and assigned to each facility for July 1, 1995 rate setting ((~~for the first fiscal year of each state biennium~~)), shall continue to be assigned without modification for July 1, 1996 and July 1, 1997 rate setting ((~~for the second fiscal year of each biennium~~)). Neither the break points separating the four groups nor facility ranking shall be adjusted to reflect future rate add-ons granted to contractors for any purpose under WAC 388-96-774 and 388-96-777. These principles shall apply, as well, to new contractors as defined in WAC 388-96-026 (1)(a) and (b).

(d) For an initial rate established for a nursing facility on or after July 1, 1995 under WAC 388-96-710(1), the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return percentage breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon the consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the initial rate shall continue until the facility's return on investment component rate can be rebased from cost report data of the new contractor covering at least six months from the prior calendar year.

(e) For a new contractor's nursing facility rate rebased as of July 1, 1996 determined under WAC 388-96-710, the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon the consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the rebased rate at this time shall continue without modification for July 1, 1997 rate setting.

(f) For a new contractor's nursing facility rate rebased as of July 1, 1997 determined under WAC 388-96-710, the variable return allowance shall be computed as provided in subsection (3)(b) of this section, using the identical variable return breakpoints calculated for July 1, 1995 rate setting. The variable return breakpoints shall not be modified based upon consideration of any rate adjustment, nor shall the variable return breakpoints be adjusted for economic trends and conditions. The percentage so determined and assigned for the rebased rate at this time shall continue without modification until June 30, 1998.

(4) The sum of the financing allowance and the variable return allowance shall be the return on investment rate for each facility and shall be a component of the prospective rate for each facility.

(5) If a facility is leased by a contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement as defined in this chapter, and for which the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to this chapter, is more than the return on investment allowance determined according to this section, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets, as of January 1, 1982, determined by department of general administration appraisal less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. Said appraisal shall be final unless shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under this subsection and the variable return allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to this chapter. The lesser of the two amounts shall be called the alternate return on investment allowances.

(c) The return on investment allowance determined in accordance with subsections (1), (2), (3), and (4) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be a component of the prospective rate of the facility.

(d) In the case of a facility leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease agreement existing on January 1, 1980, the treatment provided in subsection (5)(a) of this section shall be applied except that in the case of renewals or extensions made on or subsequent to April 1, 1985, per a provision of the lease agreement existing on January 1, 1980, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(6) The information from the two prior reporting periods used to set the two prospective return on investment rates in effect during the settlement year is subject to field audit. If the financing allowances which can be documented and calculated at audit of the prior periods are different than the prospective financing allowances previously determined by desk-reviewed, reported information, and other relevant information, the prospective financing allowances shall be adjusted to the audited level at final settlement of the year the rates were in effect, except the adjustments shall reflect a minimum bed occupancy level of eighty-five percent. Any adjustments to the financing allowances pursuant to this subsection shall be for settlement purposes only. However, the variable return allowances shall be the prospective allowances determined by desk-reviewed, reported information, and other relevant information and shall not be adjusted to reflect prior-period audit findings.

Reviser's note: 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.

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AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-763 Rates for recipients requiring exceptionally heavy care. (1) A nursing facility contractor certified to provide nursing services, a discharging hospital, a recipient of Medicaid benefits or her/his authorized representative may apply for an individual prospective reimbursement rate for a Medicaid recipient whose special nursing and direct care-related service needs are such that the hours of nursing services needed are at least twice the per patient day average of nursing services hours provided in the nursing facility to which the recipient is admitted as determined by the facility's Medicaid cost report for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994.

(2) When application for an exceptional care rate is made before determining where the recipient will be placed, pre-admission qualification may be granted when the recipient's special nursing and direct care needs require hours of nursing services at least twice the statewide per patient day average derived from Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994. For reviews to determine continued qualification only for such recipients, conducted during the specified period of time determined under subsection (4) of this section, the department will continue to utilize the statewide average available to the department, assuming the care plan is unchanged. For subsequent reviews to determine continued qualification, the contractor's average, set forth under subsection (1) of this section, shall be substituted for the statewide average.

(3) The contractor or other applicant shall apply for exceptional care rate qualification for an exceptionally heavy care recipient in accordance with department instructions. The facility shall bill the department at the authorized exceptional care rate within three hundred sixty-five days from the exceptional care rate's effective date. Bills for services submitted after three hundred sixty-five days shall be denied as untimely.

(4) When the department grants an individual rate for an exceptionally heavy care recipient, it shall be for a specified period of time, which the department shall determine, subject to extension, revision, or termination depending on the recipient's care requirements at the end of such period. If within thirty days after a resident's admission to a nursing facility the application for such resident for an exceptional care rate is submitted to the department and includes the facility plan of care documenting the need for and delivery of the resident's nursing and direct care hours, the rate, if approved, shall be effective as of the date of admission. Applications submitted more than thirty days after admission to the facility, if approved, shall be effective as of the date of application.

(5) Extensions of exceptional care rates will not be approved without an updated care plan and resident medical status information submitted in accordance with departmental instruction prior to the scheduled date of the rate's termination. Failure to comply will result in automatic termination as of the scheduled date and reinstatement of an exceptional care rate, if desired, will require re-application and approval. Discharge or transfer of the recipient, permanently or temporarily, shall terminate an exceptional care rate which shall be nontransferable to a different facility. Qualification upon re-admission shall require re-application. A contractor may not transfer or discharge a Medicaid recipient based upon the status of an exceptional care rate or application for such a rate.

(6) Regardless of whether statewide average nursing hours derived from the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994 or facility average nursing hours reported on the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994 are used for qualification, the exceptional care rate for a recipient shall be calculated by:

(a) Deriving a ratio equivalent to actual or projected nursing hours per patient day needed by the recipient in excess of the facility-specific reimbursed average nursing hours per patient day divided by the facility-specific reported average nursing hours per patient day derived from the Medicaid cost reports for ((~~the~~)) calendar year ((~~immediately prior to the first fiscal year of the current state biennium~~)) 1994;

(b) Multiplying the ratio by the facility-specific nursing services rate in effect at the time of the initial request or in the case of continuation or revision, the facility's nursing services rate in effect at the time of the approval of the continuation or revision; and

(c) Adding the result of subsection (6)(b) of this section to the total facility-specific reimbursement rate; *provided*, that in no circumstance shall an exceptional care rate exceed one hundred sixty percent of the facility's Medicare reimbursement rate in place at the time the exceptional care rate takes effect.

(7) A pre-admission exceptional care rate shall be effective for thirty days. The contractor shall notify the department, in writing, as soon as the recipient is admitted to the contractor's facility. If resident placement in a Medicaid nursing facility has not occurred within thirty days after the department receives the exceptional care application the contractor shall submit, an updated plan of care in order to reinstate exceptional care qualification.

(8) Unless the department establishes otherwise, extensions require an updated plan of care to be completed and submitted every ninety days for each exceptional care recipient, including documentation supporting the need for services identified in the plan of care. The department shall base a decision to continue, revise, or terminate an exceptional care rate on review of the updated plan of care and supporting documentation, a current care need assessment, and other information available to the department.

In order to extend an exceptional care rate, the review must verify continued need for and delivery of nursing, direct and ancillary care services funded by the rate.

(9) An exceptional care rate shall not be revised during the period the exceptional care rate is in effect because the facility-specific nursing services or total rate is revised or reset; however, when an exceptional care rate is continued or revised as authorized in this section, the facility rate in place at the time of continuation or revision shall be used in the calculation process. An exceptional care rate shall be revised during the period the rate is in effect only when:

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(a) An updated plan of care indicates a significant change in care needs; or

(b) Funded services are not fully delivered.

(10) No retroactive revision shall be made to an exceptional care rate, provided that:

(a) When application is made within thirty days after the recipient is admitted to the contractor's facility, an approved rate shall be effective the date of admission;

(b) When an exceptional care rate is revised due to a significant change, the revised rate will be effective on the date the department receives the updated plan of care and supporting documentation; and

(c) When care services funded by an exceptional care rate are not fully delivered, the exceptional care rate shall be reduced retroactively as of its effective date to the regular facility Medicaid rate and payment at the exceptional care rate shall cease immediately.

(11) Hours of nursing and direct care used to qualify a recipient and to calculate an exceptional rate must be verified by a home and community services division, aging and adult services, regional community nurse consultant.

(12) The department shall notify the contractor, in writing, of the disposition of its application as soon as possible and in no case longer than thirty days following receipt of a properly completed application and supporting documentation.

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AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-765 Ancillary care. Beginning July 1, 1984, costs of providing ancillary care are allowable, subject to any applicable cost center limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which ((~~patients~~)) recipients may be legally entitled, such as private insurance or Medicare, were first fully utilized.

AMENDATORY SECTION (Amending Order 2372, filed 5/7/86, effective 7/1/86)

WAC 388-96-769 Adjustments required due to errors or omissions. (1) Prospective rates are subject to adjustment by the department in accordance with this section and subject to WAC 388-96-122 as a result of errors or omissions by the department or by the contractor. The department will notify the contractor in writing of each adjustment and of the effective date of the adjustment, and of any amount due to the department or to the contractor as a result of the rate adjustment. Rates adjusted in accordance with this section will be effective as of the effective date of the original rate whether the adjustment is solely for computing a preliminary or final settlement or for the purpose of modifying past or future rate payments as well.

(2) If a contractor claims an error or omission based upon incorrect cost reporting, amended cost report pages shall be prepared and submitted by the contractor. Amended pages shall be accompanied by the certification required by WAC 388-96-117 and a written justification explaining why the amendment is necessary. Such amendments shall not be accepted unless the amendments meet the requirements of WAC 388-96-122. If changes made by the amendments are determined to be material by the department according to standards established by the department, such amended pages shall be subject to field audit. If a field audit or other information available to the department determines the amendments are incorrect or otherwise unacceptable, any rate adjustment based on the amendment shall be null and void and future rate payment increases, if any, scheduled as a result of such an adjustment shall be cancelled immediately. Payments made based upon the rate adjustment shall be subject to repayment as provided in subsection (3) of this section.

(3) The contractor shall pay an amount owed the department, as determined by the department on or after July 1, 1995, resulting from an error or omission or from an improper adjustment, or commence repayment in accordance with a schedule determined and agreed to in writing by the department, within sixty days after receipt of notification of the rate adjustment or rate adjustment cancellation((~~, unless the contractor contests the department's determination in accordance with the procedures set forth in WAC 388-96-904. If the determination is contested, the contractor shall pay or commence repayment within sixty days after completion of these proceedings~~)). If a refund as determined by the department is not paid when due, the amount thereof may be deducted from current payments by the department. However, neither a timely filed request to seek administrative review under WAC 388-96-904 nor commencement of judicial review, as may be available to the contractor in law, shall delay recovery, including recoupment of the refund from current payments made by the department to the contractor for nursing facility services.

(4) If a cost report amendment is accepted for rate adjustment and was received by the department prior to the end of the period to which the rate is assigned, the department shall make any retroactive payment to which the contractor may be entitled within thirty days after the contractor is notified of the rate adjustment and shall increase future rate payments for the rate period, as appropriate.

(5) If a cost report amendment is received by the department subsequent to the rate period, notification of an adjustment or other disposition shall be made at preliminary or final settlement. Adjustments resulting from amendments received after the rate period shall be for the sole purpose of computing the preliminary or final settlement and no retroactive payment shall be made to the contractor. In accordance with WAC 388-96-229(1), any amount due a contractor as determined at preliminary or final settlement shall be paid within ((~~thirty~~)) sixty days after the preliminary or final settlement ((~~report~~)) is ((~~submitted to~~)) received by the contractor.

(6) No adjustments for any purpose will be made to a rate more than one hundred twenty days after the final audit narrative and summary for the period the rate was effective is sent to the contractor or more than one hundred twenty days after the preliminary settlement becomes the final settlement. A final settlement within this one hundred twenty-day time limit may be reopened for the limited purpose of making an adjustment to a prospective rate in accordance with this section. However, only the adjustment and related computation will be subject to review if timely contested pursuant to WAC 388-96-901 and 388-96-904. Other actions relating to a settlement reopened shall not be

subject to review unless previously contested in a timely manner.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-776 Add-ons to the prospective rate—Capital improvements. (1) The department shall grant an add-on to a prospective rate for any capitalized additions or replacements made as a condition for licensure or certification; *provided*, the net rate effect is ten cents per patient day or greater.

(2) The department shall grant an add-on to a prospective rate for capitalized improvements done under RCW 74.46.465; *provided*, the legislature specifically appropriates funds for capital improvements for the biennium in which the request is made and the net rate effect is ten cents per patient day or greater. Physical plant capital improvements include, but are not limited to, capitalized additions, replacements or renovations made as a result of an approved certificate of need or capitalized additions or renovations for the removal of physical plant waivers.

(3) When physical plant improvements made under subsection (1) or (2) are completed in phases, the department shall not grant a rate add-on for any addition, replacement or improvement until each phase is completed and fully utilized for which it was intended. The department shall limit rate add-on to only the actual cost of the depreciable tangible assets meeting the criteria of WAC 388-96-557 and as applicable to that specific completed and fully utilized phase.

(4) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (8) of this section using the date the class was improved.

(5) The department shall not add on construction fees as defined in WAC 388-96-745(6) and other capitalized allowable fees and costs as related to the completion of all phases of the project to the rate until all phases of the entire project are completed and fully utilized for the purpose it was made. At that time, the department shall add on these fees and costs to the rate, effective no earlier than the earliest date a rate add-on was established specifically for any phase of this project. If the fees and costs are incurred in a later phase of the project, the add-on to the rate will be effective on the same date as the rate add-on for the actual cost of the tangible assets for that phase.

(6) The contractor requesting an adjustment under subjection (1) or (2) shall submit a written request to the office of rates management separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation (i.e., survey level "A" deficiency) requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per WAC 388-96-559(2);

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter;

(f) A written justification for granting the rate increase; and

(g) For capitalized additions or replacements requiring certificate of need approval, a copy of the approval and description of the project.

(7) The department's criteria used to evaluate the request may include, but is not limited to:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of the renovation or remodel to the facility and whether the facility will be better able to serve the needs of its residents;

(c) Whether the improvement improves the quality of living conditions of the residents;

(d) Whether the improvement might eliminate life safety, building code, or construction standard waivers;

(e) Prior survey results; and

(f) A review of the copy of the approval and description of the project.

(8) The department shall not grant a rate add-on effective earlier than sixty days prior to the receipt of the initial written request by the office of rates management and not earlier than the date the physical plant improvements are completed and fully utilized. The department shall grant a rate add-on for an approved request as follows:

(a) If the physical plant improvements are completed and fully utilized during the period from the first day to the fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the physical plant improvements are completed and fully utilized during the period from the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits a written request for the same project, the date of receipt for the purpose of applying subsection (8)

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will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8); or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) results in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter.

(14) All rate components to fund the Medicaid share of nursing facility new construction or refurbishing projects costing in excess of one million two hundred thousand dollars, or projects requiring state or federal certificate of need approval, shall be based upon a minimum facility occupancy of eight-five percent for the nursing services, food, administrative, operational and property cost centers, and the return on investment (ROI) rate component, during the initial rate period in which the adjustment is granted. These same component rates shall be based upon a minimum facility occupancy of ninety percent for all rate periods after the initial rate period.

AMENDATORY SECTION (Amending Order 2025, filed 9/16/83)

WAC 388-96-813 Suspension of payment. (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extensions. Payments will be released as soon as a properly completed report is received.

(b) Auditors or other authorized department personnel in the course of their duties are refused access to a nursing ((~~home~~)) facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided.

(c) A refund in connection with a preliminary or final settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter and chapter 74.46 RCW.

(d) Payment for the final ((~~thirty~~)) sixty days of service under a contract will be held in the absence of adequate alternate security acceptable to the department pending final settlement when the contract is terminated.

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net Medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or other sources, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is given to the contractor, stating the reason ((~~therefor~~)) for the withholding, except that neither a request to pursue administrative review under WAC 388-96-904 nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

AMENDATORY SECTION (Amending Order 3185, filed 5/31/91, effective 7/1/91)

WAC 388-96-901 Disputes. (1) If a reimbursement rate issued to a contractor is believed to be incorrect because it is based on errors or omissions by the contractor or department, the contractor may request an adjustment pursuant to WAC 388-96-769. Pursuant to WAC 388-96-904(1) a contractor may within twenty-eight days request an administrative review after notification of an adjustment or refusal to adjust.

(2) For all nursing facility prospective Medicaid payment rates effective on or after July 1, 1995, and for all settlements and audits issued on or after July 1, 1995, regardless of what periods the settlements or audits may cover, if a contractor wishes to contest the way in which a department rule((~~, contract provision, or policy statement utilized as part of the prospective cost-related reimbursement~~)) relating to the Medicaid payment rate system((~~'s rate calculation methodology~~)) was applied to the contractor by the department, e.g., in setting a ((~~reimbursement~~)) payment rate or determining a disallowance at audit, it shall ((~~first~~)) pursue the administrative review process set out in WAC 388-96-904.

(3) ((~~Subject to subsection (5) of this section the administrative review and fair hearing process set out in WAC 388-96-904 need not be exhausted~~)) If a contractor wishes to challenge the legal validity of a statute, rule((~~,~~)) or contract provision or ((~~policy statement~~)) wishes to bring a challenge based in whole or in part on federal law, including but not limited to issues of procedural or substantive compliance with the federal Medicaid minimum payment standard known as the Boren Amendment, found at 42 USC 1396a (a)(13)(A) and in federal regulation, as it applies to long-term care facility services, the administrative review procedure authorized in WAC 388-96-904 may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(4) ((~~The department's administrative review and fair hearing process, set out in WAC 388-96-904 and in RCW 74.46.780, shall not be used to challenge the adequacy of prospective or settlement reimbursement rates or rate~~

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~~components, whether preliminary or final, either individually or collectively, or to challenge audit actions or adjustments, under the federal Boren amendment payment standard found at 42 USC 1396a (a)(13)(A) and contained in federal regulation. Further, the administrative review and fair hearing process shall not be used to challenge the department's procedural compliance with this standard. Only in courts of proper jurisdiction shall contractors challenge the department's substantive and/or procedural compliance with the Boren amendment standard.~~

~~(5) The prohibition contained in subsection (4) against pursuit of substantive or procedural Boren amendment challenges in the administrative review and fair hearing process shall apply regardless of whether the challenge is brought for the purpose of obtaining an administrative decision or for the purpose of making a record or argument for subsequent judicial review. Further, the process shall not be used to challenge the validity of statutes or regulations, whether for the purpose of obtaining an administrative decision or making a record or argument for subsequent judicial review, based upon alleged substantive or procedural noncompliance with the Boren amendment standard~~)) If a contractor wishes to challenge the legal validity of a statute, rule or contract provision relating to the Medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law.

AMENDATORY SECTION (Amending Order 3737, filed 5/26/94, effective 6/26/94)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1) ((~~Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, the appropriate director or the director's designee review such determination. The contractor shall send the request to the office of rates management, aging and adult services administration. If the contractor uses a facsimile to establish the request for review, the facsimile must conform to subsection (1)(a), (b) and (c) and the original including the requirements of subsection (d) of this section must be received by the office of rates management within seven days after the transmission of the facsimile. The contractor or the licensed administrator of the facility shall:~~

~~(a) Sign the request;~~

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

~~(c) State as specifically as practicable the issues and regulations involved and the grounds for contending the determination is erroneous; and~~

~~(d) Attach to the request copies of any documentation the contractor intends to rely on to support the contractor's position.~~

~~(2) After receiving a timely request meeting the criteria of subsection (1) of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. If the department and contractor cannot agree to a mutually convenient time, then department shall schedule the conference for no earlier than fourteen days after the contractor was contacted by the department to schedule the conference and no later than ninety days after a properly completed request is received, unless both parties agree, in writing, to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.~~

~~(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference and provide to the department fourteen days in advance of the conference:~~

~~(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes under WAC 388-96-113; and~~

~~(b) Any documentation the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree, in writing, to a specific later date.~~

~~(4) Regardless of whether agreement has been reached at the conference, the director of management services division, aging and adult services or designee shall furnish the contractor a written decision within sixty days after the conclusion of the last conference held or the receipt of all required documentation on the action or determination challenged by the contractor.~~

~~(5) A contractor has the right to an adjudicative proceeding to contest only issues raised in the administrative review conference and addressed in the director's administrative review decision.~~

~~(a) A contractor contesting the director's decision shall within twenty-eight days of receipt of the decision:~~

~~(i) File a written application for an adjudicative proceeding with the office of appeals;~~

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

~~(iii) State as specifically as practicable the issues and law involved;~~

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

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

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

~~(6) Subject to subsection (7) of this section adjudicative proceedings timely requested under subsection (5) of this section shall be dismissed unless within one calendar year after the department receives the application:~~

~~(a) All issues have been resolved by a written, signed settlement agreement between the contractor and the department; or~~

~~(b) The evidentiary record, including all briefing, has been closed.~~

~~(7) If a written settlement agreement resolving all the issues has not been signed by both the contractor and the department and if the evidentiary record, including all briefing, has not been closed upon the expiration of one year~~

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~~after the application was received by the department, the office of administrative hearings shall, within fourteen days after the expiration date:~~

~~(a) Issue a written order dismissing the adjudicative proceeding with prejudice to the contractor; or~~

~~(b) Issue a written order for a continuance for good cause described in the order for a period not to exceed ninety days.~~

~~Good cause as stated in the order must show the hearing was prevented from being held because of circumstances that were beyond the control of the contractor. Upon expiration of any extension period and without either a signed settlement agreement resolving all issues or a closed evidentiary record including all briefing, the office of administrative hearings shall either dismiss with prejudice to the contractor or continue for good cause as provided in this subsection. Orders for dismissal or continuance shall be subject to a petition for review timely filed with the department's office of appeals if desired by either party.~~)) The provisions of this section shall apply to administrative review of all nursing facility payment rates effective on and after July 1, 1995, and to administrative review of all audits and settlements issued on or after this date, regardless of what payment period the audit or settlement may cover. Contractors seeking to appeal or take exception to an action or determination of the department relating to the contractor's payment rate, audit or settlement, or otherwise affecting the level of payment to the contractor, shall request an administrative review conference in writing within twenty-eight calendar days after receiving notice of the department's action or determination. The contractor shall be deemed to have received notice five calendar days after the date of the notification letter, unless the contractor can provide proof of later receipt. The contractor's request for administrative review shall be signed by the contractor or by a partner, officer or authorized employee of the contractor, shall state the particular issues raised and include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review meeting the criteria in subsection (1) of this section, the department shall schedule an administrative review conference to be held within ninety calendar days after receiving the contractor's request. By agreement this time may be extended up to sixty additional days, but a conference shall not be scheduled or held beyond one hundred fifty calendar days after the department receives the contractor's request for administrative review. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply the additional documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a decision any documentation or information needed to decide the issues raised and the contractor must comply with such a request within fourteen calendar days after it is received. This period may be extended up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen day period. Issues which cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period shall be dismissed.

(4) The department shall, within sixty calendar days after the conclusion of the conference, render a decision in writing addressing the issues raised, unless the department is waiting for additional documentation or information requested from the contractor pursuant to subsection (3) of this section, in which case the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The decision letter shall include a notice of dismissal of all issues which cannot be decided due to missing documentation or information requested.

(5) A contractor seeking further review of a decision issued pursuant to subsection (4) of this section:

(a) Shall request, in writing, signed by one of the individuals authorized by subsection (1) of this section, within twenty-eight calendar days after receiving the department's decision letter, an adjudicative proceeding to be conducted by a presiding officer employed by the department's office of appeals; or

(b) Shall file, in the event the parties are able to stipulate to a record that can serve as the record for judicial review, a petition for judicial review pursuant to RCW 34.05.570(4).

The contractor shall be deemed to have received notice of the department's conference decision five calendar days after the date of the decision letter, unless the contractor can provide proof of later receipt.

(6) The scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed in the department's decision letter. The contractor shall be deemed to have waived all issues which could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and addressed in the department's decision letter.

(7) If the contractor wishes to have further review of any issue dismissed by the department for failure to supply needed or requested information or documentation, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-08 WAC and chapter 34.05 RCW. In the event of a conflict between the provisions of this chapter and chapter 388-08 WAC, the provisions of this chapter shall prevail. The presiding officer assigned by the department's office of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) The office of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5)(a), unless within two hundred seventy days after the office of appeals receives the application or request for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the office of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all

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rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended thirty additional days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the office of appeals in order to comply with the time limit set forth in this subsection.

(10) Any party dissatisfied with a decision or an order of dismissal of the office of appeals may file a petition for reconsideration within ten days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(11) A contractor dissatisfied with a decision or an order of dismissal of the office of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-96-216	Deadline for completion of audits.
WAC 388-96-753	Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-776, and 388-96-777.
WAC 388-96-902	Recoupment of undisputed overpayments.

WSR 95-16-002
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
(Fisheries)

[Order 95-89—Filed July 19, 1995, 4:10 p.m.]

Date of Adoption: July 19, 1995

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 220-24-020.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: A harvestable surplus of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans.

Effective Date of Rule: Immediately.

July 19, 1995
Ed Manary
for Robert Turner
Director

NEW SECTION

WAC 220-24-02000W Commercial salmon troll. Notwithstanding the provisions of WAC 220-24-010, 220-24-020 and WAC 220-24-030, effective immediately until further notice it is unlawful to fish for or possess salmon taken for commercial purposes with troll gear from those waters west of the Bonilla-Tatoosh, the Pacific Ocean and waters west of the Buoy 10 Line at the mouth of the Columbia River except as provided for in this section:

(1)(a) In waters north of Carroll Island (48°00'18" N) it is lawful to fish for and possess all salmon species other than chinook salmon on the following days:

August 5 through August 8
August 12 through August 15
August 19 through August 22
August 26 through August 29
September 2 through September 5, and
September 9 through September 12, 1995.

(b) All salmon taken during the four day open periods provided for in this subsection must be sold within 24 hours of the closing date of each fishery and must be sold within the open Salmon Management and Catch Reporting Area or in an immediately adjacent closed Salmon Management and Catch Reporting Area.

(c) Lawful terminal gear during the fishing period provided for in this subsection is restricted to flashers with barbless, bare, blued hooks or flashers with barbless hooks and pink hoochies 3 inches or less.

(d) No vessel may land or possess more than 80 coho salmon in each of the four day open periods provided for in this subsection.

(2) In the fisheries authorized in this section:

(a) No coho salmon smaller than 16 inches in total length may be taken or retained. Except that frozen salmon taken in this fishery may be landed pursuant to WAC 220-20-015.

(b) It is unlawful to fish for or possess salmon taken for commercial purposes with gear other than troll gear.

(c) It is unlawful to land salmon taken south of Cape Falcon in any port north of Cape Falcon, except when the waters north of Cape Falcon are closed. It is unlawful to take or retain chinook south of Cape Falcon that are less than 26 inches in length.

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WSR 95-16-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)
[Order 95-91—Filed July 19, 1995, 4:14 p.m.]

Date of Adoption: July 19, 1995.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500Z.

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: There is a harvestable quota of halibut available for a one-day fishery in Area 3 and that portion of Area 4 west of the Bonilla-Tatoosh line. This regulation is consistent with the International Halibut Commission.

Effective Date of Rule: Immediately.

July 19, 1995
Ed Manary
for Robert Turner
Director

NEW SECTION

WAC 220-56-25500A Halibut seasons. Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut for personal use except from:

(1) Catch Record Card Area 1 - Open immediately through September 30, 1995. Minimum size limit 32 inches in length.

(2) Catch Record Card Area 3 and that portion of Catch Record Card Area 4 west of the Bonilla-Tatoosh line - Open July 29, 1995 only. The area within a rectangle defined by these four corners is closed to halibut fishing at all times: 48 degrees 18 minutes N and 125 degrees 11 minutes W, 48 degrees 18 minutes N and 124 degrees 59 minutes W, 48 degrees 04 minutes N and 125 degrees 11 minutes W and 48 degrees 04 minutes N and 124 degrees 59 minutes W. Daily limit of one halibut no size limit.

(3) Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5 through 13: Open immediately through July 29, 1995. Open 12:01 a.m. Thursday through 11:59 p.m. Monday of each week during the open period (closed Tuesdays and Wednesdays).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500Z Halibut seasons. (95-90)

WSR 95-16-018
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3872—Filed July 21, 1995, 11:28 a.m., effective July 23, 1995, 12:01 a.m.]

Date of Adoption: July 21, 1995.

Purpose: New legislation requires the department to consider the parent's income if the child is in inpatient chemical dependency/mental health treatment for less than ninety days.

Citation of Existing Rules Affected by this Order: Amending WAC 388-506-0610 AFDC-related medical programs and 388-513-1315 Eligibility determination—Institutional.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 5439, Section 48.

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: Implements ESSB 5439, Section 48 concerning the financial responsibility of parent(s) of a child in inpatient chemical dependency/mental health treatment when determining Medicaid eligibility.

Effective Date of Rule: July 23, 1995, 12:01 a.m.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3847, filed 4/26/95, effective 5/27/95)

WAC 388-506-0610 AFDC-related medical programs. (1) When determining eligibility for medical programs, the department shall consider:

(a) The family unit living in the same household as including all family members when determining program relationship;

(b) A relative financially responsible only as follows:

(i) The natural or adoptive parent or stepparent to a child eighteen years of age or younger living in the same household; and

(ii) Spouse to spouse living in the same household.

(c) As a separate medical assistance unit (MAU) the following family member living in the same household, when a family member is not eligible for a categorically needy medical care program:

(i) A child with countable income;

(ii) A child with countable resources which render another family member ineligible for a Medicaid program;

(iii) A child in common of unmarried parents;

(iv) Each unmarried parent of a child in common with such parent's separate children, if any; or

(v) A nonresponsible caretaker relative.

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(d) Categorically related family members, other than those described under subsection (1)(c) of this section, in the same MAU; ((~~and~~))

(e) A pregnant minor as not living in the same household as her parent regardless of whether she lives with her parent. See subsections (4)(b) and (5)(b) of this section; and

(f) A child, seventeen years of age and younger, in inpatient chemical dependency treatment or inpatient mental health treatment as living in the parent's or legal guardian's household, unless:

(i) An assessment by the department or its designee indicates inpatient treatment is likely to last ninety consecutive days or more;

(ii) The child is in a court-ordered out-of-home care in accordance with chapter 13.34 RCW; or

(iii) The department determines the parents are not exercising responsibility for the care and control of the child.

(2) The department shall consider income and resources jointly for spouses and spouses' children living in the same household unless the exceptions in subsection (1)(c) of this section are met. See WAC 388-506-0620 for the financial responsibility requirements for SSI-related clients.

(3) When determining eligibility for medical care, the department shall consider the countable income or resources of a child available only to the child when an exception in subsection (1)(c) of this section is met.

(4) The department shall consider the income of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall:

(i) Allow a parent one hundred percent of the Federal Poverty Level (FPL) for the parent and other members of the parent's MAU; and

(ii) Allocate income in excess of one hundred percent of the FPL on a prorated basis to all children eighteen years of age or younger in separate MAUs for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's income is actually contributed to the child.

(5) The department shall consider the resources of a parent of a child eighteen years of age or younger:

(a) Living in the same household, available to the child whether or not actually contributed. The department shall ensure a parent's countable resources are:

(i) Prorated; and

(ii) Allocated in equal shares to:

(A) The parent; and

(B) Each person for whom the parent is financially responsible.

(b) Not living in the same household, only to the extent the parent's resources are actually contributed to the child.

(6) When determining medical care eligibility, the department shall not consider available, unless actually contributed to the client, the income and resources of a:

(a) Stepparent not legally liable for support of the stepchildren;

(b) Legal guardian other than the parent of the client;

(c) Caretaker other than the parent of the client;

(d) Alien sponsor;

(e) Sibling or child; or

(f) Spouse not living in the same household as the client.

(7) The department shall determine each MAU's medical care eligibility using:

(a) The MAU's countable income and resources;

(b) Household size for the number of persons in the MAU; and

(c) The income and resource standards that apply to the household size equal to the number of persons in the MAU.

(8) The department shall exempt one vehicle as described under WAC 388-216-2650, for each separate MAU that owns such vehicle.

(9) When the household contains an SSI-related family member who is ineligible for AFDC-related categorically needy Medicaid because of income or resources, that member shall be removed from the MAU and placed in a separate categorical assistance unit (CAU). The department shall determine eligibility for:

(a) The remaining members of the MAU without consideration of the income or resources of the SSI-related client; and

(b) The SSI-related member using SSI-related income and resource rules.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-513-1315 Eligibility determination—Institutional. (1) The department shall find a person residing in or expected to reside in a Medicaid-approved medical facility for at least thirty consecutive days eligible for institutional care, if the person:

(a) Is Title XVI-related with gross income:

(i) Equal to or less than three hundred percent of SSI Federal Benefit Amount. The department shall determine a person's eligibility under the categorically needy program; and

(ii) Greater than three hundred percent of SSI federal benefit amount. The department shall determine a person's eligibility under the limited casualty program—medically needy program as determined under WAC 388-513-1395.

(b) Does not have nonexcluded resources, under WAC 388-513-1360 and 388-513-1365, greater than limitations under WAC 388-513-1310 and 388-513-1395(2).

(c) Is not subject to a period of ineligibility for transferring of resources under WAC 388-513-1365.

(2) The department shall determine institutional facility residents eligible for institutional care when the amount of the resources in excess of the amount in WAC 388-513-1310 plus countable income are less than the nursing facility private rate plus verifiable recurring medical expenses.

(3) The department shall allocate a client's income and resources as described under WAC 388-513-1380.

(4) When both spouses are institutionalized, the department shall determine the eligibility of each spouse individually.

(5) The department shall determine eligibility for a person residing or expected to reside in a Medicaid-approved medical facility less than thirty consecutive days as for a noninstitutionalized person.

(6) ((~~Effective January 1, 1991,~~)) The department shall determine eligibility for an AFDC-related child under eighteen years of age residing in inpatient chemical depen-

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dency treatment or inpatient mental health treatment as described under WAC 388-506-0610 (1)(f).

(7) For an institutionalized person twenty years of age or under, the department shall not consider the income and resources of the parents available unless the income and resources are actually contributed.

(((~~7~~))) (8) The department shall not consider a person's transfer between medical institutions as a change in institutionalized status.

(((~~8~~))) (9) For the effect of a social absence from an institutional living arrangement, see WAC 388-88-115.

WSR 95-16-019
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3871—Filed July 21, 1995, 11:30 a.m., effective July 23, 1995]

Date of Adoption: July 21, 1995.

New WAC 388-46-110 Disqualification period for recipients convicted of unlawfully obtaining assistance.

Purpose: New rule affects general assistance and is intended to meet the requirements of a new section added to RCW 74.08.290. It provides that recipients of general assistance benefits who are convicted under RCW 74.08.331 will be ineligible for not less than six months for the first conviction, and not less than twelve months for a second or subsequent conviction.

Statutory Authority for Adoption: RCW 74.08.290.

Other Authority: SB 5652.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This rule is necessary to meet the intent of a new section added to RCW 74.08.290 which addresses the issue of welfare fraud.

Effective Date of Rule: July 23, 1995.

July 21, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

Chapter 388-46 WAC
RECIPIENT FRAUD((~~—REFERRAL TO PROSECUTOR~~))

NEW SECTION

WAC 388-46-110 Disqualification period for recipients convicted of unlawfully obtaining assistance. (1) A recipient convicted of unlawful practices in obtaining general assistance shall be disqualified from receiving further general assistance benefits.

(2) The disqualification shall apply only to convictions based on actions which occurred on or after July 23, 1995.

(3) The length of the disqualification shall be for a period to be determined by the court.

(4) The department shall terminate benefits to a recipient disqualified under this section following notice requirements specified under chapter 388-245 WAC.

WSR 95-16-040
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
(Fisheries)
[Order 95-93—Filed July 21, 1995, 4:52 p.m.]

Date of Adoption: July 21, 1995.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-38000A and 220-56-35000F; and amending WAC 220-56-380 and 220-56-350.

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 clams and oysters are available in the open areas. In the other areas the harvestable surplus of clams has been taken. Restrictions on daylight hours is necessary to prevent conflicts with neighboring private tidelands.

Effective Date of Rule: Immediately.

July 21, 1995
E. Manary
for Robert Turner
Director

NEW SECTION

WAC 220-56-35000G Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to harvest or possess clams, cockles, borers or mussels taken for personal use from the following tidelands during the times shown:

(A) Closed Areas:

(1) Potlatch (DNR - 270442) located immediately southeast of Potlatch State Park. The DNR tidelands are between two rows of orange flexible posts. - **Closed** until further notice.

(2) Potlatch State Park - **Closed** until further notice.

(2) Purdy County Park - **Closed** until further notice.

(3) Rendsland Creek (DNR) - **Closed** until further notice.

(4) Shine Tidelands State Park - **Closed** until further notice.

(5) South Indian Island County Park - **Closed** 12:01 a.m. August 1, 1995 until further notice.

(6) Winas Maylor - **Closed** until further notice.

(B) Open Area:

(1) Oak Bay County Park - **Open** until further notice.

(2) Quilcene Bay (WDFW tidelands) accessed by Linger Longer Road and Identified by signs and marker posts -

Open immediately through September 15, 1995. Open only half hour after official sunrise to sunset for the harvest of Littleneck, Manila Butter clams only.

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

NEW SECTION

WAC 220-56-38000B Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to harvest or possess oysters taken for personal use from the following tidelands except during the times shown:

(1) Potlatch State Park - **Open** until further notice.

(2) Quilcene Bay (WDFW tidelands) accessed by Linger Longer Road and identified by signs and marker posts - **Open** immediately through September 15, 1995. Open only one half hour after official sunrise to sunset.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-35000F	Clams other than razor clams—Areas and seasons. (95-84)
WAC 220-56-38000A	Oysters—Areas and seasons. (95-86)

WSR 95-16-043
EMERGENCY RULES
INSURANCE COMMISSIONER'S OFFICE
[Filed July 24, 1995, 8:53 a.m.]

Date of Adoption: July 24, 1995.

Purpose: To regulate the activities and contracts issued by viatical settlement providers and viatical settlement brokers; to set minimum standards for viatical settlement contracts; and to establish a method to determine when benefits are or are not reasonable in relation to rate, fee, or other compensation.

Citation of Existing Rules Affected by this Order: Insurance Commissioner Matter No. R 95-2.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010, and chapter 161, Laws of 1995.

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: Chapter 161, Laws of 1995 is effective July 23, 1995, and requires effectuation by these rules.

Effective Date of Rule: Immediately.

July 24, 1995
Krishna Fells
Chief of Staff

Chapter 284-97 WAC
VIATICAL SETTLEMENT REGULATION

NEW SECTION

WAC 284-97-010 Purpose, scope, and effective date. (1) The purpose of this chapter is to effectuate chapter 48.—RCW (sections 1 through 13, chapter 161, Laws of 1995), by establishing minimum standards and disclosure requirements to be met by viatical settlement providers and viatical settlement brokers with respect to viatical settlement contracts advertised, solicited, or issued for delivery in this state.

(2) Except as otherwise specifically provided, this chapter applies to every viatical settlement provider or viatical settlement broker as defined in RCW 48.—.—-(section 1, chapter 161, Laws of 1995), that transacts viatical settlement business in this state on or after July 23, 1995. This chapter also applies to every viatical settlement contract executed between a viator and a viatical settlement provider in this state on or after July 24, 1995.

(3) This regulation is not exclusive, and acts or omissions, whether or not specific in this chapter, may also be violations of other sections of the insurance code or other regulations promulgated thereunder.

NEW SECTION

WAC 284-97-015 Definitions. For purposes of this chapter:

(1) "Solicitation" means, for example; proposing, negotiating, signing, or doing any act in furtherance of making or proposing to make a viatical settlement contract. Solicitation specifically includes advertising by mail, use of the print or electronic media, telephone, or any other method of presenting, distributing, issuing, circulating, or permitting to be issued or circulated any information or material in connection with a viatical settlement contract.

(2) "Viatical settlement contract" has the meaning set forth at RCW 48.—.—(3) (section 1(3), chapter 161, Laws of 1995). The commissioner finds that the purchase of a life insurance policy or certificate is outside the scope of this chapter if the viatical settlement contract is entered into between the viator and a close friend or relative.

NEW SECTION

WAC 284-97-020 Licensing requirements for viatical settlement providers. (1) Beginning July 23, 1995, no individual, partnership, corporation, or other entity may act as a viatical settlement provider, or enter into or solicit a viatical settlement contract in this state unless it has first obtained a license from the commissioner.

(2) An initial application for licensing as a viatical settlement provider, or a subsequent application for reinstatement of a viatical settlement provider's license if the license has lapsed for more than three months, shall be accompanied by a licensing fee in the amount of two hundred fifty dollars. The annual renewal fee shall be twenty-five dollars, due and payable on or before July 1 of each year.

(3) The application for a license as a viatical settlement provider shall furnish all of the applicable following information, on a form prescribed by the commissioner:

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(a) The name of the applicant, its address, and organizational structure.

(b) Copies of its organizational documents, including but not limited to its: Articles of incorporation and any amendments thereto, certificate of incorporation and any amendments thereto, bylaws and any amendments thereto, partnership agreement and any amendments thereto, and articles of association and any amendments thereto.

(c) The identity of all: Stockholders holding ten percent or more of the voting securities; partners; corporate officers; trustees; if an association, all of the members; and parent and affiliate entities, together with a chart showing the relationship of the applicant to any parent, affiliated or subsidiary entities.

(d) A list of all stockholders holding ten percent or more of the voting securities, partners, and officers of any parent or affiliate entities.

(e) Biographical affidavits of all its officers, directors, partners, and members; (if an association).

(f) For domestic viatical settlement providers, fingerprint cards of all its officers, directors, trustees, partners, and members (if an association).

(g) A list of states in which the viatical settlement provider is licensed on the date of application, a copy of each effective license, and a list of the states in which it is or was doing business.

(h) A list of all business licenses from any level of government, for which the applicant, its officers, partners, trustees, and members (if an association), have applied, together with a certificate of incorporation from the Washington secretary of state, and a statement showing the current status of any such licenses, such as whether it has been revoked or suspended.

(i) A report stating whether any formal or informal regulatory action, by any level of government, is pending or has been taken against the applicant or its officers, directors, trustees, partners, or members (if an association).

(j) A report stating whether any criminal action or civil action has been taken, or is pending, against the applicant or its officers, directors, trustees, partners, or members (if an association).

(k) A copy of its most recent financial and operating reports, audited and unaudited.

(l) Copies of documents filed with the federal Securities and Exchange Commission and any applicable state securities regulator.

(m) A detailed plan of operations for the applicant's business, including but not limited to information regarding or identification of the following items:

(i) Escrow accounts and banks;

(ii) Advertising, brokerage, or distribution system to be used;

(iii) Marketing techniques to be used;

(iv) Marketing training program; and

(v) Contract offering and servicing facilities.

(n) Appointment of the commissioner to receive service of process and a designation of the person to whom the commissioner shall forward legal process.

(o) Such other information as the commissioner may reasonably require.

(4) To qualify for authority to transact business as a viatical settlement provider, the applicant must possess unimpaired capital, and thereafter maintain unimpaired capital, in the amount of not less than five hundred thousand dollars.

(5) Each viatical settlement provider holding a license in this state shall annually, on or before March 1 of each year, file with the commissioner an annual statement for the preceding calendar year. The annual statement shall be on a form prescribed by the commissioner.

(6) The commissioner may issue a temporary viatical settlement provider's license, that will expire no later than December 31, 1995, upon receipt and review of the application required in subsection (3) of this section. After reviewing the application, the commissioner may issue the viatical settlement provider's license, refuse to issue such license, or revoke the temporary viatical settlement provider's license.

NEW SECTION

WAC 284-97-030 Licensing requirements for viatical settlement brokers. On and after July 24, 1995, no person may act as a viatical settlement broker, or solicit, negotiate, or enter into viatical settlement contracts in this state, unless licensed as a viatical settlement broker by the commissioner. A viatical settlement broker shall be qualified as a life insurance agent and appointed as a viatical settlement broker by each viatical settlement provider represented.

(1) Each applicant for a viatical settlement broker's license shall:

(a) Complete an application form furnished by the commissioner. The form shall be accompanied by a license fee in the amount of one hundred dollars. Applicants shall answer inquiries concerning their identity, provide fingerprint cards, and supply information about personal and business history and experience.

(b) A viatical settlement broker shall be appointed by each viatical settlement provider he or she represents. An appointment request form and the appointment fee in the amount of twenty dollars shall be submitted with the application for licensing.

(c) Applicants for a firm or corporate license shall provide copies of articles of incorporation, partnership agreements, or other indicia of current legal status, as appropriate.

(d) Every individual who acts as a viatical settlement broker on behalf of a firm or corporation shall be licensed and affiliated with the entity represented prior to solicitation or negotiation of a viatical settlement contract. Each request by a firm or corporation for an affiliation certificate shall be accompanied by a twenty-dollar filing fee.

(e) Applicants for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any license in any state or U.S. territory.

(f) Prior to application for a resident viatical settlement broker's license, an applicant shall pass the life insurance agent's examination in this state, but need not be licensed as a life insurance agent.

(g) Nonresident applicants may be licensed as viatical settlement brokers. Each nonresident applicant shall provide satisfactory proof that he or she has successfully passed a life insurance agent's examination in a state and that no disciplinary action has resulted in suspension or revocation

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of any license in any state or U.S. territory. A licensed nonresident viatical settlement broker shall designate and authorize the commissioner as his or her agent for service of process and shall specify the person to whom the commissioner shall forward legal process.

(2) A person applying for a viatical settlement broker's license who is transacting viatical settlement business on the effective date of this chapter, may apply to the commissioner for a temporary resident or nonresident viatical settlement broker's license. A temporary license may be issued by the commissioner if the person is otherwise eligible for such license but has not taken and passed a life insurance agent's examination in a state. The temporary license issued by the commissioner shall expire no later than December 31, 1995. After review of the application, the commissioner may issue the viatical settlement broker's license, refuse to issue such license, or revoke the temporary viatical settlement broker's license.

(3) A viatical settlement broker's license is renewable every two years, upon payment of a renewal fee in the amount of one hundred dollars. A viatical settlement broker's license expires on the licensee's month and day of birth plus one year from the date the license is first issued, if an individual, or two years from the issue date in the case of a firm, company, or corporation. Failure to pay the renewal fee by the renewal date will automatically terminate the authority conferred by the license.

(4) Appointments and affiliations of a viatical settlement broker expire on July 1 plus one year from their issue dates and every two years thereafter, concurrently with the renewal date of the viatical settlement provider's license to which the appointment or affiliation is attached.

NEW SECTION

WAC 284-97-040 Contract and rate filing requirements for viatical settlement providers and viatical settlement brokers. Beginning September 1, 1995, all viatical settlement contracts shall be approved by the commissioner prior to use in this state.

(1) Every viatical settlement contract shall be in writing, in a type size of no less than ten points, and include the terms under which the viatical settlement provider will pay compensation (called by whatever name) to the viator in exchange for the assignment, transfer, sole devise, or bequest of the death benefit or assignment of ownership of the life insurance policy or certificate to the viatical settlement provider or viatical settlement broker.

(2) The viatical settlement contract shall provide for recision no less favorable to the viator than as set forth in RCW 48.—.— (3) and (4) (section 8(3) and (4), chapter 161, Laws of 1995). The recision provision shall appear on the first page of the contract. It shall provide that if the viator dies during the period of time allowed for recision, the contract will be terminated effective the date of application and the parties are returned to their original positions. The contract shall provide a method for giving notice of recision. If notice of recision is given by mail, it shall be deemed given when deposited in the United States mail, first class postage prepaid.

(3)(a) Each form of viatical settlement contract filed with the commissioner shall include all of the following:

(i) A viatical settlement contract, completed in John Doe fashion;

(ii) A copy of a viator's application, completed in John Doe fashion;

(iii) A copy of an "Insurance Commissioner's Worksheet" as described in WAC 284-97-050(3), completed in John Doe fashion;

(iv) A copy of any written disclosure material that will be provided to a viator as required by RCW 48.—.— (section 7, chapter 161, Laws of 1995); this written disclosure shall set forth the name, address, and telephone number of the viatical settlement provider; and

(v) A copy of the pricing memorandum.

(b) That portion of the disclosure notice warning of possible tax consequences and possible effects on eligibility for public funds shall be prominently displayed.

(c) The disclosure notice shall state that before entering into a viatical settlement contract, the viator should consult with his or her life insurance agent or life insurer to determine whether accelerated benefits are available.

(d) The disclosure notice shall contain the definition of accelerated benefits set forth in WAC 284-23-620(1)in its entirety.

(4) The viatical settlement contract shall specify any effect entering into the contract will have upon the continued availability of supplemental benefits or riders that are or may be attached to the life insurance policy that is the subject of the viatical settlement contract, including assigning the responsibility for the continued payment of premiums. The benefits and riders considered shall include, but need not be limited to, the following:

(a) Guaranteed insurability options;

(b) Accidental death benefits, or accidental death and dismemberment benefits;

(c) Disability income or loss of income protection;

(d) Waiver of premium or monthly deduction waiver; and

(e) Family, spousal, or children's riders or benefits.

(5) No viatical settlement contract may contain any limitation or restriction on the use of the proceeds by the viator.

NEW SECTION

WAC 284-97-050 Standards for evaluating reasonability of compensation. In order to assure that benefits offered to a viator are reasonable in relation to the rate, fee, or other compensation that is charged, any payout shall be no less than the greater of the amounts defined in subsections (1) and (2) of this section.

(1) Payouts shall be no less than the following percentage of the expected death benefit under the insurance policy, net of loans. The following are minimum standards and shall not be presumed to be proof of fairness as to any specific transaction.

(a) If the insured's life expectancy is less than twelve months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator shall be no less than seventy-five percent.

(b) If the insured's life expectancy is at least twelve months, but less than twenty-four months, then the percentage of the expected death benefit under the insurance policy,

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net of loans, to be received by the viator shall be no less than sixty-five percent.

(c) If the insured's life expectancy is at least twenty-four months, but less than thirty-six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator shall be no less than fifty percent.

(d) If the insured's life expectancy is at least thirty-six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator, shall be no less than thirty percent.

(2) Payouts shall be no less than the expected death benefit under the insurance policy, net of loans, reduced by the sum of the amounts described in (a), (b), and (c) of this subsection.

(a) The viatical settlement provider may retain the amounts it would be required to pay to the insurer to keep the policy in force during the period of time ending concurrently with the insured's life expectancy.

(b) The viatical settlement provider may retain an allowance of fifteen percent of the expected death benefit, net of loans, to provide for a risk charge and for its expenses and profit.

(c) The viatical settlement provider may retain an allowance for the time value of money. The interest rate to be used is no more than fifteen percent simple interest. The calculation shall be performed on the basis that the viatical settlement provider pays the present value of the expected death benefit under the insurance policy, net of loans, reduced by the amounts defined in (a) and (b) of this subsection. The payment to the viator shall reflect an interest adjustment for the period of time beginning when the viator is paid and ending concurrently with the insured's life expectancy.

(3) The viatical settlement company shall maintain for each viator, a copy of the "Insurance Commissioner's Worksheet" for ten years after the death of the viator, or recision of the contract. The "Insurance Commissioner's Worksheet" shall be signed by the viator and the viatical settlement provider. This worksheet shall include items (a) through (j) of this subsection.

(a) Line one shall state, "(1) Life expectancy (measured from the date the viator is paid) is n= _____months."

(b) Line two shall state, "(2) Death benefit proceeds expected from insurer is $_____."

(c) Line three shall state, "(3) Amount expected to be paid by company to insurer is $_____." The viatical settlement provider may substitute its name for the word "company."

(d) Line four shall state, "(4) Allowance for risk, expenses and profit, 15% of (2), is $_____."

(e) Line five shall state, "(5) Line (2), less (3) and less (4), is $_____."

(f) Line six shall state, "(6) Interest rate is I= ____%."

(g) Line seven shall state, "(7) Line (5), net of allowance for interest is (5)/[1+ .0125 x I x n]= $_____."

(h) Line eight shall state, "(8) Minimum percentage, 75%, 65%, or 50%, of (2) is $_____."

(i) Line nine shall state, "(9) Minimum amount required by the commissioner, the greater of (7) and (8), is $_____."

(j) Line ten shall state, "(10) Amount to be paid by company, no less than (9), is $_____." The viatical settlement provider may substitute its name for the word "company."

(4) The viatical settlement provider shall enclose with the submission of a viatical settlement contract form, and with the submission of a rate revision, for approval prior to use in this state, a pricing memorandum providing a description of the method and assumptions used in determining the value to be paid viators. At the time of submission of a pricing memorandum or at the time of submission of any subsequent supporting documentation, the viatical settlement provider may request the commissioner to withhold that material from public inspection in order to preserve trade secrets or prevent unfair competition, in accordance with RCW 48.02.120(3). Each page covered by such request shall be clearly marked "confidentiality requested." The memorandum shall include a description, which may use reasonable ranges, of the following:

(a) The procedure used to determine viator life expectancy including medical evaluation and use of health care professionals in such evaluation;

(b) The portion of the discount (difference between the death benefit of the life insurance policy or certificate and viatical settlement company payment) due to market value interest rate (current worth of money) and how this interest rate is determined;

(c) The portion of the discount due to agent or broker compensation paid by the viatical settlement company;

(d) The portion of the discount that is the viatical settlement provider's operation costs in connection with viatical settlements, including acquisition and maintenance cost and risk charge;

(e) The portion of the discount due to other overhead costs and profit margin;

(f) The effect, if any, that policy loans, surrender charges, and the net cash surrender value in the insurance plan have on the pricing determination;

(g) How provision is made in the settlement determination for future insurance plan premiums, dividends or excess amounts, if any; and

(h) What provision, if any, is made in the settlement determination for supplemental insurance benefits or riders.

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

WSR 95-16-045
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3873—Filed July 24, 1995, 12:01 p.m.]

Date of Adoption: July 24, 1995.

Purpose: Affects AFDC program, meets the requirements of ESSB 5244 which adds a new section to chapter 74.12 RCW. Notifies parents when AFDC has been approved for their child when the child is living with a nonparental relative and informs parents of the provisions of the Family Reconciliation Act under chapter 13.34A RCW. Releases the child's address and location to the parent upon

the parent's request unless there is a current investigation or pending case involving child abuse or neglect by the address requesting parent.

Citation of Existing Rules Affected by this Order: Adding new sections WAC 388-215-1130, 388-215-1140, 388-215-1150, 388-215-1160, and 388-215-1170 to chapter 388-215 WAC.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 5244.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Establishes when aid to families with dependent children (AFDC) is approved on behalf of a child living with a nonparental relative. The Department of Social and Health Services must make reasonable efforts to inform the parent with whom the child most recently lived of the AFDC authorization and advise them of provisions of the Family Reconciliation Act (chapter 13.34A RCW) and how to request the address and location of the child or safeguard same.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 5, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 5, amended 0, repealed 0.

Effective Date of Rule: Immediately.

July 24, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

NEW SECTION

WAC 388-215-1130 Living in the home of a relative of specified degree—Notification to parent of AFDC authorization. When AFDC has been authorized on behalf of a dependent child who is living with a nonparental relative of specified degree, the department shall make reasonable efforts to notify the parent with whom the child most recently resided that an application for AFDC on behalf of the child has been approved unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(1) The department shall notify the parent as soon as reasonably possible but no later than seven calendar days after the date of AFDC approval.

(2) The notification shall advise the parent of:

(a) The provisions of the family reconciliation act under chapter 13.34A RCW; and

(b) The right of the parent to be notified of the address and location of the child as provided under WAC 388-215-1140.

NEW SECTION

WAC 388-215-1140 Living in the home of a relative of specified degree—Request for address disclosure by child's parent. When AFDC has been approved for a child who is living with a nonparental caretaker relative, the address and location of the child may be given to the parent with whom the child most recently resided if the parent has legal custody of the child or a court has granted the parent visitation rights or residential time with the child.

(1) The department shall not release the address if:

(a) The department has determined, under WAC 388-215-1410, that the nonparental caretaker relative has good cause for refusing to cooperate with the department's child support agency in regard to enforcing the address requesting parent's child support obligation;

(b) A court order exists which restricts or limits the address requesting parent's right to contact or visit the child or the nonparental caretaker relative by imposing conditions to protect the caretaker relative or the child from harm;

(c) There is a current investigation or pending case involving abuse or neglect of any child by the address requesting parent under chapter 13.34 RCW; or

(d) There is a substantiated claim that the address requesting parent has abused or neglected any child.

(2) The department shall apply the following additional conditions with regard to a regard to the disclosure of a child's address and location under this section:

(a) The address requesting parent must comply with the requirements of WAC 388-215-1150 when submitting a request for disclosure;

(b) The department shall notify the child's caretaker relative of the request for disclosure and provide the relative an opportunity to demonstrate why the disclosure request should be denied following the requirements in WAC 388-215-1160; and

(c) The department shall respond to the address disclosure request following the requirements in WAC 388-215-1170.

NEW SECTION

WAC 388-215-1150 Living in the home of a relative of specified degree—Requirements for submitting a request for disclosure of a child's address. A parent requesting disclosure of a child's address and location under WAC 388-215-1140 shall submit the request in writing and in person, with satisfactory evidence of identity, at the department's community services office which is currently maintaining the child's case record.

(1) If the request is made by the parent's attorney, the department shall waive the provisions regarding submission in person with satisfactory evidence of identity;

(2) If the parent resides outside the state of Washington, the department shall waive the provision requiring submission in person if the parent:

(a) Submits a notarized request for disclosure; and

(b) Complies with the requirements of subsection (3) of this section.

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(3) If the request for disclosure is based upon a court order which grants the parent legal custody of the child or visitation rights or residential time with the child, the parent shall include the following with a request for disclosure of an address:

(a) A copy of the court order; and

(b) A sworn statement that the order has not been modified.

NEW SECTION

WAC 388-215-1160 Living in the home of a relative of specified degree—Notifying the caretaker relative of a request for disclosure of a child's address. Prior to disclosing the address and location of a child to the child's parent under WAC 388-215-1140, the department shall mail a notice to the last known address of the nonparental caretaker relative advising the relative that:

(1) A request for disclosure has been made by the child's parent; and

(2) The office will disclose the address to the parent after thirty days from the date of the notice, unless the caretaker relative:

(a) Provides proof of a pending court case involving abuse or neglect of a child by the parent requesting disclosure;

(b) Provides proof of a current investigation of allegations of abuse or neglect of a child by the parent requesting disclosure;

(c) Provides a copy of a court order which enjoins disclosure of the address or restricts the address requesting party's right to contact or visit the caretaker relative or the child by imposing conditions to protect the nonparental relative or the child from harm, including, but not limited to, temporary orders for protection under chapter 26.50 RCW; or

(d) Requests a fair hearing under chapter 388-08 WAC which ultimately results in a decision that disclosure must be denied because of the existence of one or more of the conditions listed in WAC 388-215-1140(1).

NEW SECTION

WAC 388-215-1170 Living in the home of a relative of specified degree—Responding to a request for disclosure of a child's address. The department shall respond to a parent's request for disclosure of a child's address made under WAC 388-215-1170 within thirty five days of receiving the request. The response will notify the parent:

(1) Of the child's address and location if such information may be disclosed under the requirements of WAC 388-215-1140;

(2) That the child's address and location may not be disclosed under the requirements of WAC 388-215-1140, including the reasons for denying the parent's request; or

(3) That a decision on address disclosure has not been made because:

(a) The nonparental caretaker relative has requested a fair hearing and a final hearing decision has not been entered; or

(b) The nonparental caretaker relative is claiming good cause for refusing to cooperate with the department's child support agency with regard to enforcing the address requesting parent's child support obligation and the department has not made a final determination on the relative's claim.

(4) When a decision on address disclosure has been delayed because of a pending fair hearing decision or good cause claim, the department shall notify the parent of the decision on address disclosure within ten calendar days of the date of the fair hearing decision or good cause claim determination.

WSR 95-16-046
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
(Fisheries)

[Order 95-94—Filed July 24, 1995, 3:55 p.m.]

Date of Adoption: July 24, 1995.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-57-16000B (95-77) and 220-57-16000C (95-94); and amending WAC 220-57-160.

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: Consistent with provisions of the 1995 Columbia River fall management agreement related to Snake River fall chinook harvest limitations.

Effective Date of Rule: Immediately.

July 24, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-57-16000C Columbia River. Notwithstanding the provisions of WAC 220-57-160, the following provisions apply to the Columbia River:

1) Effective immediately through August 15, 1995 it is unlawful to take, fish for or possess adult salmon in those waters of the Columbia River from the marker located approximately 1/2 mile upstream of Spring Creek (Ringold Hatchery rearing pond outlet) downstream to a boundary marker approximately 1/4 mile downstream of Ringold waterway outlet.

2) Effective August 1, 1995 until further notice, Bag Limit A; except that August 1, 1995 through August 31, 1995 it is unlawful to take, fish for or possess **chinook** salmon in that portion of the Columbia River from the Megler-Astoria Bridge upstream to the Highway 395 Bridge at Pasco.

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REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-57-16000B Columbia River. (95-77)

The following section of the Washington Administrative Code is repealed effective September 1, 1995:

WAC 220-57-16000C Columbia River. (95-94)

WSR 95-16-055
RESCISSION OF EMERGENCY RULES
INSURANCE COMMISSIONER'S OFFICE
[Filed July 26, 1995, 8:20 a.m.]

Date of Adoption: July 25, 1995.

Purpose: Repeal of emergency rules regarding viatical settlements adopted July 24, 1995. Corrected emergency rules will be adopted immediately.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-97-010 through 284-97-050. Insurance Commissioner Matter No. R 95-2.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010, and chapter 161, Laws of 1995.

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

Reasons for this Finding: Errors were made in the emergency rules adopted on July 24, 1995. Corrected emergency rules will be adopted immediately.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

July 25, 1995
Krishna Fells
Chief of Staff

WSR 95-16-056
EMERGENCY RULES
INSURANCE COMMISSIONER'S OFFICE
[Filed July 26, 1995, 8:24 a.m.]

Date of Adoption: July 25, 1995.

Purpose: To regulate the activities and contracts issued by viatical settlement providers and viatical settlement brokers; to set minimum standards for viatical settlement contracts; and to establish a method to determine when benefits are or are not reasonable in relation to the rate, fee, or other compensation.

Citation of Existing Rules Affected by this Order: Insurance Commissioner Matter No. R 95-2-A.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010, and chapter 161, Laws of 1995.

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

Reasons for this Finding: Chapter 161, Laws of 1995, was effective July 23, 1995, and requires effectuation by these rules. These rules, adopted July 25, 1995, replace similar rules adopted July 24, 1995, that contained errors.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 6, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

July 25, 1995
Krishna Fells
Chief of Staff

Chapter 284-97 WAC
VIATICAL SETTLEMENT REGULATION

NEW SECTION

WAC 284-97-010 Purpose, scope, and effective date. (1) The purpose of this chapter is to effectuate chapter 48.—RCW (sections 1 through 13, chapter 161, Laws of 1995), by establishing minimum standards and disclosure requirements to be met by viatical settlement providers and viatical settlement brokers with respect to viatical settlement contracts advertised, solicited, or issued for delivery in this state.

(2) Except as otherwise specifically provided, this chapter applies to every viatical settlement provider or viatical settlement broker as defined in RCW 48.—.—(section 1, chapter 161, Laws of 1995), that transacts viatical

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settlement business in this state on or after July 23, 1995. This chapter also applies to every viatical settlement contract executed between a viator and a viatical settlement provider in this state on or after July 24, 1995.

(3) This regulation is not exclusive, and acts or omissions, whether or not specific in this chapter, may also be violations of other sections of the insurance code or other regulations promulgated thereunder.

NEW SECTION

WAC 284-97-015 Definitions. For purposes of this chapter:

(1) "Solicitation" means, for example; proposing, negotiating, signing, or doing any act in furtherance of making or proposing to make a viatical settlement contract. Solicitation specifically includes advertising by mail, use of the print or electronic media, telephone, or any other method of presenting, distributing, issuing, circulating, or permitting to be issued or circulated any information or material in connection with a viatical settlement contract.

(2) "Viatical settlement contract" has the meaning set forth at RCW 48.—.—(3) (section 1(3), chapter 161, Laws of 1995). The commissioner finds that the purchase of a life insurance policy or certificate is outside the scope of this chapter if the viatical settlement contract is entered into between the viator and a close friend or relative.

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NEW SECTION

WAC 284-97-020 Licensing requirements for viatical settlement providers. (1) Beginning July 23, 1995, no individual, partnership, corporation, or other entity may act as a viatical settlement provider, or enter into or solicit a viatical settlement contract in this state unless it has first obtained a license from the commissioner.

(2) An initial application for licensing as a viatical settlement provider, or a subsequent application for reinstatement of a viatical settlement provider's license if the license has lapsed for more than three months, shall be accompanied by a licensing fee in the amount of two hundred fifty dollars. The annual renewal fee shall be twenty-five dollars, due and payable on or before July 1 of each year.

(3) The application for a license as a viatical settlement provider shall furnish all of the applicable following information, on a form prescribed by the commissioner:

(a) The name of the applicant, its address, and organizational structure.

(b) Copies of its organizational documents, including but not limited to its: Articles of incorporation and any amendments thereto, certificate of incorporation and any amendments thereto, bylaws and any amendments thereto, partnership agreement and any amendments thereto, and articles of association and any amendments thereto.

(c) The identity of all: Stockholders holding ten percent or more of the voting securities; partners; corporate officers; trustees; if an association, all of the members; and parent and affiliate entities, together with a chart showing the relationship of the applicant to any parent, affiliated or subsidiary entities.

(d) A list of all stockholders holding ten percent or more of the voting securities, partners, and officers of any parent or affiliate entities.

(e) Biographical affidavits of all its officers, directors, partners, and members; (if an association).

(f) For domestic viatical settlement providers, fingerprint cards of all its officers, directors, trustees, partners, and members (if an association).

(g) A list of states in which the viatical settlement provider is licensed on the date of application, a copy of each effective license, and a list of the states in which it is or was doing business.

(h) A list of all business licenses from any level of government, for which the applicant, its officers, partners, trustees, and members (if an association), have applied, together with a certificate of incorporation from the Washington secretary of state, and a statement showing the current status of any such licenses, such as whether it has been revoked or suspended.

(i) A report stating whether any formal or informal regulatory action, by any level of government, is pending or has been taken against the applicant or its officers, directors, trustees, partners, or members (if an association).

(j) A report stating whether any criminal action or civil action has been taken, or is pending, against the applicant or its officers, directors, trustees, partners, or members (if an association).

(k) A copy of its most recent financial and operating reports, audited and unaudited.

(l) Copies of documents filed with the federal Securities and Exchange Commission and any applicable state securities regulator.

(m) A detailed plan of operations for the applicant's business, including but not limited to information regarding or identification of the following items:

(i) Escrow accounts and banks;

(ii) Advertising, brokerage, or distribution system to be used;

(iii) Marketing techniques to be used;

(iv) Marketing training program; and

(v) Contract offering and servicing facilities.

(n) Appointment of the commissioner to receive service of process and a designation of the person to whom the commissioner shall forward legal process.

(o) Such other information as the commissioner may reasonably require.

(4) To qualify for authority to transact business as a viatical settlement provider, the applicant must possess unimpaired capital, and thereafter maintain unimpaired capital, in the amount of not less than five hundred thousand dollars.

(5) Each viatical settlement provider holding a license in this state shall annually, on or before March 1 of each year, file with the commissioner an annual statement for the preceding calendar year. The annual statement shall be on a form prescribed by the commissioner.

(6) The commissioner may issue a temporary viatical settlement provider's license, that will expire no later than December 31, 1995, upon receipt and review of the application required in subsection (3) of this section. After reviewing the application, the commissioner may issue the viatical

settlement provider's license, refuse to issue such license, or revoke the temporary viatical settlement provider's license.

NEW SECTION

WAC 284-97-030 Licensing requirements for viatical settlement brokers. On and after July 24, 1995, no person may act as a viatical settlement broker, or solicit, negotiate, or enter into viatical settlement contracts in this state, unless licensed as a viatical settlement broker by the commissioner. A viatical settlement broker shall be qualified as a life insurance agent and appointed as a viatical settlement broker by each viatical settlement provider represented.

(1) Each applicant for a viatical settlement broker's license shall:

(a) Complete an application form furnished by the commissioner. The form shall be accompanied by a license fee in the amount of one hundred dollars. Applicants shall answer inquiries concerning their identity, provide fingerprint cards, and supply information about personal and business history and experience.

(b) A viatical settlement broker shall be appointed by each viatical settlement provider he or she represents. An appointment request form and the appointment fee in the amount of twenty dollars shall be submitted with the application for licensing.

(c) Applicants for a firm or corporate license shall provide copies of articles of incorporation, partnership agreements, or other indicia of current legal status, as appropriate.

(d) Every individual who acts as a viatical settlement broker on behalf of a firm or corporation shall be licensed and affiliated with the entity represented prior to solicitation or negotiation of a viatical settlement contract. Each request by a firm or corporation for an affiliation certificate shall be accompanied by a twenty-dollar filing fee.

(e) Applicants for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any license in any state or U.S. territory.

(f) Prior to application for a resident viatical settlement broker's license, an applicant shall pass the life insurance agent's examination in this state, but need not be licensed as a life insurance agent.

(g) Nonresident applicants may be licensed as viatical settlement brokers. Each nonresident applicant shall provide satisfactory proof that he or she has successfully passed a life insurance agent's examination in a state and that no disciplinary action has resulted in suspension or revocation of any license in any state or U.S. territory. A licensed nonresident viatical settlement broker shall designate and authorize the commissioner as his or her agent for service of process and shall specify the person to whom the commissioner shall forward legal process.

(2) A person applying for a viatical settlement broker's license who is transacting viatical settlement business on the effective date of this chapter, may apply to the commissioner for a temporary resident or nonresident viatical settlement broker's license. A temporary license may be issued by the commissioner if the person is otherwise eligible for such license but has not taken and passed a life insurance agent's examination in a state. The temporary license issued by the commissioner shall expire no later than December 31, 1995. After review of the application, the commissioner may issue the viatical settlement broker's license, refuse to issue such license, or revoke the temporary viatical settlement broker's license.

(3) A viatical settlement broker's license is renewable every two years, upon payment of a renewal fee in the amount of one hundred dollars. A viatical settlement broker's license expires on the licensee's month and day of birth plus one year from the date the license is first issued, if an individual, or two years from the issue date in the case of a firm, company, or corporation. Failure to pay the renewal fee by the renewal date will automatically terminate the authority conferred by the license.

(4) Appointments and affiliations of a viatical settlement broker expire on July 1 plus one year from their issue dates and every two years thereafter, concurrently with the renewal date of the viatical settlement provider's license to which the appointment or affiliation is attached.

NEW SECTION

WAC 284-97-040 Contract and rate filing requirements for viatical settlement providers and viatical settlement brokers. Beginning September 1, 1995, all viatical settlement contracts shall be approved by the commissioner prior to use in this state.

(1) Every viatical settlement contract shall be in writing, in a type size of no less than ten points, and include the terms under which the viatical settlement provider will pay compensation (called by whatever name) to the viator in exchange for the assignment, transfer, sole devise, or bequest of the death benefit or assignment of ownership of the life insurance policy or certificate to the viatical settlement provider or viatical settlement broker.

(2) The viatical settlement contract shall provide for recision no less favorable to the viator than as set forth in RCW 48.—.— (3) and (4) (section 8(3) and (4), chapter 161, Laws of 1995). The recision provision shall appear on the first page of the contract. It shall provide that if the viator dies during the period of time allowed for recision, the contract will be terminated effective the date of application and the parties are returned to their original positions. The contract shall provide a method for giving notice of recision. If notice of recision is given by mail, it shall be deemed given when deposited in the United States mail, first class postage prepaid.

(3)(a) Each form of viatical settlement contract filed with the commissioner shall include all of the following:

(i) A viatical settlement contract, completed in John Doe fashion;

(ii) A copy of a viator's application, completed in John Doe fashion;

(iii) A copy of an "Insurance Commissioner's Worksheet" as described in WAC 284-97-050(3), completed in John Doe fashion;

(iv) A copy of any written disclosure material that will be provided to a viator as required by RCW 48.—.— (section 7, chapter 161, Laws of 1995); this written disclosure shall set forth the name, address, and telephone number of the viatical settlement provider; and

(v) A copy of the pricing memorandum.

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(b) That portion of the disclosure notice warning of possible tax consequences and possible effects on eligibility for public funds shall be prominently displayed.

(c) The disclosure notice shall state that before entering into a viatical settlement contract, the viator should consult with his or her life insurance agent or life insurer to determine whether accelerated benefits are available.

(d) The disclosure notice shall contain the definition of accelerated benefits set forth in WAC 284-23-620(1)in its entirety.

(4) The viatical settlement contract shall specify any effect entering into the contract will have upon the continued availability of supplemental benefits or riders that are or may be attached to the life insurance policy that is the subject of the viatical settlement contract, including assigning the responsibility for the continued payment of premiums. The benefits and riders considered shall include, but need not be limited to, the following:

(a) Guaranteed insurability options;

(b) Accidental death benefits, or accidental death and dismemberment benefits;

(c) Disability income or loss of income protection;

(d) Waiver of premium or monthly deduction waiver; and

(e) Family, spousal, or children's riders or benefits.

(5) No viatical settlement contract may contain any limitation or restriction on the use of the proceeds by the viator.

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NEW SECTION

WAC 284-97-050 Standards for evaluating reasonability of compensation. In order to assure that benefits offered to a viator are reasonable in relation to the rate, fee, or other compensation that is charged, any payout shall be no less than the greater of the amounts defined in subsections (1) and (2) of this section.

(1) Payouts shall be no less than the following percentage of the expected death benefit under the insurance policy, net of loans. The following are minimum standards and shall not be presumed to be proof of fairness as to any specific transaction.

(a) If the insured's life expectancy is less than twelve months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator shall be no less than seventy-five percent.

(b) If the insured's life expectancy is at least twelve months, but less than twenty-four months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator shall be no less than sixty-five percent.

(c) If the insured's life expectancy is at least twenty-four months, but less than thirty-six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator shall be no less than fifty percent.

(d) If the insured's life expectancy is at least thirty-six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the viator, shall be no less than thirty percent.

(2) Payouts shall be no less than the expected death benefit under the insurance policy, net of loans, reduced by the sum of the amounts described in (a), (b), and (c) of this subsection.

(a) The viatical settlement provider may retain the amounts it would be required to pay to the insurer to keep the policy in force during the period of time ending concurrently with the insured's life expectancy.

(b) The viatical settlement provider may retain an allowance of fifteen percent of the expected death benefit, net of loans, to provide for a risk charge and for its expenses and profit.

(c) The viatical settlement provider may retain an allowance for the time value of money. The interest rate to be used is fifteen percent simple interest. The calculation shall be performed on the basis that the viatical settlement provider pays the present value of the expected death benefit under the insurance policy, net of loans, reduced by the amounts defined in (a) and (b) of this subsection. The payment to the viator shall reflect an interest adjustment for the period of time beginning when the viator is paid and ending concurrently with the insured's life expectancy.

(3) The viatical settlement provider shall maintain for each viator, a document bearing the title, "Insurance Commissioner's Worksheet" for ten years after the death of the viator, or recision of the contract. The viatical settlement contract shall provide that the viator may at any time obtain upon request, without charge, a copy of the "Insurance Commissioner's Worksheet," the purpose of which is to assure that benefits comply with this section. This provision shall appear on the same page or page following the first occurrence of the statement of the amount to be paid to the viator. In addition to identifying the insured, the "Insurance Commissioner's Worksheet" shall be dated and shall include the text shown in items (a) through (j) of this subsection.

(a) Line one shall state, "(1) Life expectancy (measured from the date the viator is paid) is n= _____months."

(b) Line two shall state, "(2) Death benefit proceeds expected from insurer is $_____."

(c) Line three shall state, "(3) Amount expected to be paid by company to insurer is $_____." The viatical settlement provider may substitute its name for the word "company."

(d) Line four shall state, "(4) Allowance for risk, expenses and profit, 15% of (2), is $_____."

(e) Line five shall state, "(5) Line (2), less (3) and less (4), is $_____."

(f) Line six shall state, "(6) Interest rate is 15%."

(g) Line seven shall state, "(7) Line (5), net of allowance for interest is (5)/[1+ .0125 x n]= $_____."

(h) Line eight shall state, "(8) Minimum percentage, 75%, 65%, 50%, or 30%, of (2) is $_____."

(i) Line nine shall state, "(9) Minimum amount required by the commissioner, the greater of (7) and (8), is $_____."

(j) Line ten shall state, "(10) Amount to be paid by company, no less than (9), is $_____." The viatical settlement provider may substitute its name for the word "company."

(4) The viatical settlement provider shall enclose with the submission of a viatical settlement contract form, and with the submission of a rate revision, for approval prior to use in this state, a pricing memorandum providing a description of the method and assumptions used in determining the value to be paid viators. At the time of submission of a

pricing memorandum or at the time of submission of any subsequent supporting documentation, the viatical settlement provider may request the commissioner to withhold that material from public inspection in order to preserve trade secrets or prevent unfair competition, in accordance with RCW 48.02.120(3). Each page covered by such request shall be clearly marked "confidentiality requested." The memorandum shall include a description, which may use reasonable ranges, of the following:

(a) The procedure used to determine viator life expectancy including medical evaluation and use of health care professionals in such evaluation;

(b) The portion of the discount (difference between the death benefit of the life insurance policy or certificate and viatical settlement company payment) due to market value interest rate (current worth of money) and how this interest rate is determined;

(c) The portion of the discount due to agent or broker compensation paid by the viatical settlement company;

(d) The portion of the discount that is the viatical settlement provider's operation costs in connection with viatical settlements, including acquisition and maintenance cost and risk charge;

(e) The portion of the discount due to other overhead costs and profit margin;

(f) The effect, if any, that policy loans, surrender charges, and the net cash surrender value in the insurance plan have on the pricing determination;

(g) How provision is made in the settlement determination for future insurance plan premiums, dividends or excess amounts, if any; and

(h) What provision, if any, is made in the settlement determination for supplemental insurance benefits or riders.

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

WSR 95-16-065
EMERGENCY RULES
LIQUOR CONTROL BOARD
[Filed July 28, 1995, 8:42 a.m.]

Date of Adoption: July 26, 1995.

Purpose: To bring existing regulations into compliance with statutory changes made during the 1995 legislative session following adoption of HB 1060 (chapter 232, Laws of 1995). All changes delete the reference to "transfers" of liquor licenses.

Citation of Existing Rules Affected by this Order: Amending WAC 314-12-020, 314-12-025, 314-12-035, 314-12-070, 314-12-080, 314-70-101 and 314-70-030.

Statutory Authority for Adoption: RCW 66.08.030.

Other Authority: Chapter 232, Laws of 1995 (HB 1060).

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 eliminate confusion or misunderstanding on the part of applicants for liquor licenses or existing licensees seeking modifications to licenses, it is necessary to adopt the changes on an emergency basis and maintain an orderly transition in the application process.

Effective Date of Rule: Immediately.

July 26, 1995
Joe McGavick
Chair

AMENDATORY SECTION (Amending WSR 93-15-024, filed 7/12/93, effective 8/12/93)

WAC 314-12-020 Applicants—Qualifications—Fingerprinting—Criminal history record information checks—Continuing conditions—Agreements—Reconsideration of denied applications. (1) Where a married person is an applicant for, or holder of a license, the spouse of such applicant, if the parties are maintaining a marital community, shall be required to have the same qualifications as the applicant.

(2) The board may require, as a condition precedent to the original issuance ((~~or transfer~~)) of any annual license, fingerprinting and criminal history record information checks on any person not previously licensed by the board. In addition to the applicant, fingerprinting and criminal history record information checks may be required of the applicant's spouse. In the case of a corporation, fingerprinting and criminal history record information checks may be required of its present and any subsequent officers, manager, and stockholders who hold more than ten percent of the total issued and outstanding stock of the applicant corporation if such persons have not previously had their fingerprints recorded with the board. In the case of a partnership, fingerprinting and criminal history record information checks may be required of all general partners and their spouses. Such fingerprints as are required by the board shall be submitted on forms provided by the board to the Washington state identification section of the Washington state patrol and to the identification division of the Federal Bureau of Investigation in order that these agencies may search their records for prior arrests and convictions of the individuals fingerprinted. The applicant shall give full cooperation to the board and shall assist the board in all aspects of the fingerprinting and criminal history record information check. The applicant may be required to pay a minimal fee to the agency which performs the fingerprinting and criminal history process.

(3) The restrictions on license issuance specified in RCW 66.24.010(2) shall be construed to be continuing conditions for retaining an existing license and any licensed person who ceases to be eligible for issuance of a license under RCW 66.44.010(2) shall also cease to be eligible to hold any license already issued.

(4) An applicant for any license or permit issued by the liquor control board, who employs an attorney or agent in connection with an application for such license or permit, shall, upon request, submit in writing the entire agreement between such applicant for license or permit, and the

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attorney or agent. No part of any compensation agreed upon, paid or received shall in any manner be contingent upon the outcome of the matter before said board. In the event the compensation agreed upon, paid or received, is determined to be excessive, the board reserves the right to refuse to consider the application for such license or permit.

(5) The board, in considering an application for a license, may require, in addition to all other information requested concerning the proposed licensed premises (see WAC 314-12-035), that the applicant justify the issuance of the license sought based on an analysis of population trends compared to licenses in the area, any uniqueness of the proposed operation, any unusual circumstances present, plus any other information the applicant(s) may feel will justify the issuance of the license sought.

(6) The board may, at its discretion and for good cause shown, reconsider a denied application upon receipt of new information within sixty days of the original denial date. Such reconsiderations are not considered part of the normal license application procedure and must be justified on an individual basis. Should the board determine to reconsider a denied application, notice of such reconsideration shall be given to those persons and/or entities entitled to receive notice of an original license application pursuant to RCW 66.24.010(8). Such notice shall be given at least twenty days prior to final determination on the reconsideration. Additionally, at the same time the notice is given, a press release will be issued informing the public of the impending reconsideration.

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AMENDATORY SECTION (Amending WSR 93-10-070, filed 5/3/93, effective 6/3/93)

WAC 314-12-025 Applicants for temporary licenses—Fee—Who qualifies. A person who has submitted ((~~a transfer~~)) application for a retail or wholesale liquor license in accordance with RCW 66.24.010 and WAC 314-12-070, and who has demonstrated to the satisfaction of the board that an emergency situation exists, or who submits all initially required documents which appear to be complete and signed, may apply for, and be issued, a temporary license to be effective immediately upon issuance under the following conditions:

(1) A fee of fifty dollars shall be submitted with the application for a temporary license.

(2) For the purposes of this section "emergency situation" shall include death or incapacity of the seller, foreclosure, divorce, or other situation which requires the buyer to assume control of the business before the application can be fully processed and approved.

(3) For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

(4) For the purposes of this section, "wholesale liquor license" shall include all classes of liquor licenses held in conjunction with those wholesale licenses authorized by RCW 66.24.200 and 66.24.250.

(5) The privilege of having a temporary license issued upon an application for ((~~a transfer of~~)) license does not apply to breweries or wineries, even though these licensees have limited wholesale and retail privileges under their manufacturers' licenses.

AMENDATORY SECTION (Amending WSR 91-22-114, filed 11/6/91, effective 12/7/91)

WAC 314-12-035 Furnishing of information and/or documentation to the board. (1) In order to facilitate the administration and/or enforcement of RCW 66.24.010, licensees, applicants for licenses, or the agents or representatives thereof shall, upon request by the board, furnish to the board copies of all documents affecting the ownership and/or proposed operation of the premises licensed or sought to be licensed. These documents may be required with the original license application, with any additional application ((~~for transfer of license~~)), and at such other times as may be requested by the board. Licensees, applicants for licenses, or the agents or representatives thereof, shall furnish along with these documents a signed written summary of any oral agreements which affect the ownership and/or proposed operation of the premises licensed, or sought to be licensed. Failure or refusal to furnish said requested documentation will be good and sufficient cause for denial of any application in support of which the documentation was requested, and will be good and sufficient cause for revocation of any license held by a licensee who fails or refuses to furnish the said requested documentation.

(2) Written information and/or documentation requested by the board from any person for the purpose of administering and/or enforcing RCW 66.24.010, any person furnishing written information and/or documentation requested by the board may be required to submit an affidavit on a form prescribed by the board, which shall be signed by the person submitting the information, given under oath subject to the penalties of perjury, and certifying that all information and/or documentation being furnished is true, accurate and complete.

AMENDATORY SECTION (Amending WSR 90-24-008, filed 11/27/90, effective 12/28/90)

WAC 314-12-070 ((~~Transfer of licenses.~~)) Applications for currently licensed locations. (1) No ((~~transfer of~~)) application for any license shall be made except in conformance with RCW 66.24.010, and subject to the following conditions:

(a) ((~~The holder of the license shall execute an assignment and transfer upon a form prescribed by the board, and the assignee and transferee shall then make application for approval of such assignment and transfer;~~

~~(b)~~)) Except as authorized by WAC 314-12-025, the ((~~transferee~~)) license applicant shall not take possession of the premises, nor exercise any of the privileges of a licensee, nor shall such ((~~assignment and transfer~~)) application be effective until the board shall have approved the same;

(((~~c~~))) (b) In approving any ((~~assignment and transfer of~~)) license((~~s~~)), the board reserves the right to impose special conditions as to the future connection of the former licensee ((~~[or] [of]~~)) or any of his employees with the licensed business as in its judgment the circumstances may justify;

(((~~d~~))) (c) A change of trade name may be made coincident with the ((~~transfer~~)) issuance of the license without any additional fee.

(2) The sale of a partnership interest or any change in the partners, either by withdrawal or addition or otherwise,

shall be considered ((~~an assignment and transfer of the licenses held by the partnership~~)) a change of ownership and subject to the applicable regulations ((~~applicable to assignment and transfer of licenses~~)).

(3) If the licensee is a corporation, ((~~[whether as sole licensee or in conjunction with other entities,]~~)) whether as sole licensee or in conjunction with other entities, a change in ownership of any stock shall be deemed a ((~~[corporate change, not a] transfer of a license[.]~~)) corporate change. The licensed corporation shall report to and obtain written approval from the board, for any proposed change in principal officers and/or the proposed sale of more than ten percent of the corporation's outstanding and/or issued stock before any such changes are made. The board may inquire into all matters in connection with any such sale of stock or proposed change in officers. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.

(4) For purposes of this regulation:

(a) "Principal officer" shall mean the president, vice president, secretary, and treasurer, or the equivalent in title, for a publicly traded corporation, and president, vice president, secretary, treasurer, or the equivalent in title, and all other officers who hold more than ten percent of the corporate stock, for a privately held corporation.

(b) The "proposed sale of more than ten percent of the stock" will be calculated as a cumulative total and must be reported to the board when the accumulation of stock transfers or newly issued stock totals more than ten percent of the outstanding and/or issued stock of the licensed corporation.

(5) If a licensee has an unresolved violation charge pending, no action will be taken by the board on an application ((~~to transfer the liquor license~~)) to another until such time as a final disposition has been made of the pending violation charge.

AMENDATORY SECTION (Amending WSR 92-21-061, filed 10/19/92, effective 11/19/92)

WAC 314-12-080 Limitation on ((~~transfers and~~)) reapplications. ((~~(1) Except as provided herein, no application for transfer of any license shall be made for a period of ninety days following the issuance or transfer of such license.~~

~~(2) This limitation shall not apply in any of the circumstances set forth in WAC 314-12-060.~~

~~(3) In the event of the withdrawal of a partner, the license may be transferred to the remaining partner or partners within the prohibited period.~~

~~(4)~~)) Unless otherwise approved by the board no reapplication for a license shall be made within a period of one year following a denial of any license application.

AMENDATORY SECTION (Amending Order 109, Resolution No. 118, filed 8/9/82)

WAC 314-70-010 Sale by Class H licensee of liquor stock after discontinuance of business. Notwithstanding any other provision of Title 66 RCW or Title 314 WAC, a Class H licensee who permanently discontinues business for any reason shall dispose of the salable unopened liquor remaining in stock by sale to the board of the items originally purchased from the board. The board will pay the total amount listed in the official price list then in effect, less the Class H discount and tax exemption expressed as a percent of the total price and the percent of total expenses assigned to the merchandise division to gross sales as reported on the profit and loss statement in the last published annual report of the board. Combined percentages will be rounded up to a whole percent: *Provided, however,* That in the case of a ((~~transfer of license~~)) sale of business with a Class H licensee, after obtaining the approval of the board and under the supervision of a representative of the board, may sell the entire inventory of liquor to the incoming licensee at a negotiated price.

AMENDATORY SECTION (Amending Order 109, Resolution No. 118, filed 8/9/82)

WAC 314-70-030 Purchases by Class H licensee of certain liquor stocks. Notwithstanding any other provision of Title 66 RCW or Title 314 WAC, a Class H licensee in conjunction with ((~~a transfer of license~~)) the purchase of a licensed business may purchase, and place into its regular stock, salable liquor as provided in WAC 314-70-010. Such liquor shall be treated for purposes of Title 66 RCW and Title 314 WAC as if it had been purchased from the board pursuant to RCW 66.24.440.

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WSR 95-16-071
EMERGENCY RULES
DEPARTMENT OF TRANSPORTATION
[Filed July 28, 1995, 3:40 p.m.]

Date of Adoption: July 28, 1995.

Purpose: A revision of WAC 468-300-010 to enable a pilot program to become permanent.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

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

Reasons for this Finding: Due to timelines this action will enable a pilot program to become permanent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: Immediately.

July 28, 1995
S. A. Moon
Deputy Director

AMENDATORY SECTION (Amending Order 77, filed 8/25/94, effective 9/25/94)

WAC 468-300-010 Ferry passenger tolls.

Effective 03:00 a.m. October 9, 1994

ROUTES	Full Fare	Half Fare	Frequent User Ticket Book 20 Rides[1]	Monthly Pass[5]	Bicycle Surcharge[2] @[6]
Via Passenger-Only Ferry *Seattle-Vashon *Seattle-Southworth *Seattle-Bremerton	3.50	1.75	21.00	44.10	N/C
Via Auto Ferry *Fauntleroy-Southworth *Seattle-Bremerton *Seattle-Winslow *Edmonds-Kingston	3.50	1.75	21.00	44.10	0.50
Port Townsend-Keystone	1.75	0.90	21.00	N/A	0.25
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah *Mukilteo-Clinton	2.30	1.15	13.70	29.00	0.50
*Anacortes to Lopez Shaw, Orcas or Friday Harbor	4.95	2.50	29.60	N/A	2.75
Between Lopez, Shaw, Orcas and Friday Harbor[4]	N/C	N/C	N/C	N/A	N/C
International Travel					
Anacortes to Sidney and Sidney to all destinations	6.90	3.45	N/A	N/A	4.50
From Lopez, Shaw, Orcas and Friday Harbor to Sidney@	1.75	1.00	N/A	N/A	1.75
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)[3]	8.65	4.45	N/A	N/A	6.25

@ These fares rounded to the nearest multiple of $ .25.

* These routes operate as a one-point toll collection system.

[1]FREQUENT USER TICKETS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage.

[2]BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

[3]ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the Islands served.

[4]INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

[5]MONTHLY PASS - A monthly passenger pass is available for all routes except: Anacortes/San Juan Island/Sidney and Port Townsend/Keystone, as a pilot program. The pass is available through some local employers. It is a flash pass valid for the month printed on the pass and will be presented to Washington state ferries staff whenever a passenger fare is collected. This pass is based on 21 days of passenger travel with a 40% discount.

[6]BICYCLE PASS - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney ((~~and Port Townsend/Keystone, as a 1 year pilot program~~)) for a $10.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

HALF FARE - Children under five years of age will be carried free when accompanied by parent or guardian. Children five through eleven years of age will be charged half-fare. Children twelve years of age will be charged full-fare.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced

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Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

FERRY/TRANSIT PASS - A combination ferry-transit monthly pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 21 days of passenger travel at a 50% discount.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the secretary of transportation for a specific discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of $1 per walk-on group or per vehicle of students and/or advisors and staff. Walk-on groups and private vehicles require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is $2 on routes where one-point toll systems are in effect.

WSR 95-16-087
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3875—Filed July 31, 1995, 10:16 a.m.]

Date of Adoption: July 28, 1995.

Purpose: Provides an appeal process for persons disqualified from employment in a child care facility because of a finding of allegation of child abuse or neglect. New WAC 388-330-035 Appeal of disqualification.

Citation of Existing Rules Affected by this Order: Amending WAC 388-330-010 Purpose and authority.

Statutory Authority for Adoption: RCW 74.15.030.

Other Authority: The Bill of Rights.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Such persons may have a constitutional right to a hearing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 1, amended 1, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 1, amended 1, repealed 0.

Effective Date of Rule: Immediately.

July 31, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3534, filed 7/13/93, effective 8/13/93)

WAC 388-330-010 Purpose and authority. This chapter establishes policy within the department of social and health services for conducting ((~~criminal history portions of~~)) background inquiries and checks of Washington state ((~~patrol's~~)) child abuse information files on those licensed or authorized by the department to care for children or developmentally disabled persons. Such inquiries are required under RCW 74.15.030.

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WAC 388-330-035 Appeal of disqualification. (1) Whenever a person in good faith desires employment in an agency licensed under chapter 74.15 RCW, the person, prior to applying for employment, upon request, may receive from the department an informal meeting on whether the person is disqualified from employment for not meeting the minimum requirements pursuant to chapter 74.15 RCW or rules promulgated thereunder. If the department during employment or at the time of employment, determines that a person is disqualified from employment with a child care agency for not meeting minimum requirements under chapter 74.15 RCW or rules promulgated thereunder, the department shall give written notice of disqualification to the person. The notice shall state what the person is disqualified from doing, the reasons for the disqualification, and the applicable law under which the person is disqualified.

(2) The procedures in RCW 43.20A.205 shall apply whenever the department issues a notice of disqualification to a person. If the disqualified person requests an adjudicative proceeding, the department shall have the burden of proving disqualification by a preponderance of the evidence.

(3) A licensee under chapter 74.15 RCW may not allow a person disqualified under subsection (1) of this section to be employed by or associate with the licensee's agency. Disqualification of a person may not be contested by a licensee.

(4) The provisions of this section do not preclude the department from taking any action against a licensee in accordance with chapter 74.15 RCW or rules promulgated thereunder.

(5) If a notice of disqualification is based on a prior department finding of abuse or neglect, and after a fair hearing it is determined that the allegations are not supported

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by a preponderance of the evidence, the department's records shall be supplemented to so state.

(6) The department in accordance with WAC 388-330-030 may remove a disqualification based on conviction of a crime.

The department may remove a disqualification based on a reason other than conviction of a crime if the disqualified person demonstrates by clear, cogent, and convincing evidence that the person is sufficiently rehabilitated to warrant public trust and to comply with the requirements of chapter 74.15 RCW or the rules promulgated thereunder.

WSR 95-16-094
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
(Wildlife)

[Filed July 31, 1995, 3:02 p.m.]

Date of Adoption: July 28, 1995.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C, 232-28-61900D, 232-28-61900F, and 232-28-61900H; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.040.

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

Reasons for this Finding: With the low numbers of returning summer steelhead to the Reiter Pond facility, an extension of the regulation closing the area around the facility is being requested. As of July 17, 1995, only 68 of the 500 summer steelhead needed for broodstock have entered the facility. It is anticipated that the August 1 opening will make it difficult to reach the broodstock goal. Summer-run returns to date have been very poor. The concern is that not enough adults may be trapped at the Reiter Pond facility to supply the full summer-run program for the Puget Sound area. Reiter is the source for the entire program. The proposal extends the closure on the Skykomish from 1400' upstream to 1000' downstream of the Reiter Ponds outlet through September 30. It could be opened earlier if it is anticipated that 500 adults would be collected prior to September 30. Since 1992, the first year of the closure in front of the ponds, the trap has been open through August. The percent of the total trapped by July 7 each year varied from 11 percent to 28 percent. This means between 150 and 375 fish on hand may be expected by September 1 without extending the closure. As of July 7, 1995, there had been 41 adults trapped. Some fish are trapped each year during the fall if the trap is left open. With a poor run it is unlikely that 100 fish would be trapped without a closure.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

July 31, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 232-28-61900H Regional exceptions to permanent game fish rules—Skykomish River. Notwithstanding the provisions of WAC 232-28-619, the following regulations apply to the Skykomish River from the mouth of the Sultan River to the forks:

Skykomish River, from the mouth of the Sultan River to the forks: June 1 through March 31 season. Trout, minimum length fourteen inches. Wild steelhead release March 1 through March 31. Dolly Varden/Bull Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Fishing from any floating device prohibited in the area one thousand five hundred feet upstream and one thousand feet downstream of the outlet at Skykomish Rearing Ponds and that same area is closed to fishing **through September 30, 1995.**

REPEALER

The following sections of the Washington Administrative Code are repealed effective immediately:

WAC 232-28-61900C	Washington game fish seasons and daily limits. (95-32)
WAC 232-28-61900D	Washington game fish seasons and daily limits. (95-33)
WAC 232-28-61900F	Regional exceptions to permanent game fish rules. (95-72)

The following section of the Washington Administrative Code is repealed effective October 1, 1995:

WAC 232-28-61900H	Washington game fish seasons and daily limits. (95-90)

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WSR 95-16-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)
[Filed July 31, 1995, 3:07 p.m.]

Date of Adoption: July 28, 1995.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-57-43500J; and amending WAC 220-57-435.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: The closure is necessary to protect depressed stocks of game fish.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

July 31, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-57-43500J Skykomish River. Notwithstanding the provisions of WAC 220-56-435, effective immediately through September 30, 1995 it is unlawful to fish for or possess salmon in those waters of the Skykomish River from the mouth of the Sultan River to the forks.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 1995:

WAC 220-57-43500J Skykomish River. (95-92)

WSR 95-16-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE
(Fisheries)
[Order 95-95—Filed July 31, 1995, 3:10 p.m., effective August 1, 1995]

Date of Adoption: July 28, 1995.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000S; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: This regulation is necessary to maintain consistency with regulations adopted by the National Marine Fisheries Service pursuant to the Pacific Fisheries Management Council.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: August 1, 1995.

July 28, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-44-05000T Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective 12:01 a.m. August 1, 1995 until further notice it is unlawful to possess, transport through the waters of the state or land in any Washington State port bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 29, 58B, 59A, 59B, 60A, 61, 62, or 63 in excess of the amounts or less than the minimum sizes shown below for the following species:

1. The following definitions apply to this section:

a. Cumulative limit - A cumulative limit is the maximum amount of fish that may be taken and retained, possessed or landed per vessel per calendar month, without a limit on the number of landings or trips. The cumulative limit includes all fish harvested by a vessel during the

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month, whether taken in limited entry or open access fisheries. Once a cumulative limit has been achieved, am operator may begin fishing on the next cumulative limit so long as the fish are not landed until after the beginning of the next cumulative limit.

b. 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.

c. Groundfish limited entry fishery - Fishing activity by a trawl, setline or bottomfish pot equipped vessel that has received a federal limited entry permit issued by the National Marine Fisheries Service endorsed for the qualifying gear type.

d. Groundfish open access fishery - Fishing activity by a vessel equipped with setline or bottomfish pot gear that has not received a federal limited entry permit, or a vessel using gear other than trawl, setline or bottomfish pot gear.

e. Vessel trip - A vessel trip is defined as having occurred upon the initiation of transfer of catch from a fishing vessel.

f. 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.

g. Dressed length - The dressed length of a fish is the distance from the anterior insertion of the first dorsal fin to the tip of the tail.

2. Groundfish limited entry fishery limits. The following limits apply to the groundfish limited entry fishery in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, and 63, and apply to all listed bottomfish species and species complexes taken in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area 29:

a. **Pacific ocean perch** - Cumulative limit of 6,000 pounds. No minimum size.

b. **Widow rockfish** - Cumulative limit of 45,000 pounds. No minimum size.

c. **Shortbelly rockfish** - No minimum size. No maximum poundage.

d. **Black rockfish** - The vessel trip limit for black rockfish for commercial fishing vessels using hook-and-line gear between the U.S. Canada border and Cape Alava (48°09'30" N. latitude) and between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'10" N. latitude), is 100 pounds (round weight) or 30 percent by weight of all fish on board including salmon, whichever is greater, per vessel trip.

e. **Sebastes complex** - All species of rockfish except Pacific ocean perch, widow, shortbelly, and thornyhead (Sebastolobus spp.)

(1) North of Cape Lookout and south of Cape Lookout if no declaration has been made - Cumulative limit of 35,000 pounds, of which no more than 18,000 pounds may be yellowtail rockfish and no more than 9,000 pounds may be canary rockfish. No minimum size on any species in this category.

(2) South of Cape Lookout - Cumulative limit of 50,000 pounds of which no more than 40,000 pounds may be yellowtail rockfish and no more than 9,000 pounds may be canary rockfish, provided the licensee has made a declaration as follows:

(a) The declaration must be made at least 12 hours prior to departing from port by telephoning the Department Montesano Office at (360) 249-4628, between the hours of 8:00 a.m. and 4:30 p.m, Monday through Friday. The declarer will receive a declaration number from the department.

(b) The declaration must include: vessel name; federal limited entry permit number; operator's name, phone number and address; anticipated date and port of departure; anticipated date and port of return.

(c) Phone declarations must be followed by a written declaration, signed by the operator and mailed or delivered to the Montesano Office at 48 Devonshire Road, Montesano, WA 98563, prior to the day of departure. Forms are available at that office or from coastal processors.

(d) No fishing north of Cape Lookout is allowed after declaring for fishing south of Cape Lookout until the vessel has landed at a Washington or Oregon port and notified the Montesano Office during business hours.

1) There is a maximum cumulative limit for landings from both north and south of Cape Lookout of 50,000 pounds of which no more than 30,000 pounds may be yellowtail rockfish and no more than 9,000 pounds may be canary rockfish.

2) Wholesale fish dealers purchasing more than 30,000 pounds of sebastes complex or 18,000 pounds of yellowtail rockfish must enter the declaration number on the fish receiving ticket.

f. **DTS Complex - (Sablefish, Dover sole and thornyhead rockfish)** - Cumulative monthly limit of 35,000 pounds of which no more than 15,000 pounds may be thornyhead rockfish. Of the thornyhead, no more than 3,000 pounds may be shortspine thornyheads.

g. **Sablefish** -

(1) **Trawl vessels** - Cumulative limit of 7,000 pounds. In any vessel trip no more than 500 pounds may be sablefish less than 22 inches total length. Sablefish total length of 22 inches is equivalent to dressed length of 15.5 inches. To convert sablefish from dressed weight to round weight, multiply dressed weight by 1.6.

(2) **Non-trawl vessels** - Daily trip limit of 300 pounds (round weight). No minimum size.

(a) Effective noon August 6, 1995 through noon August 13, 1995 there shall be no vessel trip limit on sablefish, except in any trip no more than 1,500 pounds or 3% may be sablefish less than 22 inches in length.

(b) Hold Inspections -

1) Any limited entry fisher possessing or landing sablefish with gear other than trawl during the unrestricted sablefish fishery (noon August 6, 1995 through noon August 13, 1995) must have a Washington sablefish hold inspection certificate.

2) The inspection certificates will be issued to properly licensed vessels made available for inspection in the ports of Bellingham, Neah Bay, La Push, Westport, and Ilwaco, beginning August 5, 1995.

3) Inspections will be performed by authorized department personnel not earlier than August 5, 1995 and during the following seven-day period.

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4) The inspection certificate number must be recorded on the fish ticket in the area marked for dealer's use for any sablefish taken with limited entry gear other than trawl during the period from noon August 7, 1995 through noon August 13, 1995.

(c) Effective noon August 13, 1995 the daily trip limit is 300 pounds (round weight). No minimum size.

(d) Effective noon August 3, 1995 all groundfish fixed gear, both limited entry and open access, must be removed from all coastal waters.

(e) Effective noon August 5, 1995 it shall be lawful to set groundfish pot gear.

(f) Effective noon August 6, 1995 it shall be lawful to set all other groundfish fixed gear.

(g) All non-trawl sablefish landings are prohibited from noon August 3, 1995 through noon August 6, 1995.

h. **Pacific Whiting** - Vessel trip limit of 10,000. No minimum size.

i. **Lingcod** - Cumulative limit of 20,000 pounds. Total length minimum size limit of 22 inches. Lingcod total length of 22 inches is equivalent to dressed length of 18 inches. To convert lingcod from dressed weight to round weight, multiply the dressed weight by 1.5. To convert lingcod from dressed, head on (gutted only), weight, multiply the dressed weight by 1.1.

(1) Effective August 1, 1995 it shall be lawful to land up to 100 pounds of lingcod under 22 inches taken in the trawl fishery only.

3. Groundfish open access fishery limits. The following limits apply to the groundfish open access fishery in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, and 63, and apply to all listed species and species complexes taken in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area 29. Notwithstanding the provisions of this subsection, no groundfish open access fishery limit may exceed a groundfish limited entry fishery daily, vessel or cumulative limit:

a. Effective noon August 3, 1995 all groundfish fixed gear, both limited entry and open access, must be removed from all coastal waters.

b. Effective noon August 5, 1995 it shall be lawful to set groundfish pot gear.

c. Effective noon August 6, 1995 it shall be lawful to set all other groundfish fixed gear.

d. All non-trawl sablefish landings are prohibited from noon August 3, 1995 through noon August 6, 1995.

(1) **Sablefish** - Effective noon August 6, 1995 a daily trip limit of 300 pounds (round weight) is lawful. No minimum size.

(2) **Rockfish** - Vessel trip limit of 10,000 pounds. Cumulative limit of 35,000 pounds.

(3) **Lingcod** - cumulative limit of 20,000 pounds. Total length minimum size limit of 22 inches. Lingcod total length of 22 inches is equivalent to dressed length of 18 inches. To convert lingcod from dressed weight to round weight, multiply the dressed weight by 1.5. To convert lingcod from dressed, head on (gutted only), weight, multiply the dressed weight by 1.1.

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

(5) The fisher's copy of all fish receiving tickets showing landings of species provided for in this section shall be retained aboard the landing vessel for 90 days after landing.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000S Coastal bottomfish catch limits (95-88)

WSR 95-16-099
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE
(Fisheries)

[Order 95-96—Filed July 31, 1995, 4:53 p.m.]

Date of Adoption: July 31, 1995.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-57-43000I; and amending WAC 220-57-430.

Statutory Authority for Adoption: RCW 75.08.080.

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

Reasons for this Finding: Insufficient numbers of chinook salmon are returning to the Skokomish River. As escapement is below expectations, the returning fish are needed for broodstock, and recreational fishing must be curtailed for conservation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

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July 31, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-57-43000I Skokomish River. Notwithstanding the provisions of WAC 220-57-430, effective August 1 through August 31, 1995, it is unlawful to fish for or possess salmon taken for personal use from the waters of the Skokomish River.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 1995:

WAC 220-57-43000I Skokomish River. (95-96)

WSR 95-16-100
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3875A—Filed July 31, 1995, 4:59 p.m., effective August 1, 1995, 12:01 a.m.]

EMERGENCY

Date of Adoption: July 31, 1995.

Purpose: Rescinds WAC 388-330-010 and 388-330-035 from WSR 95-16-087, filed July 31, 1995. The division of children, youth and family services has chosen not to file this amendment and new material at this time.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: August 1, 1995, 12:01 a.m.

July 31, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

WSR 95-16-103
EMERGENCY RULES
LIQUOR CONTROL BOARD
[Filed August 1, 1995, 8:50 a.m.]

Date of Adoption: July 19, 1995.

Purpose: WAC 314-14-040 provides for the temporary certification for providers of alcohol server training programs. It is intended to meet the requirements of chapter 51, Laws of 1995.

Statutory Authority for Adoption: RCW 66.08.030.

Other Authority: Chapter 51, Laws of 1995.

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

Reasons for this Finding: The adoption of temporary, emergency certification rule language allows for providers of alcohol server training to continue the critical task of training while the board develops more detailed criteria.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 1, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Effective Date of Rule: Immediately.

August 1, 1995
Joe McGavick
Chair

[NEW SECTION]

WAC 314-14-040 Temporary certification as a provider The board has determined it is for the benefit of the welfare and safety of the citizens of the state to strongly encourage continued voluntary server training during the period the board develops guidelines and standards required by the passage of Chapter 51, Laws of 1995. Therefore, the following emergency rule will be in effect until such time as the board completes work on the development of requirements for programs required by Chapter 51, Laws of 1995:

(1) Nationally recognized alcohol server training programs may submit their materials to the board for temporary certification. Temporary certification may be issued by the board for a period not to exceed six months.

(2) If permanent certification is not obtained during the six month temporary certification period, at the end of the temporary certification period, the provider will return to the board the original letter of board certification and any class

12 and/or class 13 permit forms together with the records of all permits issued during the temporary certification period.

(3) To obtain temporary certification, a provider applicant must submit a letter indicating the following: a) in which states and/or countries their program is currently used; b) a copy of the lesson plan for the program; c) a copy of any audio/visual/printed materials used with the program; d) a copy of the examination and explanation of the examination procedure used.

(4) The board or their designee will evaluate the program to see if it meets the minimum standards set by Chapter 51, Laws of 1995, Section 4(1) and curriculum guidelines as set by the board. If the program meets such standards, the board or their designee will send to the provider applicant a letter of temporary certification to be valid for a period not to exceed six months together with the appropriate permit forms.

(5) The board or their designee may review and attend any provider classes at no charge to determine compliance with the program approved. If, in the opinion of the board or their designee, the provider does not comply with the lesson plan submitted and approved by the board or any of the requirements of WAC 314-14, the temporary certification may be revoked immediately.

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

WSR 95-16-112
EMERGENCY RULES
NOXIOUS WEED CONTROL BOARD
[Filed August 1, 1995, 3:55 p.m.]

Date of Adoption: July 19, 1995.

Purpose: The Washington State Noxious Weed Control Board has made an emergency addition to the state noxious weed list to add Hydrilla Verticillata to the Class A list.

Citation of Existing Rules Affected by this Order: Amending WAC 16-750-005.

Statutory Authority for Adoption: Chapter 17.10 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:

Scientific Name: *Hydrilla verticillata* (L.f.) Royle.

Common Name: Hydrilla.

Specific Change: *Hydrilla verticillata* (hydrilla) is hereby designated as a Class A weed on the Washington state noxious weed list, WAC 16-750-005. Class A weeds are noxious weeds not native to the state that are of limited distribution and that pose a serious threat to the state. Hydrilla fits this description, and immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. 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 Rule Making: On June 1, 1995, hydrilla, an invasive, nonnative aquatic plant, was discovered in the 73 acre Pipe/Lucerne Lake system in the Auburn area. This is the first known occurrence of this extremely invasive freshwater plant in the Pacific Northwest.

Once established, hydrilla out competes native plant species and destroys freshwater recreational opportunities by forming extensive surface mats. Like other aquatic plants that form monocultures, hydrilla is a destroyer of aquatic ecosystems. Florida has spent 56 million dollars since 1984 to manage this plant and South Carolina estimates that they spend about 2.5 million each year for hydrilla control activities. We do not want Washington to be in the same situation as these states. Therefore, it is imperative to take immediate action to prevent hydrilla from being established in our state!

Contact has been made with aquatic plant scientists and managers throughout the United States for advice on how to eradicate this plant. They all agree that prompt action is essential. They also agree that hydrilla is a serious pest that causes severe economic impacts.

Hydrilla has been on the monitor list, WAC 16-750-025, in Washington since 1991, when the first monitor list was created. The monitor list is designed to recognize potentially serious threats to Washington and to monitor for the occurrence of these species. There is no legal or regulatory aspect to the monitor list. Hydrilla has also been under quarantine in Washington, WAC 16-752-505, since the creation of the noxious weed quarantines in 1992.

Hydrilla was the subject of a Washington state nonnative aquatic plant workshop held in Olympia in May 1993. The hydrilla action plan goal is identified by workshop participants is "to prevent the establishment and spread of hydrilla in Washington state and to promote the prevention of establishment of hydrilla in the Pacific Northwest." A hydrilla management workshop was held in Portland, Oregon on February 13 and 14, 1995, and Washington state was invited to send a speaker and participate in the development of an Oregon hydrilla management plan. The goal of the Oregon plan is to maintain hydrilla as a nonproblem in Oregon and the Pacific Northwest. The seriousness of the threat posed by hydrilla to the Pacific Northwest has been recognized for several years.

Justification for Immediate Adoption: The immediate listing of hydrilla as a Class A noxious weed in Washington is necessary for the preservation of public health, safety, and general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Authority: Listing hydrilla as a Class A noxious weed is a necessary first step towards eradicating this plant from Washington's waters. A Class A listing gives the state and local programs legal authority to take steps to eradicate the plant. Without listing as a noxious weed, no other authority exists to require control of the species.

Exponential Growth: The biology of hydrilla provides for extremely rapid growth and competitive advantages over native vegetation. This infestation has not been caught early and the species is nearing a phase of exponential growth. As an example of the ability of hydrilla to grow exponentially, an infestation identified in Lake Weohyakapka, Florida in 1991 was at a similar stage to the infestation in Pipe and

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Lucerne lakes now. By late 1993 hydrilla was expected to fill the entire 7,500 acre lake. If control activities are not conducted during this growing season, the effort required to contain and eradicate this species from Washington's waters will be substantially greater.

Public Health and Safety: Hydrilla infestations can pose serious public safety risks, as thick mats of vegetation on or near the surface can interfere with safe swimming and recreation. The risk to the public is greater than that from Eurasian watermilfoil. Cheroke Bay, a community beach and recreation area on Pipe and Lucerne lakes, is open to the community for swimming and well used on hot days. The lake is rimmed by homes with access for swimming and boating. Swimmers can become entangled in dense hydrilla mats and drown. Dense hydrilla mats also are a physical hazard to boaters and they create mosquito breeding grounds. With the high level of community use of the area, action to control hydrilla is essential.

Economic Relief: The state weed law holds landowners responsible for the cost of controlling noxious weeds in Washington. Every growing season that passes without hydrilla control will substantially increase the cost of eradicating this species. Control costs for whole-lake treatments, which will be required for Pipe and Lucerne lakes, can easily run from $70,000 to $500,000. The Washington State Department of Ecology has grant funds available through its aquatic weeds management fund to assist with early detection and control efforts for aquatic noxious plants. Without the official listing of hydrilla as a noxious weed, it would be difficult to allow grant funds to be spent on hydrilla this season. Without listing as a noxious weed, grant funds would definitely not be available for more than an initial treatment. The public welfare would be served by the availability of supplemental funding and by the prevention of infestation expansion and the accompanying expansion of their financial liability.

Permit Action: Eradication of an aquatic noxious weed sometimes calls for severe measures requiring multiple permits and review processes. Listing hydrilla as a Class A weed conveys the seriousness of the situation to the public and government officials. Preliminary conversations with permitting agencies have indicated that without listing as a noxious weed, review time for local and state permitting would likely be extended and the chance of permit refusal increased.

Public Involvement: Hydrilla clearly meets the definition of a Class A noxious weed and the intent of the noxious weed law. The experience of other states gives dramatic evidence to the threat posed by this species. Previous rule making, to list hydrilla as a quarantined species (preventing the sale, trade, or transport of any part of the plant) provides regulatory precedent that Washington residents are concerned about controlling this species. A public information campaign is underway, utilizing television and newspaper media outlets, to inform the public about hydrilla and the drive to list the species as a noxious weed. An informational session was conducted by the King County lakes stewardship program and the Washington State Department of Ecology with assistance from the state weed board, for lakeshore residents on July 6, 1995. Residents were updated on the nature of the hydrilla problem, control options, and the request for the addition of hydrilla to the state noxious weed list. Turnout was substantial and the lakeshore community supportive of control efforts and the listing process. Hydrilla emergency rule making was on the regular agenda of the July 19, 1995, state weed board meeting, which is sent out two weeks in advance to all county noxious weed control boards and districts and all parties who have requested to regularly receive meeting notices and agendas. Public participation is always welcome at state weed board meetings, and there was an open discussion period to allow for any comments on the hydrilla listing proposal before the state weed board made their final rule-making decision.

Effective Date of Rule: Immediately.

July 20, 1995
Laurie McLellan-Penders
for Ray Fann
Chairman

AMENDATORY SECTION (Amending WSR 93-01-004, filed 12/2/92, effective 1/2/93)

WAC 16-750-005 State noxious weed list - Class A noxious weeds.

Common Name	Scientific Name
bean-caper, Syrian	Zygophyllum fabago
blueweed, Texas	Helianthus ciliaris
buffalobur	Solanum rostratum
cordgrass, salt meadow	Spartina patens
crupina, common	Crupina vulgaris
four o'clock, wild	Mirabilis nyctaginea
hawkweed, mouseear	Hieracium pilosella
hogweed, giant	Heracleum mantegazzianum
hydrilla	Hydrilla verticillata
johnsongrass	Sorghum halepense
knapweed, bighead	Centaurea macrocephala
knapweed, Vochin	Centaurea nigrescens
mallow, Venice	Hibiscus trionum
nightshade, silverleaf	Solanum elaeagnifolium
peganum	Peganum harmala
sage, Mediterranean	Salvia aethiopsis
starthistle, purple	Centaurea calcitrapa
thistle, Italian	Carduus pycnocephalus
thistle, milk	Silybum marianum
thistle, slenderflower	Carduus tenuiflorus
unicorn-plant	Proboscidea louisianica
velvetleaf	Abutilon theophrasti
woad, dyers	Isatis tinctoria

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 95-16-114
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3877—Filed August 1, 1995, 4:17 p.m.]

Date of Adoption: August 1, 1995.

Purpose: Adds additional requirements for subrogation. New language is added requiring the department to collect the medical assistance costs of the health care provided to a client unless waived by the secretary. Assures that the client has assigned rights to the department to collect such costs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-87-020 Subrogation.

Statutory Authority for Adoption: RCW 74.08.090 and SSB 5419.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: SSB 5419 changes the requirements for subrogation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 1, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 1, repealed 0.

Effective Date of Rule: Immediately.

August 1, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 264 (part), filed 11/24/67)

WAC 388-87-020 Subrogation. (1) As a condition of medical care eligibility as described under WAC 388-505-0540, a client shall assign to the state any right the client may have to receive payment from any liable third party for reimbursement of state-made expenses for medical care for health care items or services provided to the client.

(2) The department shall not be responsible to pay for medical care for ((~~an applicant or recipient~~)) a client whose personal injuries are occasioned by the negligence or wrongdoing of another: *Provided, however,* That the ((~~director~~)) secretary of the department or the secretary's designee may ((~~in his discretion~~)) furnish the medical care required as a result of ((~~such~~)) an injury((~~ies~~)) to the client if the client is otherwise eligible for medical care and no other liable third party has been identified at the time the claim is filed, and the department shall thereby be subrogated to the ((~~applicant's or recipient's~~)) rights of recovery therefore to the extent of the ((~~cost~~)) value of medical care ((~~paid for~~)) furnished by the department.

(3) The department may pursue its right to recover the value of medical care provided to an eligible client from any liable third party as a subrogee, assignee, or by enforcement of its public assistance lien as provided under RCW 43.20B.040 through 43.20B.070.

(4) Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the department shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement. No settlement or judgment of a lien created under RCW 43.20B.060 shall be discharged or compromised without written consent of the secretary of the department or the secretary's designee. The department shall only consider compromise or discharge of a medical care lien as authorized by federal regulation at 42 CFR 433.139.

(5) The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the department as to its assignment, lien, or subrogation rights.

WSR 95-16-115
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 3876—Filed August 1, 1995, 4:19 p.m.]

Date of Adoption: August 1, 1995.

Purpose: Add denturists as eligible to enroll as medical assistance providers, as allowed under Initiative 607. Reformats dental WAC to add enhanced children dental benefits as allowed under ESHB 1410 and adds dental payment methodology.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-86-020 Dental services, 388-86-021 Dentures, and 388-87-050 Payment—Dental services; amending WAC 388-87-005 Payment—Eligible providers defined; and new chapter 388-535 WAC, Dental-related services.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESHB 1410 and Initiative 607.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: ESHB 1410 enhanced the benefits to Medicaid children. Initiative 607 adds denturists as licensed professionals in this state.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 12, amended 1, repealed 3.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 12, amended 1, repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, amended 1, repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 12, amended 1, repealed 3.

Effective Date of Rule: Immediately.

August 1, 1995
Jeanette Sevedge-App
Acting Chief
Office of Vendor Services

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AMENDATORY SECTION (Amending Order 3620, filed 8/11/93, effective 9/11/93)

WAC 388-87-005 Payment—Eligible providers defined. (1) The following providers shall be eligible for enrollment to provide medical care to eligible clients:

(a) Persons currently licensed by the state of Washington to practice medicine, osteopathy, dentistry, optometry, podiatry, midwifery, nursing, dental hygiene, denturism, chiropractic, or physical, occupational, speech, or respiratory therapy;

(b) A hospital currently licensed by the department of health;

(c) A facility currently licensed and classified by the department as a nursing facility or an intermediate care facility for the mentally retarded (ICF-MR);

(d) A licensed pharmacy;

(e) A home health services agency licensed under chapter 70.127 RCW;

(f) A hospice care agency licensed under chapter 70.127 RCW;

(g) An independent (outside) laboratory certified to participate under Title XVIII or determined currently to meet the Medicare requirements for such participation;

(h) A company or person, not excluded in subsection (3) of this section, supplying items vital to the provision of medical services such as ambulance service, oxygen, eyeglasses, other appliances, or approved services not otherwise covered under this section;

(i) A provider of screening services having a signed agreement with the department to provide such services to eligible persons in the early and periodic screening and diagnosis and treatment (EPSDT) program;

(j) A qualified and approved center for the detoxification of acute alcohol or other drug intoxication conditions;

(k) A qualified and approved outpatient clinical community mental health center, an approved inpatient psychiatric facility, or Indian health service clinic;

(l) A chemical dependency facility:

(i) Certified by the division of alcohol and substance abuse under chapter 275-19 WAC, or it successor; and

(ii) Included in a coordinated continuum of chemical dependency services per a county plan under chapter 275-25 WAC or its successor.

(m) A Medicare-certified rural health clinic;

(n) A federally qualified health care center;

(o) Licensed or certified agencies or persons having a signed agreement with the department to provide coordinated community AIDS service alternatives program services:

(i) Home care agency personal care providers or self-employed independent contractors providing hourly attendant or respite care;

(ii) Facilities or agencies providing therapeutic-home-delivered meals;

(iii) Dietitians or nutritionists; and

(iv) Social workers, mental health counselors, or psychologists who are self-employed independent contractors or employed by various licensed or certified agencies.

(p) Approved prepaid health maintenance, prepaid health plans, or health insuring organizations;

(q) An out-of-state provider of services listed under subsection (1)(a) through (l) of this section subject to conditions specified under WAC 388-87-105;

(r) A Washington state school district or educational service district;

(s) A licensed birthing center; and

(t) A Medicare-certified ambulatory surgical center.

(2) The department shall not pay for services performed by the following practitioners:

(a) Acupuncturists;

(b) Sanipractors;

(c) Naturopaths;

(d) Homeopathists;

(e) Herbalists;

(f) Masseurs or manipulators;

(g) Christian Science practitioners or theological healers; and

(h) Any other licensed or unlicensed practitioners not otherwise specifically provided for under the rules of this chapter.

(3) Conditions of provider enrollment.

(a) Nothing in this section shall bind the department to enroll all eligible providers capable of delivering covered services. The department shall demonstrate the department's plan for service delivery creates adequate access to covered services.

(b) When a provider has a restricted professional license or has been terminated, excluded, or suspended from the Medicare/Medicaid programs, the department shall not enroll the provider unless the department determines the violations leading to the sanction or license restriction are not likely to be repeated. In the department's determination, the department shall consider whether the provider has been convicted of offenses related to the delivery of professional or other medical services not considered during the development of the previous sanction.

(c) The department shall not reinstate in the medical assistance program, a provider suspended from Medicare or suspended by the United States Department of Health and Human Services (DHHS) until DHHS notifies the department that the provider may be reinstated.

(d) Nothing in this subsection shall preclude the department from denying provider enrollment if, in the opinion of the medical director, medical assistance administration, the provider constitutes a danger to the health and safety of clients.

Chapter 388-535 WAC
DENTAL-RELATED SERVICES

NEW SECTION

WAC 388-535-1000 Dental-related services—Scope of coverage. (1) The medical assistance administration (MAA) shall pay only for covered medical and dental services, equipment, and supplies listed in MAA published issuances, including billing instructions, numbered memoranda, and bulletins.

(2) MAA shall pay for covered dental services, equipment and supplies when they are:

(a) Within the scope of an eligible client's medical care program;

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(b) Medically necessary;

(c) Within accepted medical or dental practice standards and are:

(i) Consistent with a diagnosis; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(d) Not listed under WAC 388-535-1100, Noncovered services; and

(e) Billed according to the conditions of payment under WAC 388-87-010 and 388-87-015.

(3) MAA shall cover the following dental-related services:

(a) Oral health evaluations/assessments, including oral health screening by providers of screening services authorized by MAA to provide screening.

(i) Oral health evaluation or assessment services shall be covered twice a year, and an oral health evaluation of a child shall include an indicator of the child's oral health status.

(ii) The screening services shall, at a minimum, include:

(A) A comprehensive oral health and developmental history;

(B) An assessment of physical and oral health development and nutritional status;

(C) Health education, including anticipatory guidance; and

(D) Oral health status.

(b) Dental services necessary for the identification of dental problems or the prevention of dental disease subject to limitations of this chapter;

(c) Coronal polishing and scaling, provided that coronal polishing shall not be covered for children eight years old or younger, unless prior authorized;

(d) Dental services or treatment necessary for the relief of pain and infections, including removal of wisdom teeth, except that routine removal of wisdom teeth without justifiable medical indications shall not be covered;

(e) Dental services or treatment necessary for the restoration of teeth and maintenance of dental health subject to limitations of this chapter;

(f) Orthodontic treatment, which is defined as the use of any appliance, intraoral or extraoral, removable or fixed, or any surgical procedure designed to move teeth. The following limitations apply:

(i) Orthodontic coverage is limited to clients who are eligible for the early and periodic screening, diagnosis and treatment (EPSDT)/healthy kids services;

(ii) Prior approval is required; and

(iii) Treatment is limited to conditions specified in WAC 388-535-1250.

(g) Complete and partial dentures, and necessary modifications, repairs, rebasing, relining and adjustments of dentures, and cost base partial dentures with prior authorization.

(4) For children identified as high risk by the department or clients identified by the department as developmentally disabled, the following preventive services may be allowed more frequently than the limits listed in (3) of this section:

(a) Fluoride application;

(b) Root planing, if a developmentally disabled client; and

(c) Prophylaxis scaling and coronal polishing, if nine years of age and over, or developmentally disabled.

(5) Panoramic radiographs are allowed only for oral surgical or orthodontic purposes.

(6) The department shall cover medically necessary services provided in a hospital for the care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization. Services covered under this subsection shall be furnished under the direction of a physician or dentist.

(7) For clients residing in nursing facilities or group homes, the following additional requirements shall apply:

(a) Dental services must be requested by the client or a referral for services made by the attending physician, facility nursing supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted, except for the EPSDT/healthy kids services as described under WAC 388-86-027;

(c) Nursing facilities shall provide medically necessary dental services in accordance with WAC 388-97-225.

(8) If eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment shall be the client's responsibility. The client shall be responsible for payment of any dental treatment or service received during any period of ineligibility for medical care, even if the treatment was started when the client was eligible.

NEW SECTION

WAC 388-535-1050 Definitions. This section contains definitions of words and phrases the department uses in rules for the medical assistance administration dental program.

(1) **"Access to baby and child dentistry (ABCD)"** is a Spokane County pilot initiative to increase access to dental services for Medicaid eligible infants, toddlers, and preschoolers.

(2) **"Arch"** means the curving structure formed by the crowns of the teeth in their normal position, or by the residual ridge after loss of the teeth.

(3) **"Banding"** means the application of orthodontic brackets to the teeth and/or face for the purpose of correcting dentofacial abnormalities.

(4) **"Behavior management"** means managing the behavior of a client during treatment using the assistance of additional professional staff, and restraints such as a papoose board or sedative agent, to protect the client from self-injury.

(5) **"Buccal"** means pertaining to or directed toward the cheek.

(6) **"By report"** - A method of payment for a covered service, supply, or equipment for which the medical assistance administration has not established a maximum allowable, either because the service or supply is new and its use is not yet considered standard, or it is a variation on a standard practice, or is rarely provided. Payment for a "by report" service or item is made on a case-by-case basis.

(7) **"Caries"** means a disease of the calcified tissues of the teeth resulting from the action of microorganisms on carbohydrates, characterized by a decalcification of the inorganic portion of the tooth and accompanied or followed by disintegration of the organic portion.

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(8) **"Child"** - For purposes of the dental program, a child is defined as a person zero through eighteen years of age.

(9) **"Cleft"** means a longitudinal opening or fissure, especially one occurring in the embryo. Also see "facial cleft."

(10) **"Comprehensive oral evaluation"** means a thorough evaluation and recording of the extraoral and intraoral hard and soft tissues. Includes the evaluation and recording of the patient's dental and medical history and a general health assessment.

(11) **"Corona"** is the portion of a tooth that is covered by enamel, and is separated from the root or roots by a slightly constricted region, known as the neck.

(12) **"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired.

(13) **"Current dental terminology (CDT), second edition (CDT-2),"** a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

(14) **"Dental analgesia"** means the use of agents to induce insensibility to or relief from dental pain without loss of consciousness.

(15) **"Dental anesthesia"** means the use of agents to induce loss of feeling or sensation in order to allow dental services to be rendered to the client. The term is applied especially to the loss of sensation of pain through general anesthesia.

(16) **"Dentin"** is the chief substance or tissue of the teeth, which surrounds the tooth pulp and is covered by enamel on the crown and by cementum on the roots of the teeth.

(17) **"Dental prosthesis"** means a replacement for one or more of the teeth or other oral structure, ranging from a single tooth to a complete denture.

(18) **"Dentures"** are a set of natural or artificial teeth; ordinarily used to designate an artificial replacement for the natural teeth.

(19) **"Dysplasia"** means an abnormality of development of the teeth.

(20) **"Enamel"** is the white, compact, and very hard substance that covers and protects the dentin of the crown of a tooth.

(21) **"Facial clefts"** are the clefts between the embryonic processes which normally unite to form the face. Failure of such union, depending on its site, causes such developmental defects as cleft lip (harelip), cleft mandible, oblique facial cleft, and transverse facial cleft (macrostomia).

(22) **"High risk"** child means any child who has been identified through an oral evaluation or assessment as having a high risk for dental disease because of caries in the child's dentin; or a child identified by the department as developmentally disabled.

(23) **"Hypoplasia"** means the incomplete or defective development of the enamel of the teeth.

(24) **"Limited oral evaluation"** means an evaluation or reevaluation limited to a specific oral health situation or problem.

(25) **"Limited visual oral assessment"** - A service preformed by dentists which involves assessing the need for sealants to be placed by dental hygienists; screening children in Head Start or ECEAP programs; providing triage services; or in circumstances referring a child to another dentist for treatment. These assessments are also used by dental hygienists performing intraoral screening of soft and hard tissues to assess the need for prophylaxis, sealants, fluoride varnish, or refers to a dentist for other dental treatment.

(26) **"Low risk"** child means any child who has been identified through an oral evaluation or assessment as having a low risk for dental disease because of the absence of white spots or caries in the enamel or dentin. This category includes children with restorations who are otherwise without disease.

(27) **"Macrostomia"** means a greatly exaggerated width of the mouth, resulting from failure of union of the maxillary and mandibular processes, with extension of the oral orifice to the ear. The defect may be unilateral or bilateral.

(28) **"Malocclusion"** means the contact between the maxillary and mandibular teeth as will interfere with the highest efficiency during the excursive movements of the jaw that are essential to mastication. The abnormality is categorized into four classes, graded by angle.

(29) **"Moderate risk"** child means a child who has been identified through an oral evaluation or assessment as having a moderate risk for dental disease, based on presence of white spots, enamel caries or hypoplasia.

(30) **"Occlusion"** means the relation of the maxillary and mandibular teeth when in functional contact during activity of the mandible.

(31) **"Oral evaluation"** is an evaluation performed on a client, new or established, to determine the patient's dental and/or medical health status, or changes to that status.

(32) **"Oral health assessment or screening"** is a comprehensive oral health and developmental history; an assessment of physical and oral health development and nutritional status; and health education, including anticipatory guidance.

(33) **"Oral health status"** refers to the client's risk or susceptibility to dental disease at the time an oral evaluation is done by a dental practitioner. This risk is designated as low, moderate or high based on the presence or absence of certain indicators.

(34) **"Oral sedation"** means the use of oral agents to produce a sedative or calming effect.

(35) **"Orthodontia"** is a treatment involving the use of any appliance, intraoral or extraoral, removable or fixed, or any surgical procedure designed to move teeth.

(35) **"Partial dentures"** means a prosthetic appliance replacing one or more missing teeth in one jaw, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth.

(36) **"Prophylaxis"** is a preventive intervention which includes the scaling and polishing of teeth to remove coronal plaque, calculus, and stains.

(37) **"Rebase"** means to replace the base material of a denture without changing the occlusal relations of the teeth.

(38) **"Reline"** means to resurface the tissue side of a denture with new base material in order to achieve a more accurate fit.

(39) **"Restorative services"** means services or treatments to restore a tooth to its original condition by the

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filling of a cavity and replacement of lost parts, or the material used in such a procedure.

(40) **"Root planing"** is a procedure designed to remove microbial flora, bacterial toxins, calculus, and diseased cementum or dentin from the teeth's root surfaces and pockets.

(41) **"Scaling"** means the removal of calculous material from the exposed tooth surfaces and that part of the teeth covered by the marginal gingiva.

(42) **"Sealant"** is a material applied to teeth to prevent dental caries.

(43) **"Space management therapy"** is a treatment to hold space for missing first and/or second primary molars and maintain position for permanent teeth.

(44) **"Usual and customary charge"** means the fee that the provider usually charges his or her non-Medicaid customers for a service or item. This is the maximum amount that the provider may bill MAA for the same service or item.

NEW SECTION

WAC 388-535-1100 Noncovered services. (1) Unless required as a result of a EPSDT/Healthy Kids screen, included as part of a managed care plan service package; included in a waivered program; or part of one of the Medicare programs for the qualified Medicare beneficiaries; the MAA shall specifically exclude from the scope of covered dental-related services:

(a) Services, procedures, treatment, devices, drugs, or application of associated services which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the services are provided;

(b) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;

(c) Orthodontia for adults, except that Medicaid eligible clients nineteen and twenty years of age who meet the criteria in WAC 388-535-1250 shall be covered;

(d) Orthodontia for children who do not meet the criteria in WAC 388-535-1250, or who request orthodontia for cosmetic reasons;

(e) Any service specifically excluded by statute;

(f) More costly services when less costly equally effective services as determined by the department are available; and

(g) Nonmedical equipment, supplies, personal or comfort items and/or services.

(h) Prophylaxis, for children eight years of age or younger, unless developmentally disabled:

(i) Root planing for children eighteen years of age or younger;

(j) Molar endodontics for clients nineteen years of age or older;

(k) Endodontic services for anterior primary teeth, except that new therapeutic pulpotomy shall be covered; and

(l) For a persons nineteen years of age and older, unless developmentally disabled:

(i) Routine fluoride treatments;

(ii) Molar endodontics; or

(iii) Orthognathic surgery.

(2) MAA does not pay for the following services/supplies:

(a) Missed or canceled appointments;

(b) Provider mileage;

(c) Take-home drugs;

(d) Educational supplies;

(e) Reports, client charts, insurance forms, copying expenses;

(f) Service charges/delinquent payment fees;

(g) Dentists writing prescriptions or calling in prescriptions or prescription refills to a pharmacy; and

(h) Medical supplies used in conjunction with an office visit.

NEW SECTION

WAC 388-535-1150 Eligible dental providers defined. (1) The following providers shall be eligible for enrollment to provide and be reimbursed for dental-related medical services to eligible clients:

(a) Persons currently licensed by the state of Washington to practice medicine and osteopathy, for oral surgery procedures;

(b) Persons currently licensed by the state of Washington to practice dentistry;

(c) Persons currently licensed by the state of Washington to practice as dental hygienists;

(d) Persons currently licensed by the state of Washington to provide denture services (denturists);

(e) Hospitals currently licensed by the department of health;

(f) Federally-qualified health centers;

(g) Participating health departments;

(h) Medicare-certified ambulatory surgical centers;

(i) Medicare-certified rural health clinics;

(j) Public health providers of dental screening services who have a signed agreement with the department to provide such services to persons eligible for EPSDT/healthy kids services; and

(k) Border area or out-of-state providers of dental-related services qualified in their states to provide these services.

(2) A licensed provider participating in the MAA dental program may be reimbursed only for those services that are within his or her scope of practice.

(3) The provider shall bill the department and its clients according to WAC 388-87-010 and WAC 388-87-015.

NEW SECTION

WAC 388-535-1200 Prior authorization. (1) The following services require prior approval:

(a) Nonemergent surgical procedures as described under WAC 388-86-095;

(b) Nonemergent hospital admissions as described under WAC 388-86-050 and 388-87-070;

(c) Orthodontic treatment as described under WAC 388-535-1000 (3)(f);

(d) Cast base partial dentures: or

(e) Coronal polishing and scaling for children eight years of age and under.

(2) When requesting prior approval, the department shall require the dental provider to submit, in writing, sufficient

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objective clinical information to establish medical necessity including, but not limited to:

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

(b) Pertinent laboratory findings;

(c) X-ray reports; and

(d) Patient profiles.

(3) The department shall approve a request when the requested service meets the criteria in WAC 388-535-1000(2), Scope of coverage.

(4) The department shall deny a request for dental services when the requested service is:

(a) Not medically necessary as defined under WAC 388-500-0005; or

(b) A service, procedure, treatment, device, drug, or application of associated service which MAA or the Health Care Financing Administration (HCFA) consider investigative or experimental on the date the service is provided.

(5) The department may require a second opinion and/or consultation before the approval of any elective oral surgical procedure.

NEW SECTION

WAC 388-535-1250 Orthodontic coverage for DSHS clients. The department shall cover orthodontia care when:

(1) Prior authorized;

(2) A client is eligible for EPSDT/healthy kids services; and

(3) A client meets one of the following categories:

(a) A child with clefts and congenital or acquired craniofacial anomalies:

(i) Cleft lip and palate, cleft palate, and cleft lip with alveolar process involvement;

(ii) Craniofacial anomalies, including but not limited to:

(A) Hemifacial microsomia;

(B) Craniosynostosis syndromes;

(C) Cleidocranial dysplasia;

(D) Arthrogryposis;

(E) Downs syndrome;

(F) Marfans syndrome; or

(G) Other syndromes by review;

(iii) Other diseases/dysplasia with significant facial growth impact, e.g., Juvenile Rheumatoid Arthritis (JRA); or

(iv) Post traumatic, post radiation, or post burn jaw deformity.

(b) A child with severe malocclusions which include one or more of the following:

(i) A severe skeletal disharmony;

(ii) A severe overjet resulting in functional impairment;

(iii) A severe vertical overbite resulting in palatal impingement; and/or damage to the mandibular labial tissues.

(c) A child with other malformations resulting in severe functional impairment will be reviewed for medical necessity.

NEW SECTION

WAC 388-535-1300 Access to baby and child dentistry (ABCD) program. (1) The access to baby and child dentistry (ABCD) program is a demonstration project in Spokane County, established to increase access to dental services for Medicaid eligible infants, toddlers, and preschoolers.

(2) Children eligible for the ABCD program shall be four years of age and under and residing in Spokane County.

(3) Dental providers certified by the University of Washington continuing education program shall provide ABCD services.

(4) In addition to services provided under the medical assistance administration (MAA) dental care program, the following services are provided:

(a) Family oral health education; and

(b) Case management services.

(5) Clients who do not comply with program requirements may be disqualified from the ABCD program. The client remains eligible for regular MAA dental coverage.

(6) MAA pays enhanced fees to ABCD-certified participating providers for the targeted services.

NEW SECTION

WAC 388-535-1350 Payment methodology—Dental services. (1) For covered services provided to eligible clients, MAA shall reimburse dentists and related providers on a fee-for-service or contract basis, subject to the exceptions and restrictions listed under WAC 388-535-1100, Noncovered services and WAC 388-535-1400 Payment limits.

(2) In general maximum allowable fees (MAFs) for dental services provided to adult clients are based on the department's historical reimbursement rates, updated for legislatively authorized vendor rate increases.

(3) MAA may pay providers a higher reimbursement rate for selected dental services provided to children eighteen years and younger in order to increase children's access to dental services.

(4) Maximum allowable fees (MAFs) for dental services provided to children are set as follows:

(a) The department's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) The department consults with and seeks input from representatives of the provider community to identify program areas/concerns that need to be addressed.

(c) The department consults with dental experts and public health professionals to identify and prioritize dental services/ procedures in terms of their effectiveness in improving and/or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on this priority list and considerations of access to services.

(e) Larger percentage increases are given to those procedures which have been identified as most effective in improving and/or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

(5) Dental anesthesia services for all eligible clients are reimbursed on the basis of base anesthesia units (BAU) plus time. Payment for dental anesthesia is calculated as follows:

(a) Dental procedures are assigned five base anesthesia units;

(b) Twelve minutes constitute one unit of time. When a dental procedure requiring anesthesia results in multiple time units and a remainder (less than twelve minutes), the remainder or fraction shall be considered as one time unit;

(c) Time units are added to the five base anesthesia units and multiplied by the anesthesia conversion factor;

(d) The formula for determining reimbursement for dental anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(6) Dental hygienists shall be paid at the same rate as dentists for services allowed under The Dental Hygienist Practice ACT.

(7) Licensed denturists or dental laboratories billing independently shall be paid at MAA's allowance for prosthodontics.

(8) Fee schedule changes are made whenever vendor rate increases or decreases are authorized by the legislature.

(9) The department uses the American Dental Association's Current Dental Terminology, Second Edition (CDT-2) as the basis for identification of dental services. The department supplements this list with state-assigned procedure codes to identify services which do not fit exactly into the CDT-2 descriptions.

(10) The department may adjust maximum allowable fees to reflect changes in the services or procedure code descriptions.

NEW SECTION

WAC 388-535-1400 Payment limitations—Dental services. (1) Provision of covered services to a client eligible for a medical care program constitutes acceptance by the provider of the department's rules and fees.

(2) Participating providers shall bill the department their usual and customary fees.

(3) Payment for dental services is based on the department's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) Payment to the provider will be the lesser of the billed charge (usual and customary fee) or the department's maximum allowable fee.

(5) If a covered service is performed for which no fee is listed, the service shall be paid "By Report."

(6) Clients shall be responsible for payment as described under WAC 388-087-010 for services not covered under the client's medical care program.

NEW SECTION

WAC 388-535-1450 Payment—Denture laboratory services. (1) A dentist using the services of an independent denture laboratory shall request services for an MAA client in the same manner he or she requests services for his or her private patient.

(2) An independently practicing denturist may bill the department directly. No reimbursement will be made to a dentist for services performed and billed by an independent denturist.

NEW SECTION

WAC 388-535-1500 Payment—Hospital services. The department shall pay for medically necessary dental-related hospital inpatient and outpatient services according to WAC 388-87-070 and WAC 388-87-072.

NEW SECTION

WAC 388-535-1550 Dental care provided out-of-state. (1) The department shall authorize and provide comparable dental care services to clients who are temporarily outside of the state to the same extent that such dental care services are furnished to clients in the state, subject to the same exceptions and limitations as in-state clients.

(2) The department shall not provide out-of-state dental care to clients receiving medical care services as defined under WAC 388-500-0005. The department shall cover dental services in designated bordering cities for eligible clients.

(3) Out-of-state dental providers shall meet the same criteria for payment as in-state providers.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-86-020	Dental services.
WAC 388-86-021	Dentures.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-87-050	Payment—Dental services.

EMERGENCY

WSR 95-16-021
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
[Memorandum—July 21, 1995]

Board of Trustees Meeting
July 25, 1995
Special Meeting
Sno-King Building
Room 103
(4:30 - 6:15)

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

WSR 95-16-044
NOTICE OF PUBLIC MEETINGS
SEATTLE COMMUNITY COLLEGES
[Memorandum—July 18, 1995]

The Seattle Community College District board of trustees will hold a retreat on August 28, 1995, at the Battelle Conference Center, 4000 N.E. 41st Street, Seattle, WA 98105-5428.

The meeting will be held in conference room 4 and 5, at 7:30 a.m. until 4:30 p.m.

WSR 95-16-047
NOTICE OF PUBLIC MEETINGS
JOINT CENTER FOR HIGHER EDUCATION
[Memorandum—July 21, 1995]

The Joint Center for Higher Education is canceling its August 9, 1995, board meeting.

We will resume our regular schedule with the September 13th meeting.

WSR 95-16-049
NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION
[Memorandum—July 21, 1995]

The August 1995 Washington State Transportation Commission meetings will be held at 1:00 p.m. on Wednesday, August 16, and 9:00 a.m. on Thursday, August 17, 1995, in the Transportation Commission Room, Room 1D2, Transportation Building, Olympia, Washington. There will be committee meetings at 9:00 a.m., Wednesday, August 16, in the Transportation Building, Rooms 1D2 and 3F21, Olympia.

The September 1995 Washington State Transportation Commission meetings will be held at 11:00 a.m. on Wednesday, September 20, and 9:00 a.m. on Thursday, September 21, 1995, at the Yakima Valley Red Lion Inn, 1507 North First Street, Yakima, WA. There will be committee meetings at 9:00 a.m., Wednesday, September 20, at the Yakima Valley Red Lion Inn.

WSR 95-16-051
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 95-02]

ESTABLISHING THE GOVERNOR'S HIGHER EDUCATION TASK FORCE

WHEREAS, in the last decade, Washington State's higher education funding has not increased at the rate needed to keep pace with demand for access to higher education and the enrollment goals set by the Higher Education Coordinating Board have been adopted but never funded; and

WHEREAS, the state will need to provide higher educational opportunities for at least 50,000 more citizens over the next 15 years just to keep postsecondary educational opportunities equal to population growth; and

WHEREAS, past state general fund reductions to public higher education have required cuts to program offerings and restricted opportunities to begin new and innovative service delivery methods; and

WHEREAS, there is a need for improved performance measures for higher education institutions that receive state funding; and

WHEREAS, limits imposed by Initiative 601 and the estimated increases in the statutorily required state services of K-12, corrections, and some social service programs make it clear that a new funding system and service delivery innovations are needed to prevent an erosion of postsecondary education opportunities and financial support;

NOW, THEREFORE, I, Mike Lowry, Governor of the state of Washington, by virtue of the authority vested in me, do hereby establish the Governor's Higher Education Task Force.

1. The Task Force is charged with the responsibility to review the current higher education system and to propose a new financing system and accountability measures that establish the state's commitment to efficient, effective, and innovative institutions through the year 2010. The Task Force shall identify and propose:
   A. Effective and innovative uses of resources that preserve an efficient, stable, and strong public higher education system with institutional accountability to the Governor, legislature, students, business, and citizens of the state;
   B. Long term policies for establishing student tuition rates, state financial aid, program quality levels, and state funded student enrollments; and
   C. Higher education and training needs necessary for effective and successful participation in the global economy of the 21st Century by Washington State citizens.
2. The Governor shall appoint the members of the Task Force which shall include members of the legislature, the Director of the Office of Financial Management, business, labor, higher education institutions, the Higher

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Education Coordinating Board, and the Commission on Student Learning.

3. The Task Force budget and staff shall be provided by the Office of Financial Management.
4. Task Force members will be reimbursed for expenses according to RCW 43.03.050.
5. The Task Force chair shall be appointed by the Governor.
6. The Task Force chair will establish committees as may be necessary to carry out the work of the Task Force. The chair shall also designate a vice chair and provide for the recording of activities and actions taken by the Task Force.
7. The Task Force shall appoint advisory groups to assist the Task Force.
8. The Task Force shall:
   A. Issue a report to the Governor and the legislature by July 31, 1996 recommending actions needed to effectively implement long range funding and accountability needs of our state's higher education system;
   B. Draft the needed legislation and specify other actions that should be taken to implement the recommendations of the Task Force; and
   C. Coordinate its work with the Higher Education Coordinating Board Master Plan and other education development activities currently taking place in the state of Washington.
9. This Executive Order shall take effect immediately and terminate one day after the 1997 legislative session.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 24th day of July, A.D., nineteen hundred and ninety-five.

Mike Lowry
Governor of Washington

BY THE GOVERNOR:

Ralph Munro
Secretary of State

WSR 95-16-052
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 95-03]

ESTABLISHING THE GOVERNOR'S SCHOOL-TO-WORK TASK FORCE

WHEREAS, the young people of the state of washington would benefit from an education that exposes them to the world of work, provides opportunities to explore a range of choices for careers, and provides opportunities to develop skills and capacities to increase the education and work choices of young people; and

WHEREAS, such educational practices are known as school-to-work transition programs, many of which are currently in operation in the state, and the state would benefit by increasing the scale of existing efforts, developing an integrated school-to-work system which incorporates existing work into a larger statewide effort; and

WHEREAS, the state currently has major strengths in developing a school-to-work system that provides such opportunities for all students in the state, including leadership in education reform, a creative and active education system, substantial commitment and involvement by business and labor in education and workforce development at the state and local levels, initial development of skill standards by industry and education, and local school-to-work and Tech Prep programs currently involving thousands of students; and

WHEREAS, partnerships have been developed at the state level between the common schools, community colleges, business, organized labor, workforce development, and others in support of school-to-work efforts, and such partnerships have also developed at the local level as school-to-work projects have grown; and

WHEREAS, the Governor's Council on School-to-Work Transition in completing its work, has proposed the development of a statewide school-to-work system designed for all the state's young people and has made recommendations to establish the system including establishment of an ongoing task force to oversee the implementation of the Council's recommendations; and

WHEREAS, goals include building school-to-work efforts on the base of education reform, ensuring that all schools and students are involved in school-to-work projects, supporting changes in school-based learning which includes the development of educational pathways, broadening the development of work-based learning, enhancing connecting activities at the local and regional level, expanding the development of skill standards, increasing the ability of business and labor to participate in school-to-work activities, addressing the needs of special populations to ensure all students have the opportunity to effectively participate in school-to-work activities, increasing public understanding of and involvement in school-to-work transition efforts, and establishing an accountability system to ensure that school-to-work efforts are effective.

NOW, THEREFORE, I, Mike Lowry, Governor of the state of Washington, by virtue of the authority vested in me, do hereby establish the Governor's School-to-Work Task Force.

I. The Task Force is charged with overseeing the implementation of the state's school-to-work system and overseeing the implementation of the recommendations of the Governor's Council on School-to-Work Transition and the subsequent Comprehensive Plan.

   Responsibilities of the Task Force include:

   A. Ensuring that the goals and tasks identified in the Final Report of the Governor's Council for School-to-Work Transition and the subsequent Compre-

hensive Plan are appropriately assigned to lead agencies or organizations with prime responsibility for implementation and ensuring that partners who need to be involved in these tasks have been identified;

B. Regularly reviewing progress and quality of school-to-work tasks undertaken by the statewide partners under the Comprehensive Plan;

C. Identifying problems that occur in the implementation of the Comprehensive Plan and in the development of the school-to-work system, identifying strategies for responding to them, and directing implementation of those strategies when possible; and

D. Submitting annual reports on the state's progress in implementing school-to-work tasks.

II. The Task Force shall consist of no more than 12 members who shall be appointed by the Governor and shall serve at the Governor's pleasure. Membership of the Task Force shall include representatives of major partners in developing the state's school-to-work system including the directors of agencies and organizations representing the common schools, two-year colleges, business, labor, and workforce development and shall include other members as the Governor shall designate.

III. The Governor shall designate the chair of the Task Force who shall serve at the Governor's pleasure.

IV. The Task Force chair may establish sub-committees and working groups as may be necessary to carry out the work of the Task Force. The chair shall designate a vice-chair from the members of the Task Force and shall provide for the recording of activities and actions taken by the Task Force.

V. In the event that the state receives major federal grants for school-to-work implementation, the Task Force shall determine necessary actions, develop agreements with partners to implement them, and review progress annually.

VI. The Office of Financial Management will serve as fiscal agent for the Task Force for federal grants. The Director of the Office of Financial Management shall serve as an ex officio member of the Task Force. In the event that the state receives major federal grants for school-to-work implementation, the Office of Financial Management shall assist the Task Force in implementing its decisions.

VII. This Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 24th day of July, A.D., nineteen hundred and ninety-five.

Mike Lowry
Governor of Washington

BY THE GOVERNOR:

Ralph Munro
Secretary of State

WSR 95-16-054
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING
(Real Estate Commission)
[Memorandum—July 24, 1995]

Please revise the date and location for the December 1995 Washington Real Estate Commission meeting. The meeting has been rescheduled for Friday, December 8, 1995, at 9:00 a.m. at the Department of Labor and Industries Building, 7273 Linderson Way S.W., Olympia, WA 98501.

WSR 95-16-060
NOTICE OF PUBLIC MEETINGS
COMMISSION ON JUDICIAL CONDUCT
[Memorandum—July 24, 1995]

A meeting of the rules subcommittee of the Commission on Judicial Conduct will be conducted at 6:00 p.m., September 7, 1995, at the Sea-Tac Holiday Inn, 17338 Pacific Highway South, Seattle, WA 98188.

WSR 95-16-061
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH
(Board on Fitting and Dispensing of Hearing Aids)
[Memorandum—July 24, 1995]

Listed below is the amended date and location of the November 1995 Board on Fitting and Dispensing of Hearing Aids board meeting.

Date: November 15, 1995

Location: Department of Social and Health Services
Meeker Mall - Federal Way Room
1313 West Meeker Street
Kent, WA
(206) 872-2663

WSR 95-16-072
RULES COORDINATOR
STATE BOARD OF EDUCATION
[Filed July 28, 1995, 3:45 p.m.]

The rules coordinator for the State Board of Education is Larry Davis, Executive Director, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, phone (360) 753-6715, FAX (360) 586-2357.

Larry Davis
Executive Director

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WSR 95-16-085
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 95-04]

MANDATING THE USE OF COMMUNITY PROTECTION TEAMS

WHEREAS, the number of children in the United States who face violence in their own homes is growing dramatically as more families experience poverty, homelessness, and substance abuse problems; and

WHEREAS, the rate of child abuse and neglect in our country has increased by 48 percent over the past eight years; and

WHEREAS, the state's child welfare system is struggling to keep up with growing caseloads and to respond effectively to increasingly severe cases of family dysfunction; and

WHEREAS, no reliable research-based approach exists to identify those families who are most at risk for child fatalities, thereby increasing the need for enhanced professional evaluations; and

WHEREAS, law enforcement officers, physicians, mental health and substance abuse treatment providers, child guardians ad litem, public health nurses, school counselors, and other professionals collectively possess the skills and expertise that can help to reliably assess risk to children, and;

WHEREAS, the checks and balances provided by an "outside" community review of state agency actions can improve outcomes for children and their families; and

WHEREAS, current law permits, but does not require, the Department of Social and Health Services to use community-based, multidisciplinary teams of service professionals for consultation in certain child protection cases;

NOW, THEREFORE, I, Mike Lowry, Governor of the state of Washington, by virtue of the power vested in me, do hereby order the following:

I. The Department of Social and Health Services shall utilize the multidisciplinary community protection teams established pursuant to RCW 74.14B.030 as follows:

   A. In all child protection cases in which the risk assessment results in a "moderately high" or "high" risk classification, and the child is age six years or younger;

   B. In all child protection cases where serious professional disagreement exists about a risk of death or serious injury;

   C. In all child protection cases that are opened on the basis of "imminent harm"; and

   D. In all complex child protection cases where such consultation will help improve outcomes for children.

II. The Department of Social and Health Services shall establish, maintain, and staff multidisciplinary community protection teams sufficient to review these cases as soon as feasible and shall continue to develop a broad array of team members who will work with the department to make the best decisions possible to protect and improve the lives of the children in our state.

III. This Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 27th day of July, A.D., nineteen hundred and ninety-five.

Mike Lowry
Governor of Washington

BY THE GOVERNOR:

Donald F. Whiting
Assistant Secretary of State

WSR 95-16-089
NOTICE OF PUBLIC MEETINGS
COMMUNITY COLLEGES OF SPOKANE
[Memorandum—July 26, 1995]

The August 1995 meeting of the board of trustees of Community Colleges of Spokane, Washington Community College District 17, has been canceled.

The September 19, 1995, meeting has been changed to September 26, 1995. The location and time remains the same, 1:30 p.m., 2000 North Greene Street, Spokane, WA 99207.

WSR 95-16-091
RULES OF COURT
STATE SUPREME COURT
[July 26, 1995]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO RLD 5.5A(c); CrRLJ 3.2(s) AND IRLJ 6.2	))))	ORDER NO. 25700-A-564

The Washington State Bar Association having recommended the adoption of the proposed amendment to RLD 5.5A(c); the Washington State Utilities and Transportation Commission having recommended the amendment to CrRLJ 3.2(s) and the Washington State Patrol having recommended the amendment to IRLJ 6.2, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

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

DATED at Olympia, Washington this 26th day of July, 1995.

	Durham, C.J.
Dolliver, J.	Smith, J.
Johnson, J.	Madsen, J.
Guy, J.	Alexander, J.
Talmadge, J.	Pekelis, J.

RLD 5.5A(c)

(c) **Protest.** A respondent lawyer wishing to protest the issuance of an admonition must file a notice to that effect with the Association within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance shall be considered to have been ordered to hearing by the review committee issuing the admonition.

CrRLJ 3.2(s)

(s) **Forfeitable Utilities and Transportation Offenses.** The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	60% PSEA	30% PSEA	TOTAL
RCW & WAC	VIOLATION				
81.04.380	Violation of Chapter by Officer, Agent, Employee of Public Service Co. (Mandatory Appearance)				500
81.04.385	Failure To Comply With Commission Orders/Provision of Title 81 (Mandatory Appearance)				500
81.04.390	Person Violating Provision of Title 81 (Mandatory Appearance)				500
81.04.390	Failure To Observe Order, Aiding, Abetting, Etc. (Mandatory Appearance)				250
81.68.045 480-030-030	Certificate Required-Auto Transp. (Mandatory Appearance)				500
81.68.045 480-40-030	Certificate Required-Excursion Bus (Mandatory Appearance)				500
81.70.220 480-40-030	Certificate Required-Charter Bus (Mandatory Appearance)				500
81.70.330	No Name or Permit Number Displayed-Charter/Excursion Bus	50	30	15	95
480-30-090	Fail to ID Vehicle-Auto Transp.	50	30	15	95
81.70.340 480-40-120	Fail To Register ICC Authority-Charter/Excursion Bus	80	48	24	152
480-30-100	Disqualified Driver-License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R. § 391.15 (Mandatory Appearance)				500
480-40-070	Disqualified Driver-License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R § 391.15-Charter/Excursion Bus (Mandatory Appearance)				500
480-30-100	Medical Certificate Violation-Auto Transp.	50	30	15	95
480-40-070	Medical Certificate Violation-Charter/Excursion Bus	50	30	15	95
480-30-097	Moving Equipment Ordered Out of Service Without Repairs Made-Auto Transp. (Mandatory Appearance)				500
480-40-065	Moving Equipment Ordered Out of Service without Repairs Made-Charter/Excursion Bus (Mandatory Appearance)				500
480-30-100	Hours of Service-Auto Transp.-Driver in Service	50	30	15	95
480-30-100(1)	Driver Out of Service	80	48	24	152
81.77.040 480-70-070	Certificate of Convenience and Necessity Required-Solid Waste Transp. (Mandatory Appearance)				500
480-70-300	Fail to ID Vehicle-Solid Waste Transp.	50	30	15	95
480-70-400	Disqualified Driver-License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R. § 391.15-Solid Waste Transp. (Mandatory Appearance)				500

480-70-400	Medical Certificate Violation-Solid Waste Transp.	50	30	15	95
480-70-325	Moving Equipment Ordered Out of Service Without Repairs Made-Solid Waste Transp. (Mandatory Appearance)				500
480-70-330	Hours of Service-Solid Waste Transp.				
	Driver in Service	50	30	15	95
	Driver Out of Service	80	48	24	152
~~81.80.060~~	~~No Valid Combination of Services Permit~~	~~130~~	~~78~~	~~39~~	~~247~~
81.80.070	No Valid Permit-Common/Contract				
480-14-190	(Mandatory Appearance)				500
81.80.100	Exceeding Permit Authority	30	78	39	247
~~81.80.300~~	~~No Valid ID Cab Card Displayed~~	~~50~~	~~30~~	~~15~~	~~95~~
~~480-12-130~~					
~~81.80.318~~	~~Fail To Obtain Valid Trip Permit~~	~~50~~	~~30~~	~~15~~	~~95~~
~~81.80.320~~	~~Insufficient/No Regulatory Fees Paid~~	~~50~~	~~30~~	~~15~~	~~95~~
81.80.355	Unlawful Advertising	80	48	24	152
480-14-100					
81.80.371	Fail To Register Appropriate				
~~480-12-126~~	ICC Authority	80	48	24	152
480-14-320					
480-12-121	Fail To Display Copy of Permit	25	15	7	47
480-14-090					
~~480-12-135~~	Improper Use of ~~Cab Card~~ Permit				
480-14-110	~~and Stamp~~ or Registration	130	78	39	247
81.80.305	No Name or Permit Number				
480-12-150	Displayed	50	30	15	95
480-14-340					
480-12-165	Moving Equipment Ordered Out of Service Without				
480-14-360(3)	Repairs Made (Mandatory Appearance)				500
480-12-180(6)	Disqualified Driver-License Suspended or Revoked,				
480-14-370(7)	and Other Disqualifying Offenses as Listed in 49 C.F.R. § 391.15 (Mandatory Appearance)				500
480-12-180(1)	Attendance/Surveillance of Hazardous Material Laden				
480-14-370(1)	Motor Vehicle (Mandatory Appearance)				500
480-12-180(1)	Parking of Hazardous Material Laden Motor Vehicle				
480-14-370(1)	(Mandatory Appearance)				500
480-12-180(1)	Explosive Laden Vehicle Off Route				
480-14-370(1)	(Mandatory Appearance)				500
480-12-180(6)	Medical Certificate Violation	50	30	15	95
480-14-370(7)					
480-12-190	Hours of Service Violation				
480-14-380	Driver in Service	50	30	15	95
480-12-190(1)	Driver Out of Service	80	48	24	152
480-14-380					
~~480-12-195~~	Hazardous Material Transportation				
480-14-390	(Mandatory Appearance)				500
~~480-12-205~~	~~Unauthorized Passenger in Vehicle~~	~~25~~	~~15~~	~~7~~	~~47~~
480-12-210	Failure To Display Commission Approved Lease	50	30	15	95
~~480-12-260~~	~~Failure To Display Bill of Lading/ Shipping Document~~	~~50~~	~~30~~	~~15~~	~~95~~
~~480-12-321~~	~~Failure To File Log Road Classification~~	~~50~~	~~30~~	~~15~~	~~95~~
81.90.030	Certificate Required (Mandatory Appearance)				500
81.90.140	Failure To Register Interstate				
480-35-110	Authority	80	48	24	152
480-35-120	Failure To Display Valid Identification Decal	50	30	15	95
81.80.301	Failure To Display Single State				
480-14-300	Registration (SSR) Receipt	50	30	15	95
480-14-400	Radioactive Material Transp. (Mandatory Appearance)				500

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IRLJ 6.2(d)

(d) Penalty Schedule. The following infractions shall have the penalty listed, not including statutory assessments.

	Base Penalty
(1) Traffic Infractions	
Wrong way on freeway (RCW 46.61.150)	$175
Wrong Way on freeway access (RCW 46.61.155)	$80
Backing on limited access highway (RCW 46.61.605)	$80
Spilling or failure to secure load (RCW 46.61.655)	$80
Throwing or depositing debris on highway (RCW 46.61.645)	$80
Disobeying school patrol (RCW 46.61.385)	$80
Passing stopped school bus (with red lights flashing) (RCW 46.61.370)	$80
Violation of posted road restriction (RCW 46.44.080; RCW 46.44.105(4))	$175
Switching license plates, loan of license or use of another's (RCW 46.16.240)	$80
Altering or using altered license plates (RCW 46.16.240)	$80
Operator's Licenses (RCW 46.20)	
All RCW 46.20 infractions	$35
Vehicle Licenses (RCW 46.16)	
Expired Vehicle License (RCW 46.16.010)	
Two months or less	$35
Over 2 months	$80
Speeding (RCW 46.61.400) if speed limit is over 40 m.p.h.	
1-5 m.p.h. over limit	$20
6-10 m.p.h. over limit	$30
11-15 m.p.h. over limit	$45
16-20 m.p.h. over limit	$60
21-25 m.p.h. over limit	$75
26-30 m.p.h. over limit	$95
31-35 m.p.h. over limit	$120
36-40 m.p.h. over limit	$145
Over 40 m.p.h. over limit	$175
Speeding if speed limit is 40 m.p.h. or less	
1-5 m.p.h. over limit	$30
6-10 m.p.h. over limit	$35
11-15 m.p.h. over limit	$50
16-20 m.p.h. over limit	$70
21-25 m.p.h. over limit	$95
26-30 m.p.h. over limit	$120
31-35 m.p.h. over limit	$145
Over 35 m.p.h. over limit	$175
Speed Too Fast for Conditions (RCW 46.61.400(1))	$35
Rules of the Road	
Failure to stop (RCW 46.61.050, .210)	$35
Failure to yield the right of way	$35

(RCW 46.61.180, .190, .205, .210, .235, .300, .365)	
Following too close	$35
(RCW 46.61.145, .635)	
Failure to signal	$35
(RCW 46.61.310)	
Improper lane usage or travel	$35
(RCW 46.61.140)	
Impeding traffic	$35
(RCW 46.61.425)	
Improper passing	$35
(RCW 46.61.110, .115, .120, .125, .130)	
Prohibited and improper turn	$35
(RCW 46.61.290, .295, .305)	
Crossing double yellow line left of center line	$35
(RCW 46.61.100, .130, .140)	
Operating with obstructed vision	$35
(RCW 46.61.615)	
Wrong way on one-way street	$35
(RCW 46.61.135)	
Failure to comply with restrictive signs	$35
(RCW 46.61.050)	
Accident	
If an accident occurs in conjunction with any of the listed rules-of-the-road infractions or speed too fast for conditions, the penalty for the infraction shall be:	$60
Equipment (RCW 46.37)	
Illegal use of emergency equipment	$80
(RCW 46.37.190)	
Defective or modified exhaust systems, mufflers, prevention of noise and smoke (RCW 46.37.390 (1) and (3))	
First offense (the penalty may be waived upon proof to the court of compliance)	$40
Second offense within 1 year of first offense	$60
Third and subsequent offenses within 1 year of first offense	$80
Any other equipment infraction (RCW 46.37.010)	$35
Motorcycles	
Any infraction relating specifically to motorcycles (Including no valid endorsement, RCW 46.20.500)	$35
Parking	
Illegal parking on roadway (RCW 46.61.560)	$30
Any other parking infraction (not defined by city or county ordinance)	$20
Pedestrians	
Any infraction regarding pedestrians (not defined by city or county ordinance)	$40
Bicycles	
Any infraction regarding bicycles	$25
Load Violations	
(all under RCW 46.44, except over license capacity) (see RCW 46.16)	
Over legal—tires, wheelbase (RCW 46.44.105(1))	
(First offense)	$65
(Second offense)	$95
(Third offense)	$110
In addition to the above (RCW 46.44.105(2)) 3¢ per excess pound	
Over license capacity (RCW 46.16.145)	
(First offense)	$50
(Second offense)	$95
(Third offense)	$110
Violation of special permit	$60

Failure to obtain special permit	$60
Failure to submit to being weighed	$60
Illegal vehicle combination (RCW 46.44.036)	$60
Illegally transporting mobile home	$65
Any other infraction defined in RCW 46.44	$45
Violation of Federal Motor Carrier Safety Regulations (RCW 46.32.010)	
Logbook/Medical Certificate	$62
Equipment/All Others	$35
Private Carrier (RCW 46.73)	
Failure to display valid medical exam	$62
Violation of daily log book	
Driver not out of service	$62
Driver out of service	$88
Off-Road Vehicles (ATV's) (RCW 46.09)	
Any RCW 46.09 infraction	$40
Snowmobiles (RCW 46.10)	
Any RCW 46.10 infraction	$40
Failure to respond to notice of infraction or failure to pay penalty (RCW 46.63.110(3))	$25 ~~$35~~
Failure to provide proof of motor vehicle insurance (RCW 46.30.020)	$250
(2) Commercial Vehicle Infractions	
Defective Equipment/Driver Safety (auto transp.) (WAC 480-30-095)	$35
Commercial Vehicle License (auto transp.) (WAC 480-30-095(1))	$35
Defective Equipment/Driver Safety (charter/excursion bus) (WAC 480-40-075(1))	$35
Commercial Vehicle License (charter/excursion bus) (WAC 480-40-075(1))	$35
Defective Equipment/Driver Safety (solid waste transp.) (WAC 480-70-400)	$35
Commercial Vehicle License (solid waste transp.) (WAC 480-70-400(1))	$35
Failure To Have Proof of Insurance (RCW 81.80.190)	$250
Defective Equipment/Driver Safety (WAC 480-12-180)	$35
Commercial Vehicle License (WAC 480-12-180(1))	$35
Defective Equipment/Driver Safety (limousine) (WAC 480-35-090)	$35
Commercial Vehicle License (limousine) (WAC 480-35-090(1))	$35
(3) Parks and Recreation Infractions	
Display of Snowmobile Registration Number, Decals, and Validation Tabs (WAC 308-94-070)	$48
Off-Road Vehicle Traffic Prohibited (WAC 332-52-030(4))	$35
Travel Off Road or Off Trail (WAC 332-52-030 (4)(c))	$35
Spark-Arresting Muffler Required (WAC 332-52-030 (4)(h))	$35
Yield Right of Way to:	
Log Hauling and Gravel Trucks (WAC 332-52-030 (4)(l))	$35
Animal-Drawn Vehicles/Persons Riding Animals (WAC 332-52-030 (4)(l))	$35
Following Closer Than 150 Feet (WAC 332-52-030 (4)(m))	$35
Moving Through Livestock Herd Without Direction (WAC 332-52-030 (4)(o))	$35
Parking on the Traveled Portion of the Roadway (WAC 332-52-030 (4)(q))	$30
Excessively Rev Vehicle Engine (WAC 332-52-030 (4)(r))	$35
Driving/Parking Vehicles (WAC 332-52-050(1))	$35
Bicycles/Motorbikes/Motorcycles on Posted Trails (WAC 332-52-050(3))	$35

Driving Motor Vehicle in Camp (WAC 332-52-050(4))	$35
Moorage and Use of Marine Facilities (WAC 352-12-010)	$35
Moorage Fees (WAC 352-12-020)	$35
Seasonal Permits (WAC 352-12-030)	$35
Use of Onshore Campsites (WAC 352-12-040)	$35
Self-Registration (WAC 352-12-050)	$60
Parking (WAC 352-20-010)	$24
Motor Vehicles on Roads and Trails (WAC 352-20-020)	$60
Speed Limits (WAC 352-20-030)	$35
Vehicles in Snow Areas (WAC 352-20-040)	$60
Trucks and Commercial Vehicles (WAC 352-20-050)	$35
Camping (WAC 352-32-030)	$60
Campsite Reservation (WAC 352-32-035)	$35
Picnicking (WAC 352-32-040)	$35
Park Periods (Unlawful Entry) (WAC 352-32-050)	$60
Park Capacities (WAC 352-32-053)	$35
Peace and Quiet (WAC 352-32-056)	$60
Pets (WAC 352-32-060)	$35
Horseback Riding (WAC 352-32-070)	$35
Use of Nonmotorized Cycles or Similar Devices in State Parks (WAC 352-32-075)	$35
Swimming (WAC 352-32-080)	$35
Games (WAC 352-32-090)	$35
Disrobing (WAC 352-32-100)	$35
Tents, etc., on Beaches (WAC 352-32-110)	$35
Lakes Located Wholly Within State Park Boundaries—Internal Combustion Engines Prohibited (WAC 352-32-155)	$35
Lakes Located Partially Within State Park Boundaries—Internal Combustion Engines Prohibited (WAC 352-32-157)	$35
Solicitation (WAC 352-32-195)	$60
Intoxication in State Park Areas (WAC 352-32-220)	$135
Food and Beverage Containers on Swimming Beaches (WAC 352-32-230)	$35
Use of Metal Detectors in State Parks (WAC 352-32-235)	$35
Self-Registration (WAC 352-32-255)	$60
Sno-Park Permit (WAC 352-32-260)	$35
Sno-Park Permit Display (WAC 352-32-265)	$35
Vehicular Traffic—Where Permitted—Generally (WAC 352-37-030)	$60
Equestrian Traffic (WAC 352-37-080)	$35
Pedestrians To Be Granted Right of Way (WAC 352-37-090)	$35
Beach Parking (WAC 352-37-100)	$24
Overnight Parking or Camping Prohibited (WAC 352-37-110)	$60
Speed Limits (WAC 352-37-130)	$35
(4) Boating Infractions	
Operating Vessel in Negligent Manner (RCW 88.12.020)	$160

No Personal Flotation Device (PFD) on Vessel for Each Person (RCW 88.12.115(1))	$35
Personal Flotation Device Not the Appropriate Size (RCW 88.12.115(1))	$35
Personal Flotation Device Not Readily Accessible (RCW 88.12.115(1))	$35
Observer Required on Board Vessel (RCW 88.12.125(2))	$35
Observer To Continuously Observe (RCW 88.12.125(2))	$35
Failure To Display Skier Down Flag (RCW 88.12.125(2))	$35
Flag/Pole Not to Specifications (RCW 88.12.125(2))	$35
Observer Does Not Meet Minimum Qualifications (RCW 88.12.125(3))	$60
Water Skier Not Wearing Personal Flotation Device (RCW 88.12.125(4))	$60
Overloading of Vessel Beyond Safe Carrying Ability (RCW 88.12.135(1))	$110
Carrying Passengers in Unsafe Manner (RCW 88.12.135(1))	$60
Overpowering of Vessel Beyond Vessel's Ability To Operate Safely (RCW 88.12.135(2))	$110
Person Not Wearing Personal Flotation Device (PFD) on Personal Watercraft (RCW 88.12.145(1))	$60
Failure To Give Accident Information to Law Enforcement (RCW 88.12.155(1))	$110
Motor Propelled Vessels Without Effective Muffler in Good Working Order and Constant Use (RCW 88.12.085(1))	$35
Sound Level in Excess of 90 Decibels for Engines Made Before 1/1/94 Using Stationary Test (RCW 88.12.085(1))	$35
Sound Level in Excess of 88 Decibels for Engines Made on or After 1/1/94 Using Stationary Test (RCW 88.12.085(1))	$35
Sound Level in Excess of 75 Decibels Using Shoreline Test (RCW 88.12.085(3))	$35
Removing, Altering of Modifying Muffler or Muffler System (RCW 88.12.085(7))	$35
Manufacturing, Selling, or Offering for Sale Any Vessel Equipped With Noncomplying Muffler or Muffler System (RCW 88.12.085(8))	$60
Vessel Exemption/Exception for Competing in Racing Events Carried on Board Operating Vessel (RCW 88.12.085(8))	$35
Personal Flotation Devices (PFDs) (WAC 352-60-030)	$35
Visual Distress Signals (WAC 352-60-040)	$35
Ventilation (WAC 352-60-050)	$35
Navigation Lights and Sound Signals (WAC 352-60-060)	$35
Steering and Sailing (WAC 352-60-070)	$35
Fire Extinguishing Equipment (WAC 352-60-080)	$35
Backfire Flame Control (WAC 352-60-090)	$35
Liquefied Petroleum Gas (WAC 352-60-100)	$35
Canadian Vessels (WAC 352-60-110)	$35

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

WSR 95-16-092
RULES OF COURT
STATE SUPREME COURT
[July 26, 1995]

IN THE MATTER OF THE ADOPTION OF THE AMENDMENTS TO REGULATIONS 102 AND 104 TO APR 11.2) ORDER NO. 25700-A-565

The Washington State Bar Association having recommended the adoption of the proposed amendments to Regulations 102 and 104 to APR 11.2, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments to Regulations 102 and 104 for APR 11.2 are adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendments will become effective immediately.

DATED at Olympia, Washington this 26th day of July, 1995.

	Durham, C.J.
Dolliver, J.	Madsen, J.
Smith, J.	Johnson, J.
Guy, J.	Alexander, J.
Talmadge, J.	Pekelis, J.

PROPOSED AMENDMENTS

REGULATIONS OF THE WASHINGTON STATE BOARD OF CONTINUING LEGAL EDUCATION

Regulation 102. Continuing Legal Education Requirements

As provided for in APR 11.2, each active member shall complete a minimum of 45 credit hours of approved legal education every three years. At least six of the 45 continuing legal education credit hours required during the reporting period shall be devoted exclusively to the areas of legal ethics, professionalism, or professional responsibility. If an active member completes more than 45 credits during a three-year reporting period, 15 of the excess credits may be carried forward and applied to that member's education requirement for the next reporting period. The fifteen credit hours that may be carried forward may include two credit hours toward the legal ethics, professionalism, or professional responsibility requirement. This requirement shall be prorated during the implementation period for active members who are assigned an initial reporting period of less than three years.

(a) Implementation. All members active in 1992, except those admitted in 1991 and 1992, will be assigned to three reporting groups of approximately equal numbers. Group 1 shall have a one-year initial reporting period. Group 2 shall have a two-year reporting period. Group 3 shall have a three-year reporting period. All subsequent reporting periods shall be three years.

(b) New Admission. Attorneys admitted in 1991, 1992 and all subsequent years report credits as specified in APR 11.2(b).

(c) Carry-Over Credits Earned Prior to January 1, 1992. Any credits earned and reported for 1991 as carry-over credits shall be claimed in the reporting period(s) covering 1992 or 1993.

(d) Carry-Over Credits Earned During the Initial Reporting Period. If, during the initial reporting period, an active member earns more credits than required during that period, 15 of the excess credits may be carried forward to the next reporting period, consistent with APR 11.2(a). The combined carry-over from credits earned prior to January 1, 1992 and the initial reporting period shall not, however, exceed 30 credits.

(e) As provided for in APR 11.2(d), implementation of the ethics/professionalism requirement commences on January 1, 1996. Members of Group 2 shall complete and report a minimum of two credit hours of accredited legal ethics, professionalism, or professional responsibility continuing education for the reporting period terminating December 31, 1996. Members of Group 3 shall complete and report a minimum of four credit hours of accredited legal ethics, professionalism or professional responsibility continuing education for the reporting period terminating on December 31, 1997. Members of Group 1 shall complete and report a minimum of six credit hours of approved or accredited legal ethics, professionalism, or professional responsibility continuing education for the reporting period terminating on December 31, 1998.

Regulation 104. Standards for Approval

The following standards shall be met by any course or activity for which approval is sought:

(a) The course shall have significant intellectual or practical content and its primary objective shall be to increase the attendee's professional competence as a lawyer.

(b) The course shall constitute an organized program of learning dealing with matter directly relating to the practice of law and/or to the areas of legal ethics, professional responsibility, of professionalism. ~~or ethical obligation of a lawyer~~. The area of professionalism shall include the issues of diversity and anti-bias training.

(c) Each faculty member shall be qualified by practical or academic experience to teach the subject he or she covers.

(d) Thorough, high quality, readable and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

(e) Courses should be conducted in a setting physically suitable to the educational activity of the program. A suitable writing surface should be provided where feasible.

(f) [RESERVED]
(g) Activities which involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting-tax law seminar, may be approved.

Reviser's note: The typographical errors in the above material 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: The brackets and enclosed material in the above text occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 95-16-098
HEALTH CARE POLICY BOARD
[Filed July 31, 1995, 3:55 p.m.]

In the Matter of:)
) NOTICE OF HEARING
WHITMAN MEDICAL GROUP, P.S.)
)

TO: Randall L. Stamper, STAMPER, SHERMAN, STOCKER & SMITH, P.S., Suite 200 Post Place, 720 West Boone, Spokane WA, Counsel for Petitioner

Whitman Medical Group, P.S. has filed a petition to approve certain conduct pursuant to the provision of RCW 43.72.310. The Health Care Policy Board appoints Tom Hilyard, pursuant to the provision of WAC 245-02-165, to serve as the Presiding Officer in this matter. The hearing is scheduled for September 5, 1995, at 10 a.m. at the Office of the Attorney General (1116 West Riverside, Spokane, Washington) in the Large Conference Room.

On or before August 9, 1995, Petitioner shall serve two copies of a Brief on the Health Care Policy Board that addresses, with specificity, the factors set forth in RCW 43.72.310(4). Respondent's Brief must be served on the Petitioner and the Presiding Officer on or before August 23, 1995.

DATED this 24th day of July, 1995.

Bernie Dochnahl
Chair

HEALTH CARE POLICY BOARD

NOTICE OF PETITION TO APPROVE CERTAIN CONDUCT- IN THE MATTER OF WHITMAN MEDICAL GROUP, P.S.

Whitman Medical Group, P.S. petitioned the Washington State Health Services Commission to approve certain conduct pursuant to the provision of RCW 43.62.310, and WAC 245-02-130, et seq., which could lessen competition in the relevant market. The authority of the Helath Services Commission to approve certain conduct was transferred to the Health Care Policy Board pursuant to the provisions of Engrosses Substitute House Bill 1589. Consistent with WAC 245-02-131, the Health Care Policy Board is soliciting comments from the public on the petition.

The conduct that is the subject of the petition can be generally be described as the creation of a new corporate entity which will include all the primary care physicians in Colfax, Washington.

Written comments may be filed with Tom Hilyard, Health Care Policy Board Member, P.O. Box 41185, Olympia, WA 98504-1185, and must be received by August 25, 1995.

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

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

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

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 identify the document within the issue.

WAC #		WSR #
1-21	PREP	95-11-115
1-21-010	AMD-P	95-14-044
1-21-020	AMD-P	95-14-044
1-21-040	AMD-P	95-14-044
1-21-050	AMD-P	95-14-044
1-21-170	AMD-P	95-14-044
1-21-180	NEW-P	95-14-044
4-25-710	AMD-P	95-09-066
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16-08-021	AMD-P	95-15-100
16-54-030	AMD-E	95-15-077
16-101-700	AMD-W	95-04-036
16-101-700	AMD-P	95-10-020
16-101-700	AMD-W	95-11-082
16-144-001	AMD-E	95-10-049
16-144-001	AMD-P	95-12-084
16-144-001	AMD	95-16-062
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16-144-147	NEW	95-16-062
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16-144-148	NEW	95-16-062
16-144-149	NEW-P	95-12-084
16-144-149	NEW	95-16-062
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16-164-080	AMD-P	95-10-099
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16-166-040	REP	95-13-074
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16-166-050	REP	95-13-074
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16-414-085	NEW	95-13-038
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16-493-005	NEW-P	95-15-097
16-493-010	NEW-P	95-15-097
16-493-015	NEW-P	95-15-097
16-493-020	NEW-P	95-15-097
16-493-025	NEW-P	95-15-097
16-493-030	NEW-P	95-15-097
16-493-035	NEW-P	95-15-097
16-493-040	NEW-P	95-15-097
16-493-045	NEW-P	95-15-097
16-493-050	NEW-P	95-15-097
16-495-200	NEW-P	95-11-118
16-495-200	NEW	95-14-034
16-495-205	NEW-P	95-11-118
16-495-205	NEW	95-14-034
16-495-210	NEW-P	95-11-118
16-495-210	NEW	95-14-034
16-495-215	NEW-P	95-11-118
16-495-215	NEW	95-14-034
16-495-220	NEW-P	95-11-118
16-495-220	NEW	95-14-034
16-495-225	NEW-P	95-11-118
16-495-225	NEW	95-14-034
16-495-230	NEW-P	95-11-118
16-495-230	NEW	95-14-034
16-495-235	NEW-P	95-11-118

WAC #		WSR #
16-495-235	NEW	95-14-034
16-495-240	NEW-P	95-11-118
16-495-240	NEW	95-14-034
16-495-245	NEW-P	95-11-118
16-495-245	NEW	95-14-034
16-495-250	NEW-P	95-11-118
16-495-250	NEW	95-14-034
16-495-255	NEW-P	95-11-118
16-495-255	NEW	95-14-034
16-497-005	AMD-P	95-15-098
16-497-030	AMD-P	95-15-098
16-532-035	PREP	95-09-079
16-532-035	AMD-P	95-10-095
16-532-040	PREP	95-09-079
16-532-040	AMD-P	95-10-095
16-532-101	PREP	95-09-079
16-532-120	PREP	95-09-079
16-532-120	AMD-P	95-10-095
16-536-020	PREP	95-08-005
16-536-020	AMD-P	95-12-089
16-557-010	PREP	95-08-003
16-557-020	AMD-P	95-12-090
16-580	PREP	95-08-004
16-580-020	AMD-P	95-10-096
16-580-070	AMD-P	95-10-096
16-585-010	NEW-P	95-05-071
16-585-010	NEW	95-15-102
16-585-020	NEW-P	95-05-071
16-585-020	NEW	95-15-102
16-585-030	NEW-P	95-05-071
16-585-030	NEW	95-15-102
16-585-040	NEW-P	95-05-071
16-585-040	NEW	95-15-102
16-585-050	NEW-P	95-05-071
16-585-050	NEW	95-15-102
16-585-060	NEW-P	95-05-071
16-585-060	NEW	95-15-102
16-585-070	NEW-P	95-05-071
16-585-070	NEW	95-15-102
16-585-080	NEW-P	95-05-071
16-585-080	NEW	95-15-102
16-585-090	NEW-P	95-05-071
16-585-090	NEW	95-15-102
16-674-059	NEW-P	95-09-090
16-674-059	NEW-W	95-11-070
16-674-060	AMD-P	95-09-090
16-674-060	AMD-W	95-11-070
16-674-080	AMD-P	95-09-090
16-674-080	AMD-W	95-11-070
16-675-029	REP-P	95-09-089
16-675-029	REP-W	95-11-071
16-675-030	AMD-P	95-09-089
16-675-030	AMD-W	95-11-071
16-675-039	REP-P	95-09-089
16-675-039	REP-W	95-11-071
16-675-040	AMD-P	95-09-089
16-675-040	AMD-W	95-11-071
16-700-011	NEW-P	95-12-091
16-700-011	NEW	95-15-101
16-750	PREP	95-13-089
16-750-005	AMD-E	95-16-112
16-750-011	AMD	95-06-002
16-750-015	AMD	95-06-002
30	PREP	95-11-095
30-01-010	AMD-P	95-12-098
30-01-010	AMD	95-15-040
30-01-020	AMD-P	95-12-098
30-01-020	AMD	95-15-040
30-01-030	REP-P	95-12-098
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30-01-050	AMD	95-15-040
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30-24-080	REP-P	95-12-098
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30-28-030	REP	95-15-040
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50-60-165	AMD-P	95-05-084
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50-60-180	REP-P	95-05-084
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50-60-200	NEW	95-13-091
50-60-210	NEW-P	95-05-084
50-60-210	NEW	95-13-091
51-20	PREP	95-03-086
51-20-001	REP-P	95-04-106
51-20-001	REP	95-11-107
51-20-002	REP-P	95-04-106
51-20-002	REP	95-11-107
51-20-003	REP-P	95-04-106
51-20-003	REP	95-11-107
51-20-004	REP-P	95-04-106
51-20-004	REP	95-11-107

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51-20-005	REP	95-11-107
51-20-007	REP-P	95-04-106
51-20-007	REP	95-11-107
51-20-008	REP-P	95-04-106
51-20-008	REP	95-11-107
51-20-009	REP-P	95-04-106
51-20-009	REP	95-11-107
51-20-0100	REP-P	95-04-106
51-20-0100	REP	95-11-107
51-20-0104	REP-P	95-04-106
51-20-0104	REP	95-11-107
51-20-0300	REP-P	95-04-106
51-20-0300	REP	95-11-107
51-20-0307	REP-P	95-04-106
51-20-0307	REP	95-11-107
51-20-0400	REP-P	95-04-106
51-20-0400	REP	95-11-107
51-20-0404	REP-P	95-04-106
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51-20-0409	REP-P	95-04-106
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51-20-0414	REP-P	95-04-106
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51-20-0417	REP-P	95-04-106
51-20-0417	REP	95-11-107
51-20-0420	REP-P	95-04-106
51-20-0420	REP	95-11-107
51-20-0500	REP-P	95-04-106
51-20-0500	REP	95-11-107
51-20-0503	REP-P	95-04-106
51-20-0503	REP	95-11-107
51-20-0514	REP-P	95-04-106
51-20-0514	REP	95-11-107
51-20-0515	REP-P	95-04-106
51-20-0515	REP	95-11-107
51-20-0551	REP-P	95-04-106
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51-20-0600	REP-P	95-04-106
51-20-0600	REP	95-11-107
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51-20-0901	REP-P	95-04-106
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51-20-1200	REP-P	95-04-106
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51-20-1201	REP-P	95-04-106
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51-20-1224	REP-P	95-04-106
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51-21	PREP	95-03-086
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51-21-003	REP	95-11-107
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51-21-008	REP-P	95-04-106
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51-21-38039	REP-P	95-04-106
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67-25-255	AMD	95-06-057
67-25-257	AMD	95-06-057
67-25-260	AMD	95-06-057
67-25-270	AMD	95-06-057
67-25-275	AMD	95-06-057
67-25-280	AMD	95-06-057
67-25-281	REP	95-06-057

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67-25-288	NEW	95-06-057
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67-25-360	AMD	95-06-057
67-25-380	AMD	95-06-057
67-25-384	AMD	95-06-057
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67-25-388	AMD	95-06-057
67-25-390	AMD	95-06-057
67-25-392	REP	95-06-057
67-25-394	AMD	95-06-057
67-25-396	AMD	95-06-057
67-25-398	NEW	95-06-057
67-25-399	NEW	95-06-057
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67-25-404	AMD	95-06-057
67-25-408	AMD	95-06-057
67-25-412	AMD	95-06-057
67-25-416	AMD	95-06-057
67-25-418	NEW	95-06-057
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67-25-436	NEW	95-06-057
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67-25-590	AMD	95-06-057
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67-35-030	AMD	95-12-007
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67-35-210	AMD	95-12-007
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67-35-230	PREP	95-04-012
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67-35-230	AMD	95-12-007
67-35-350	PREP	95-04-012
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67-35-360	PREP	95-04-012
67-35-360	AMD-P	95-05-040
67-35-360	AMD	95-12-007
67-35-430	PREP	95-04-012
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82-50-021	AMD-P	95-11-116
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131-12-010	AMD	95-13-068
131-16-005	PREP	95-05-026
131-16-005	REP-P	95-06-064
131-16-005	REP	95-10-014
131-16-056	PREP	95-10-087
131-16-056	NEW-P	95-10-089
131-16-056	NEW-C	95-13-006
131-16-056	NEW	95-13-069
131-28	AMD-C	95-13-007
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131-28-015	AMD-E	95-07-004
131-28-015	PREP	95-10-088
131-28-015	AMD-P	95-10-090
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131-28-025	AMD-E	95-07-004
131-28-025	PREP	95-10-088
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131-28-02501	NEW-E	95-07-004
131-28-02501	PREP	95-10-088
131-28-02501	NEW-P	95-10-090
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131-28-030	AMD-E	95-07-004
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131-28-090	AMD	95-13-070
131-46-135	NEW-P	95-06-054
131-46-135	NEW	95-10-013
132D-300	PREP	95-16-050
132D-300-005	PREP	95-16-050
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132G-126-020	REP-P	95-04-008
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132G-126-030	REP-P	95-04-008
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132G-126-210	REP-P	95-04-008
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132G-126-290	REP-P	95-04-008
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132G-126-330	REP-P	95-04-008
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132G-126-350	REP-P	95-04-008
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132G-126-360	REP-P	95-04-008
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132G-126-390	REP-P	95-04-008
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132G-126-400	REP	95-07-103
132G-160-075	PREP	95-15-016
132H-121-020	NEW-P	95-14-069
132H-160-052	NEW-P	95-14-070
132H-160-093	REP-P	95-14-070
132H-160-094	REP-P	95-14-070
132H-160-095	REP-P	95-14-070
132H-160-182	AMD-E	95-11-098
132H-160-182	PREP	95-14-068
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132I-130-030	NEW-P	95-06-083
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132I-160	PREP	95-10-021
132I-160-110	AMD-P	95-11-102
132I-160-110	AMD	95-15-026
132K-120	PREP	95-11-136
132K-120-005	REP-P	95-12-103
132K-120-010	REP-P	95-12-103
132K-120-015	REP-P	95-12-103
132K-120-020	REP-P	95-12-103
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132K-120-030	REP-P	95-12-103
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132K-120-065	REP-P	95-12-103
132K-120-070	REP-P	95-12-103
132K-120-075	REP-P	95-12-103
132K-120-080	REP-P	95-12-103
132K-120-085	REP-P	95-12-103
132K-130-010	PREP	95-11-137
132K-130-010	NEW-P	95-12-102
132M-108-020	AMD-P	95-13-097
132M-108-020	AMD	95-16-069
132M-108-090	NEW-P	95-06-052
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132M-160-040	NEW-P	95-13-097
132M-160-040	NEW	95-16-069
132M-160-050	NEW-P	95-13-097
132M-160-050	NEW	95-16-069
132Q-04-076	NEW-P	95-11-019
132Q-04-076	NEW	95-16-066
132Q-04-077	NEW-P	95-11-020
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132Q-04-097	NEW	95-03-060
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133-20-060	PREP	95-12-080
133-20-060	AMD-P	95-13-078
133-20-100	AMD-P	95-13-078
133-20-120	PREP	95-12-080
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133-30	PREP	95-12-081
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133-30-080	REP-P	95-13-077
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137-28-410	NEW	95-15-044
137-28-420	NEW	95-15-044
137-28-430	NEW	95-15-044
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139-10-210	AMD	95-08-036
139-10-210	AMD	95-09-070
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173-19-1202	PREP	95-11-087
173-19-1301	AMD	95-12-057
173-19-250	PREP	95-04-101
173-19-250	AMD-P	95-07-144
173-19-2513	PREP	95-05-063
173-19-2515	PREP	95-07-020
173-19-2519	PREP	95-07-022
173-19-2519	AMD-P	95-12-092
173-19-2521	PREP	95-07-021
173-19-2521	AMD-P	95-11-088
173-19-2521	AMD	95-16-024
173-19-260	PREP	95-04-076
173-19-260	AMD-P	95-05-064
173-19-280	PREP	95-11-085
173-19-3101	AMD	95-10-051
173-19-3507	AMD-S	95-03-082
173-19-3507	AMD	95-08-042
173-19-3514	AMD-P	95-03-078
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173-19-360	PREP	95-07-019
173-19-360	AMD	95-07-125
173-19-360	AMD-P	95-09-052
173-19-370	AMD	95-12-026
173-19-4005	PREP	95-11-086
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173-19-420	AMD	95-16-048
173-19-4205	AMD-P	95-11-089
173-19-4205	AMD	95-16-048
173-175	PREP	95-15-064
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173-204-200	AMD-P	95-16-023
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173-204-520	AMD-P	95-16-023
173-204-530	AMD-P	95-16-023
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173-204-590	AMD-P	95-16-023
173-221A	PREP	95-07-057
173-224-040	AMD-P	95-15-045
173-224-050	AMD-P	95-15-045
173-224-070	REP-P	95-15-045
173-224-090	AMD-P	95-15-045
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173-303-030	AMD-P	95-11-113
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173-330-030	REP-P	95-15-104
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173-330-070	REP-P	95-15-104
173-330-900	REP-P	95-15-104
173-340-200	AMD-P	95-15-078
173-340-440	AMD-P	95-15-078
173-340-530	AMD-P	95-15-078
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173-354-070	NEW-P	95-15-104
173-354-090	NEW-P	95-15-104
173-354-100	NEW-P	95-15-104
173-354-150	NEW-P	95-15-104
173-354-200	NEW-P	95-15-104
173-354-230	NEW-P	95-15-104
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173-354-340	NEW-P	95-15-104
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173-354-380	NEW-P	95-15-104
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173-354-440	NEW-P	95-15-104
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173-354-515	NEW-P	95-15-104
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173-354-990	NEW-P	95-15-104
173-360-100	AMD	95-04-102
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173-360-120	AMD	95-04-102
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173-360-190	AMD	95-04-102
173-360-200	AMD	95-04-102
173-360-210	AMD	95-04-102
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173-360-310	AMD	95-04-102
173-360-320	AMD	95-04-102
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173-360-340	AMD	95-04-102
173-360-345	AMD	95-04-102
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173-360-380	AMD	95-04-102
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173-360-680	REP	95-04-102
173-360-690	REP	95-04-102
173-360-695	REP	95-04-102
173-400	PREP	95-06-067
173-400-030	AMD	95-07-126
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173-400-100	AMD	95-07-126
173-400-101	AMD	95-07-126
173-400-102	NEW	95-07-126
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173-422-195	AMD	95-06-068
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173-430-080	AMD	95-03-083
173-430-090	NEW	95-03-083
173-430-100	NEW	95-03-083
173-548	AMD-C	95-06-055
173-548	PREP	95-12-059
173-548-010	AMD-E	95-07-009
173-548-010	AMD-W	95-12-065
173-548-015	NEW-E	95-07-009
173-548-015	NEW-W	95-12-065
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173-548-030	AMD-W	95-12-065

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174-116-127	PREP	95-05-010
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178-01	PREP	95-04-016
178-01-010	REP-P	95-04-017
178-01-010	REP	95-08-008
180-10	PREP	95-11-069
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180-16-215	AMD-P	95-16-113
180-16-222	PREP	95-13-047
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180-27-600	PREP	95-14-042
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180-27-610	PREP	95-14-042
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180-27-615	PREP	95-14-042
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180-53-070	AMD-P	95-16-113
180-57-080	PREP	95-12-024
180-75-070	PREP	95-05-043
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180-78-160	PREP	95-13-048
180-78-160	AMD-P	95-16-081
180-79-062	PREP	95-13-046
180-79-062	AMD-P	95-16-082
180-79-230	PREP	95-13-047
180-79-241	PREP	95-13-049
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180-79-334	PREP	95-16-075
180-79-340	PREP	95-16-073
180-79-350	PREP	95-16-074
180-85	PREP	95-05-042
180-95	AMD-P	95-05-076
180-95	AMD	95-08-029
180-95-005	AMD-P	95-05-076
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180-95-050	AMD-P	95-05-076
180-95-050	AMD	95-08-029
180-95-070	NEW-P	95-05-076
180-95-070	NEW	95-08-029
182-04	PREP	95-04-057
182-08	PREP	95-04-057
182-12	PREP	95-04-057
182-12-110	AMD-E	95-08-002

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182-12-110	AMD-E	95-15-112
182-12-111	AMD-E	95-08-002
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182-12-115	AMD-E	95-08-002
182-12-115	AMD-E	95-15-112
182-12-122	AMD-E	95-08-002
182-12-122	AMD-E	95-15-112
182-13-010	NEW-P	95-03-063
182-13-010	NEW-W	95-03-074
182-13-010	NEW-P	95-03-075
182-13-010	NEW	95-07-011
182-13-020	NEW-P	95-03-063
182-13-020	NEW-W	95-03-074
182-13-020	NEW-P	95-03-075
182-13-020	NEW	95-07-011
182-13-030	NEW-P	95-03-063
182-13-030	NEW-W	95-03-074
182-13-030	NEW-P	95-03-075
182-13-030	NEW	95-07-011
182-13-040	NEW-P	95-03-063
182-13-040	NEW-W	95-03-074
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182-13-040	NEW	95-07-011
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182-14-010	NEW-E	95-15-092
182-14-020	NEW-E	95-08-001
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182-14-030	NEW-E	95-08-001
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182-14-090	NEW-E	95-08-001
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182-14-100	NEW-E	95-08-001
182-14-100	NEW-E	95-15-092
182-16	PREP	95-04-057
182-18	PREP	95-04-057
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182-20-001	NEW	95-12-010
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192-04-175	NEW-P	95-15-063
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192-12-141	PREP	95-04-104
192-12-141	PREP	95-07-075
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192-12-184	AMD-P	95-06-081
192-12-184	AMD	95-09-085
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192-16-007	REP-P	95-06-081
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192-16-021	AMD-P	95-06-081
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192-16-025	AMD	95-09-085
192-16-050	AMD-P	95-06-081
192-16-050	AMD	95-09-085
192-16-051	PREP	95-11-128
192-16-051	AMD-E	95-14-091
192-16-052	NEW-E	95-14-091
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192-16-065	REP	95-09-085
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192-23-019	NEW-P	95-08-077
192-23-019	NEW	95-12-014
192-28-100	REP-P	98-06-081
192-28-100	REP	95-09-085
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192-28-110	AMD	95-09-085
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192-28-120	AMD	95-09-085
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192-42-010	REP	95-05-048
192-42-021	REP	95-05-048
192-42-030	REP	95-05-048
192-42-056	REP	95-05-048
192-42-057	REP	95-05-048
192-42-058	REP	95-05-048
192-42-081	REP	95-05-048
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196-20	PREP	95-15-120
196-24	PREP	95-15-120
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197-11-220	NEW	95-07-023
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197-11-228	NEW-E	95-03-059
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197-11-230	NEW-E	95-03-059
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197-11-232	NEW-E	95-03-059
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197-11-904	AMD	95-07-023
197-11-908	AMD	95-07-023
197-11-938	AMD	95-07-023
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204-24-050	AMD	95-07-137
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220-12-020	AMD	95-04-066
220-22-030	AMD-P	95-09-081
220-22-030	AMD	95-13-056
220-24-02000W	NEW-E	95-16-002
220-32-05100M	NEW-E	95-04-087
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220-32-05100N	NEW-E	95-07-010
220-32-05500K	NEW-E	95-09-031
220-32-05500K	REP-E	95-10-041
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220-32-05500L	REP-E	95-11-061
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220-32-05700Q	NEW-E	95-03-002
220-32-06000A	NEW-E	95-10-041
220-33-03000J	NEW-E	95-11-062
220-33-04000A	NEW-E	95-03-013
220-36-021	AMD-P	95-10-105
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220-36-023	AMD-P	95-10-105
220-36-023	AMD-C	95-13-062
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220-40-027	AMD-C	95-13-062
220-40-027	AMD	95-13-065
220-44-050	AMD-P	95-06-094
220-44-050	AMD	95-08-069
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220-44-05000N	NEW-E	95-05-007
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220-44-05000P	NEW-E	95-05-021
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220-44-05000S	NEW-E	95-15-048
220-44-05000S	REP-E	95-16-096
220-44-05000T	NEW-E	95-16-096
220-47-262	AMD-P	95-09-081
220-47-262	AMD	95-13-056
220-47-304	AMD-P	95-09-081
220-47-304	AMD	95-13-056
220-47-307	AMD-P	95-09-081
220-47-307	AMD	95-13-056
220-47-311	AMD-P	95-09-081

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220-47-411	AMD	95-13-056
220-47-412	AMD-P	95-09-081
220-47-412	AMD	95-13-056
220-49-02000H	NEW-E	95-04-088
220-52-03000I	NEW-E	95-13-057
220-52-03000I	REP-E	95-13-057
220-52-04600A	NEW-E	95-06-001
220-52-04600A	REP-E	95-06-016
220-52-04600B	NEW-E	95-06-016
220-52-04600B	REP-E	95-07-027
220-52-04600C	NEW-E	95-09-027
220-52-04600Z	NEW-E	95-05-056
220-52-04600Z	REP-E	95-06-001
220-52-07100U	NEW-E	95-10-030
220-52-07100U	REP-E	95-10-057
220-52-07100V	NEW-E	95-10-057
220-52-07100V	REP-E	95-11-015
220-52-07100W	NEW-E	95-11-015
220-52-07100W	REP-E	95-14-077
220-52-07100X	NEW-E	95-14-077
220-52-07100X	REP-E	95-15-010
220-52-07300V	REP-E	95-03-064
220-52-07300W	NEW-E	95-03-067
220-52-07300W	REP-E	95-07-080
220-52-07300X	NEW-E	95-07-080
220-52-07300X	REP-E	95-07-119
220-52-07300Y	NEW-E	95-07-119
220-56	AMD-C	95-04-064
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220-56-103	NEW-P	95-14-133
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220-56-12000B	REP-E	95-13-040
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220-56-19100K	NEW-E	95-12-028
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220-56-225	AMD	95-04-066
220-56-235	AMD	95-04-066
220-56-240	AMD	95-04-066
220-56-245	AMD	95-12-027
220-56-255	AMD	95-12-027
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220-56-25500X	NEW-E	95-12-012
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220-56-25500Y	REP-E	95-14-098
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220-56-285	AMD	95-12-027
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220-56-28500E	NEW-E	95-10-001B
220-56-305	AMD	95-12-027
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220-56-335	AMD	95-04-066
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220-56-35000D	NEW-E	95-04-086
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220-56-35000E	NEW-E	95-10-040
220-56-35000E	REP-E	95-14-099
220-56-35000F	NEW-E	95-14-099
220-56-35000F	REP-E	95-16-040
220-56-35000G	NEW-E	95-16-040
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220-56-370	AMD	95-04-066
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220-56-38000Y	REP-E	95-14-099
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220-57-135	AMD	95-12-027
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220-57-138	AMD	95-12-027
220-57-140	AMD	95-12-027
220-57-155	AMD	95-12-027
220-57-160	AMD	95-12-027
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220-57-16000C	NEW-E	95-16-046
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220-57-16000Z	NEW-E	95-05-049
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220-57-175	AMD	95-12-027
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220-57-430	AMD	95-12-027
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220-57-440	AMD	95-12-027
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220-57-455	AMD	95-12-027
220-57-460	AMD	95-12-027
220-57-46000B	NEW-E	95-14-035
220-57-46000B	REP-E	95-14-035
220-57-465	AMD	95-12-027
220-57-473	AMD	95-12-027
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220-57-495	AMD	95-12-027
220-57-497	AMD	95-12-027

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220-57-50500X	NEW-E	95-08-037
220-57-510	AMD	95-12-027
220-57-515	AMD	95-12-027
220-57-520	AMD	95-12-027
220-57-525	AMD	95-12-027
220-57A	AMD-C	95-04-064
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220-57A-015	AMD	95-12-027
220-57A-017	AMD	95-12-027
220-57A-030	AMD	95-12-027
220-57A-035	AMD	95-12-027
220-57A-037	AMD	95-12-027
220-57A-040	AMD	95-12-027
220-57A-045	AMD	95-12-027
220-57A-110	AMD	95-12-027
220-57A-112	AMD	95-12-027
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220-57A-145	AMD	95-12-027
220-57A-175	AMD	95-12-027
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220-57A-183	AMD	95-12-027
220-57A-185	AMD	95-12-027
220-57A-190	AMD	95-12-027
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222-16-075	NEW-C	95-04-073
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230-02-125	REP	95-09-061
230-02-183	AMD-P	95-04-039
230-02-183	AMD	95-07-093
230-02-210	AMD-P	95-14-095
230-02-240	AMD-P	95-04-037
230-02-240	AMD-C	95-07-099
230-02-240	AMD	95-09-062
230-02-250	AMD-P	95-14-094
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230-04-145	AMD	95-09-062
230-04-147	AMD-P	95-04-037
230-04-147	AMD-C	95-07-099
230-04-147	AMD	95-09-062
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230-20-070	AMD-P	95-04-037
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230-20-070	AMD	95-09-062
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230-20-335	NEW-P	95-04-039
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230-25-055	AMD-P	95-07-111
230-25-055	AMD	95-12-051
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230-25-330	AMD-P	95-07-111
230-25-330	AMD	95-12-051
230-40-400	AMD-E	95-05-070
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230-40-400	AMD	95-13-024
230-46-010	AMD-P	95-07-111
230-46-010	AMD	95-12-051
230-48-010	NEW-E	95-07-065

WAC #		WSR #
230-48-010	NEW-P	95-07-096
230-48-010	NEW-C	95-12-048
230-48-010	NEW	95-13-032
230-50-010	AMD-C	95-04-040
230-50-010	AMD-C	95-06-013
230-50-010	AMD-C	95-07-097
230-50-010	AMD-C	95-12-054
230-50-010	AMD	95-13-030
232-12-001	AMD	95-05-008
232-12-018	NEW-P	95-14-134
232-12-019	AMD-P	95-14-134
232-12-055	REP-P	95-14-100
232-12-068	NEW-P	95-14-106
232-12-131	AMD	95-03-034
232-12-151	AMD	95-05-008
232-12-227	AMD	95-02-070
232-12-287	AMD-P	95-06-095
232-12-287	AMD	95-10-026
232-12-619	AMD	95-05-008
232-12-619	AMD-P	95-14-134
232-12-61900A	NEW-E	95-04-065
232-16-380	AMD-P	95-14-107
232-28-02202	AMD	95-03-024
232-28-02202	AMD-P	95-14-101
232-28-02203	AMD	95-03-025
232-28-02204	AMD	95-03-026
232-28-02205	AMD	95-03-027
232-28-02206	AMD	95-03-028
232-28-02210	AMD	95-03-029
232-28-02220	AMD	95-03-040
232-28-02220	AMD-P	95-06-100
232-28-02220	AMD	95-11-035
232-28-02280	AMD	95-03-030
232-28-239	REP-P	95-06-099
232-28-239	REP	95-11-028
232-28-240	AMD	95-03-031
232-28-241	AMD	95-03-032
232-28-24102	NEW	95-03-035
232-28-24102	AMD-P	95-14-104
232-28-242	AMD	95-03-033
232-28-243	REP-P	95-06-099
232-28-243	REP	95-11-028
232-28-244	REP-P	95-06-099
232-28-244	REP	95-11-028
232-28-245	REP-P	95-06-099
232-28-245	REP	95-11-028
232-28-246	NEW	95-03-036
232-28-246	AMD-P	95-06-107
232-28-246	AMD	95-11-037
232-28-24601	NEW-E	95-03-068
232-28-247	NEW	95-03-037
232-28-248	NEW	95-03-038
232-28-248	AMD-P	95-06-106
232-28-248	AMD	95-11-036
232-28-249	NEW	95-03-039
232-28-250	NEW-P	95-06-097
232-28-250	NEW	95-11-034
232-28-251	NEW-P	95-06-098
232-28-251	NEW	95-11-038
232-28-252	NEW-P	95-06-102
232-28-252	NEW	95-11-033
232-28-253	NEW-P	95-06-101
232-28-253	NEW	95-11-032
232-28-254	NEW-P	95-06-103
232-28-254	NEW	95-11-031
232-28-255	NEW-P	95-06-105
232-28-255	NEW	95-11-029
232-28-256	NEW-P	95-06-104
232-28-256	NEW	95-11-030
232-28-257	NEW-P	95-06-096
232-28-257	NEW	95-11-027
232-28-258	NEW-P	95-14-105
232-28-259	NEW-P	95-14-129
232-28-418	REP-P	95-14-103
232-28-419	NEW-P	95-14-103
232-28-514	AMD-P	95-14-102
232-28-619	AMD	95-05-008
232-28-619	AMD-P	95-06-093
232-28-619	AMD	95-10-027
232-28-619	AMD-P	95-14-134
232-28-61900A	NEW-E	95-04-065
232-28-61900B	NEW-E	95-07-018
232-28-61900B	REP-E	95-12-030
232-28-61900B	REP-E	95-12-040
232-28-61900C	NEW-E	95-09-050
232-28-61900C	REP-E	95-16-094
232-28-61900D	NEW-E	95-09-051
232-28-61900D	REP-E	95-16-094
232-28-61900E	NEW-E	95-12-030
232-28-61900E	REP-E	95-12-040
232-28-61900F	NEW-E	95-12-040
232-28-61900F	REP-E	95-16-094
232-28-61900G	NEW-E	95-14-063
232-28-61900H	NEW-E	95-16-094
232-28-61900H	REP-E	95-16-094
232-28-61940	REP-E	95-09-050
232-28-61940	REP-P	95-14-134
232-28-61941	REP-E	95-09-050
232-28-61941	REP-P	95-14-134
232-28-61942	REP-E	95-09-050
232-28-61942	REP-P	95-14-134
232-28-61945	REP-E	95-09-050
232-28-61945	REP-P	95-14-134
232-28-61946	REP-E	95-09-050
232-28-61946	REP-P	95-14-134
232-28-61947	REP-E	95-09-050
232-28-61947	REP-P	95-14-134
232-28-61950	REP-E	95-09-050
232-28-61950	REP-P	95-14-134
232-28-61951	REP-E	95-09-050
232-28-61951	REP-P	95-14-134
232-28-61952	NEW-W	95-03-066
232-28-61953	REP-E	95-09-050
232-28-61953	REP-P	95-14-134
232-28-61954	REP-E	95-09-050
232-28-61954	REP-P	95-14-134
232-28-61957	REP-E	95-09-050
232-28-61957	REP-P	95-14-134
236-12	PREP	95-11-130
236-12-015	AMD-P	95-13-107
236-12-015	AMD	95-16-107
236-12-360	AMD-P	95-13-107
236-12-360	AMD	95-16-107
236-12-361	AMD-P	95-13-107
236-12-361	AMD	95-16-107
236-12-362	AMD-P	95-13-107
236-12-362	AMD	95-16-107
236-15	PREP	95-11-131
236-15-010	NEW	95-05-044
236-15-010	REP-P	95-13-108
236-15-010	REP	95-16-106
236-15-015	NEW	95-05-044
236-15-015	REP-P	95-13-108
236-15-015	REP	95-16-106
236-15-050	NEW	95-05-044
236-15-050	REP-P	95-13-108
236-15-050	REP	95-16-106
236-15-100	NEW	95-05-044
236-15-100	REP-P	95-13-108
236-15-100	REP	95-16-106
236-15-200	NEW	95-05-044
236-15-200	REP-P	95-13-108
236-15-200	REP	95-16-106
236-15-300	NEW	95-05-044
236-15-300	REP-P	95-13-108
236-15-300	REP	95-16-106
236-15-700	NEW	95-05-044
236-15-700	REP-P	95-13-108
236-15-700	REP	95-16-106
236-15-800	NEW	95-05-044
236-15-800	REP-P	95-13-108
236-15-800	REP	95-16-106
236-15-900	NEW	95-05-044
236-15-900	REP-P	95-13-108
236-15-900	REP	95-16-106
240-10-030	AMD	95-09-025
240-10-040	AMD	95-09-025
245-01-010	DECOD	95-12-009
245-01-020	DECOD	95-12-009
245-01-030	DECOD	95-12-009
245-01-040	DECOD	95-12-009
245-01-050	DECOD	95-12-009
245-01-060	DECOD	95-12-009
245-01-070	DECOD	95-12-009
245-01-080	DECOD	95-12-009
245-01-090	DECOD	95-12-009
245-01-100	DECOD	95-12-009
245-01-110	DECOD	95-12-009
245-01-120	DECOD	95-12-009
245-01-130	DECOD	95-12-009
245-01-140	DECOD	95-12-009
245-01-150	DECOD	95-12-009
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245-02-020	NEW	95-04-115
245-02-025	NEW	95-04-115
245-02-030	NEW	95-04-115
245-02-035	NEW	95-04-115
245-02-040	NEW	95-04-115
245-02-045	NEW	95-04-115
245-02-050	NEW	95-04-115
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245-02-125	NEW	95-04-112
245-02-130	NEW	95-04-112
245-02-131	NEW	95-04-112
245-02-135	NEW	95-04-112
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245-02-145	NEW	95-04-112
245-02-150	NEW	95-04-112
245-02-155	NEW	95-04-112
245-02-160	NEW	95-04-112
245-02-165	NEW	95-04-112
245-02-170	NEW	95-04-112
245-02-175	NEW	95-04-112
245-02-180	NEW	95-04-112
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245-03-010	NEW-W	95-07-037
245-03-010	NEW-W	95-12-047
245-03-020	NEW-P	95-06-075
245-03-020	NEW-W	95-07-037
245-03-020	NEW-W	95-12-047
245-03-040	NEW-P	95-06-075
245-03-040	NEW-W	95-07-037
245-03-040	NEW-W	95-12-047
245-03-050	NEW-P	95-06-075
245-03-050	NEW-W	95-07-037
245-03-050	NEW-W	95-12-047
245-03-080	NEW-P	95-06-075
245-03-080	NEW-W	95-07-037
245-03-080	NEW-W	95-12-047
245-03-120	NEW-P	95-06-075
245-03-120	NEW-W	95-07-037
245-03-120	NEW-W	95-12-047
245-03-140	NEW-P	95-06-075
245-03-140	NEW-W	95-07-037
245-03-140	NEW-W	95-12-047
245-03-160	NEW-P	95-06-075

WAC #		WSR #
245-03-160	NEW-W	95-07-037
245-03-160	NEW-W	95-12-047
245-03-180	NEW-P	95-06-075
245-03-180	NEW-W	95-07-037
245-03-180	NEW-W	95-12-047
245-03-200	NEW-P	95-06-075
245-03-200	NEW-W	95-07-037
245-03-200	NEW-W	95-12-047
245-03-220	NEW-P	95-06-075
245-03-220	NEW-W	95-07-037
245-03-220	NEW-W	95-12-047
245-03-240	NEW-P	95-06-075
245-03-240	NEW-W	95-07-037
245-03-240	NEW-W	95-12-047
245-03-260	NEW-P	95-06-075
245-03-260	NEW-W	95-07-037
245-03-260	NEW-W	95-12-047
245-03-280	NEW-P	95-06-075
245-03-280	NEW-W	95-07-037
245-03-280	NEW-W	95-12-047
245-03-300	NEW-P	95-06-075
245-03-300	NEW-W	95-07-037
245-03-300	NEW-W	95-12-047
245-03-320	NEW-P	95-06-075
245-03-320	NEW-W	95-07-037
245-03-320	NEW-W	95-12-047
245-03-390	NEW-P	95-06-075
245-03-390	NEW-W	95-07-037
245-03-390	NEW-W	95-12-047
245-03-520	NEW-W	95-07-035
245-03-520	NEW-W	95-12-047
245-03-540	NEW-W	95-07-035
245-03-540	NEW-W	95-12-047
245-03-560	NEW-W	95-07-035
245-03-560	NEW-W	95-12-047
245-03-580	NEW-W	95-07-035
245-03-580	NEW-W	95-12-047
245-03-610	NEW-P	95-06-076
245-03-610	NEW-W	95-12-047
245-03-620	NEW-P	95-06-076
245-03-620	NEW-W	95-07-036
245-03-620	NEW-W	95-12-047
245-03-630	NEW-P	95-06-076
245-03-630	NEW-W	95-12-047
245-03-640	NEW-P	95-06-076
245-03-640	NEW-W	95-07-036
245-03-640	NEW-W	95-12-047
245-03-650	NEW-P	95-06-076
245-03-650	NEW-W	95-07-036
245-03-650	NEW-W	95-12-047
245-03-660	NEW-P	95-06-076
245-03-660	NEW-W	95-07-036
245-03-660	NEW-W	95-12-047
245-03-670	NEW-P	95-06-076
245-03-670	NEW-W	95-12-047
245-03-680	NEW-P	95-06-076
245-03-680	NEW-W	95-07-036
245-03-680	NEW-W	95-12-047
245-03-810	NEW-P	95-06-074
245-03-810	NEW-W	95-07-034
245-03-810	NEW-W	95-12-047
245-03-820	NEW-P	95-06-074
245-03-820	NEW-W	95-07-034
245-03-820	NEW-W	95-12-047
245-03-830	NEW-P	95-06-074
245-03-830	NEW-W	95-07-034
245-03-830	NEW-W	95-12-047
245-03-840	NEW-P	95-06-074
245-03-840	NEW-W	95-07-034
245-03-840	NEW-W	95-12-047
245-03-860	NEW-P	95-06-074
245-03-860	NEW-W	95-07-034
245-03-860	NEW-W	95-12-047
245-03-880	NEW-P	95-06-074
245-03-880	NEW-W	95-07-034
245-03-880	NEW-W	95-12-047
245-04-010	NEW-P	95-06-077
245-04-010	NEW-W	95-07-033
245-04-010	NEW-W	95-12-047
245-04-020	NEW-P	95-06-077
245-04-020	NEW-W	95-07-033
245-04-020	NEW-W	95-12-047
245-04-025	NEW-P	95-06-077
245-04-025	NEW-W	95-07-033
245-04-025	NEW-W	95-12-047
245-04-030	NEW-P	95-06-077
245-04-030	NEW-W	95-07-033
245-04-030	NEW-W	95-12-047
245-04-040	NEW-P	95-06-077
245-04-040	NEW-W	95-07-033
245-04-040	NEW-W	95-12-047
245-04-050	NEW-P	95-06-077
245-04-050	NEW-W	95-07-033
245-04-050	NEW-W	95-12-047
245-04-060	NEW-P	95-06-077
245-04-060	NEW-W	95-07-033
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245-04-070	NEW-P	95-06-077
245-04-070	NEW-W	95-07-033
245-04-070	NEW-W	95-12-047
245-04-080	NEW-P	95-06-077
245-04-080	NEW-W	95-07-033
245-04-080	NEW-W	95-12-047
245-04-090	AMD-P	95-03-101
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245-04-100	AMD-P	95-03-101
245-04-100	AMD	95-06-048
245-04-100	DECOD	95-12-009
245-04-110	AMD-P	95-03-101
245-04-110	AMD	95-06-048
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245-04-115	AMD	95-06-048
245-04-115	DECOD	95-12-009
245-04-125	NEW-P	95-04-113
245-04-125	NEW-W	95-12-047
245-04-130	NEW-P	95-04-113
245-04-130	NEW-W	95-12-047
245-04-135	NEW-P	95-04-113
245-04-135	NEW-W	95-12-047
245-04-140	NEW-P	95-04-113
245-04-140	NEW-W	95-12-047
245-04-145	NEW-P	95-04-113
245-04-145	NEW-W	95-12-047
245-04-150	NEW-P	95-04-113
245-04-150	NEW-W	95-12-047
245-04-155	NEW-P	95-04-113
245-04-155	NEW-W	95-12-047
245-04-160	NEW-P	95-04-113
245-04-160	NEW-W	95-12-047
245-04-165	NEW-P	95-04-113
245-04-165	NEW-W	95-12-047
245-04-170	NEW-P	95-04-113
245-04-170	NEW-W	95-12-047
245-04-175	NEW-P	95-04-113
245-04-175	NEW-W	95-12-047
245-04-180	NEW-P	95-04-113
245-04-180	NEW-W	95-12-047
245-04-185	NEW-P	95-04-113
245-04-185	NEW-W	95-12-047
245-04-190	NEW-P	95-04-113
245-04-190	NEW-W	95-12-047
245-04-195	NEW-P	95-04-113
245-04-195	NEW-W	95-12-047
245-04-200	NEW-P	95-06-079
245-04-200	NEW-W	95-07-032
245-04-200	NEW-W	95-12-047
245-04-210	NEW-P	95-06-079
245-04-210	NEW-W	95-07-032
245-04-210	NEW-W	95-12-047
245-04-220	NEW-P	95-06-079
245-04-220	NEW-W	95-07-032
245-04-220	NEW-W	95-12-047
245-04-230	NEW-P	95-06-079
245-04-230	NEW-W	95-07-032
245-04-230	NEW-W	95-12-047
245-04-240	NEW-P	95-06-079
245-04-240	NEW-W	95-07-032
245-04-240	NEW-W	95-12-047
245-04-300	NEW-P	95-06-078
245-04-300	NEW-W	95-07-031
245-04-300	NEW-W	95-12-047
245-04-310	NEW-P	95-06-078
245-04-310	NEW-W	95-07-031
245-04-310	NEW-W	95-12-047
245-04-320	NEW-P	95-06-078
245-04-320	NEW-W	95-07-031
245-04-320	NEW-W	95-12-047
245-04-330	NEW-P	95-06-078
245-04-330	NEW-W	95-07-031
245-04-330	NEW-W	95-12-047
245-04-340	NEW-P	95-06-078
245-04-340	NEW-W	95-07-031
245-04-340	NEW-W	95-12-047
245-04-350	NEW-P	95-06-078
245-04-350	NEW-W	95-07-031
245-04-350	NEW-W	95-12-047
245-08-010	NEW-P	95-04-114
245-08-010	NEW-W	95-07-030
245-08-010	NEW-W	95-12-047
245-08-020	NEW-P	95-04-114
245-08-020	NEW-W	95-07-030
245-08-020	NEW-W	95-12-047
245-08-030	NEW-P	95-04-114
245-08-030	NEW-W	95-07-030
245-08-030	NEW-W	95-12-047
245-08-040	NEW-P	95-04-114
245-08-040	NEW-W	95-07-030
245-08-040	NEW-W	95-12-047
245-08-050	NEW-P	95-04-114
245-08-050	NEW-W	95-07-030
245-08-050	NEW-W	95-12-047
246-01-040	AMD-P	95-07-054
246-01-040	AMD	95-10-043
246-01-080	AMD-P	95-07-054
246-01-080	AMD	95-10-043
246-08-400	NEW-E	95-14-108
246-100-166	PREP	95-05-012
246-100-236	AMD-S	95-08-026
246-100-236	AMD	95-13-037
246-130	AMD-P	95-15-109
246-130-001	AMD-P	95-15-109
246-130-010	AMD-P	95-15-109
246-130-020	AMD-P	95-15-109
246-130-030	AMD-P	95-15-109
246-130-040	AMD-P	95-15-109
246-130-050	REP-P	95-15-109
246-130-060	AMD-P	95-15-109
246-130-070	AMD-P	95-15-109
246-170	AMD	95-04-035
246-170-001	REP	95-04-035
246-170-002	NEW	95-04-035
246-170-010	REP	95-04-035
246-170-011	NEW	95-04-035
246-170-020	REP	95-04-035
246-170-021	NEW	95-04-035
246-170-030	REP	95-04-035
246-170-031	NEW	95-04-035

WAC #		WSR #
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246-170-041	NEW	95-04-035
246-170-050	REP	95-04-035
246-170-051	NEW	95-04-035
246-170-055	NEW	95-04-035
246-170-060	REP	95-04-035
246-170-061	NEW	95-04-035
246-170-065	NEW	95-04-035
246-170-070	REP	95-04-035
246-170-080	REP	95-04-035
246-170-090	REP	95-04-035
246-249-020	AMD-P	95-04-100
246-249-020	AMD	95-13-094
246-249-080	AMD-P	95-04-100
246-249-080	AMD	95-13-094
246-254	PREP	95-05-058
246-254-053	AMD-P	95-08-066
246-254-053	AMD	95-12-004
246-254-070	AMD-P	95-08-066
246-254-070	AMD	95-12-004
246-254-080	AMD-P	95-08-066
246-254-080	AMD	95-12-004
246-254-090	AMD-P	95-08-066
246-254-090	AMD	95-12-004
246-254-100	AMD-P	95-08-066
246-254-100	AMD	95-12-004
246-254-120	AMD-P	95-08-066
246-254-120	AMD	95-12-004
246-255	PREP	95-05-058
246-272-25001	AMD-P	95-04-034
246-272-25001	AMD	95-09-018
246-290-990	PREP	95-05-059
246-290-990	AMD-P	95-15-108
246-291	PREP	95-09-017
246-291-010	AMD-P	95-15-107
246-291-020	AMD-P	95-15-107
246-291-025	AMD-P	95-15-107
246-291-030	AMD-P	95-15-107
246-291-100	AMD-P	95-15-107
246-291-110	AMD-P	95-15-107
246-291-130	AMD-P	95-15-107
246-291-140	AMD-P	95-15-107
246-314	PREP	95-07-073
246-314-990	AMD-P	95-09-059
246-314-990	AMD	95-12-097
246-316	PREP	95-07-073
246-316-990	AMD-P	95-09-059
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246-322	PREP	95-07-073
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246-322-090	REP-P	95-12-096
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246-322-120	AMD-P	95-12-096
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246-322-140	NEW-P	95-12-096
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246-322-991	AMD-P	95-09-059
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246-324-010	NEW-P	95-12-094
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246-358-055	AMD-E	95-13-093
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246-358-075	AMD-E	95-13-093
246-358-085	AMD-E	95-08-018
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246-358-115	REP-E	95-13-093
246-358-125	AMD-E	95-13-093
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246-812-430	NEW-E	95-09-029

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246-815-050	AMD	95-16-102
246-815-060	AMD-P	95-13-110
246-815-060	AMD	95-16-102
246-815-070	AMD	95-02-056
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246-817-820	NEW-P	95-12-068
246-817-830	NEW-P	95-12-068
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246-817-990	NEW	95-16-122
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246-828-410	AMD-P	95-11-111
246-828-530	AMD-P	95-11-111
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246-830-037	NEW-E	95-15-009
246-830-201	AMD-E	95-15-009
246-830-220	AMD-E	95-15-009
246-830-230	AMD-P	95-07-013
246-830-230	AMD	95-11-108
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246-830-427	NEW-E	95-15-009
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246-830-440	AMD-P	95-07-013
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246-830-450	AMD-P	95-07-013
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246-830-475	AMD-P	95-07-013
246-830-475	AMD	95-11-108
246-830-475	AMD-E	95-15-009
246-830-610	AMD-P	95-07-013

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246-830-990	AMD-E	95-15-009
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246-838-100	PREP	95-06-018
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246-838-150	REP-P	95-12-095
246-838-160	REP-P	95-12-095
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246-838-240	REP-P	95-12-095
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246-839-080	PREP	95-06-018
246-839-090	PREP	95-06-018
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246-839-565	REP-P	95-12-095
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246-839-575	PREP	95-09-058
246-839-575	REP-P	95-12-095
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246-839-990	REP	95-12-021
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246-840-565	NEW-P	95-12-095
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246-840-575	NEW-P	95-12-095
246-840-990	NEW-P	95-08-049
246-840-990	NEW	95-12-021
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246-843-090	AMD	95-07-128
246-843-205	AMD	95-07-128
246-843-240	REP	95-07-128
246-843-320	AMD	95-07-128
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246-851-060	REP	95-14-114
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246-851-990	AMD	95-14-111
246-858-020	PREP	95-06-036
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246-861	AMD-C	95-03-070
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246-861-020	AMD	95-08-019
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246-861-040	AMD	95-08-019
246-861-050	AMD	95-08-019
246-861-055	NEW	95-08-019
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246-861-090	AMD-W	95-08-051
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246-869-240	REP-P	95-14-112
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246-887-160	PREP	95-07-086
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275-45	PREP	95-11-001
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284-13-360	PREP	95-15-043

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284-13-860	NEW-P	95-16-029
284-13-863	NEW-P	95-16-029
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284-14-020	PREP	95-15-043
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356-56-050	AMD-P	95-14-132
356-56-115	AMD-E	95-14-057
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358-01-042	NEW-P	95-03-054
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358-20-010	AMD-P	95-03-054
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358-30-022	NEW-P	95-03-054

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358-30-080	AMD	95-07-074
358-30-082	NEW-P	95-03-054
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358-30-084	NEW-P	95-03-054
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358-30-110	AMD-P	95-03-054
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358-30-190	AMD-P	95-03-054
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358-30-220	AMD-P	95-03-054
358-30-220	AMD	95-07-074
365-04	PREP	95-06-051A
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365-08	PREP	95-06-051
365-140-030	AMD-P	95-07-100
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388-08-585	PREP	95-15-046
388-11	PREP	95-16-010
388-14	PREP	95-15-010
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388-15	PREP	95-10-033
388-15	PREP	95-12-032
388-15	PREP	95-13-041
388-15-192	NEW-P	95-16-016
388-15-194	NEW-P	95-16-016
388-15-196	NEW-P	95-16-016
388-15-202	AMD-P	95-16-016
388-15-203	AMD-P	95-16-016
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388-15-205	AMD-P	95-16-016
388-15-206	NEW-P	95-16-016
388-15-207	AMD-P	95-16-016
388-15-208	REP-P	95-16-016
388-15-209	AMD-P	95-16-016
388-15-212	REP-P	95-16-016
388-15-213	REP-P	95-16-016
388-15-214	AMD-P	95-16-016
388-15-215	AMD-P	95-16-016
388-15-216	AMD-P	95-16-016
388-15-219	NEW-P	95-16-016
388-15-222	NEW-P	95-16-016
388-15-610	AMD-P	95-16-016
388-15-615	REP-P	95-16-016
388-15-620	AMD-P	95-16-016
388-15-630	AMD-P	95-16-016
388-15-830	AMD-P	95-16-016
388-15-850	REP-P	95-16-016
388-15-860	REP-P	95-16-016
388-15-870	REP-P	95-16-016
388-15-880	AMD-P	95-16-016
388-15-890	AMD-P	95-16-016
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388-15-950	NEW-P	95-11-005
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388-15-950	NEW	95-15-011
388-15-955	NEW-P	95-11-005
388-15-955	NEW-C	95-14-050
388-15-955	NEW	95-15-011
388-18	PREP	95-06-034
388-43-010	AMD	95-03-049
388-43-020	AMD	95-03-049
388-43-130	NEW	95-03-049
388-46	AMD-P	95-16-017
388-46	AMD-E	95-16-019
388-46-110	PREP	95-14-039
388-46-110	NEW-P	95-16-017
388-46-110	NEW-E	95-16-019
388-47	PREP	95-12-078
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388-47-030	REP-P	95-15-001
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388-47-110	AMD-E	95-14-079
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388-47-115	REP-P	95-15-001
388-47-120	AMD-P	95-14-078
388-47-120	AMD-E	95-14-079
388-47-120	REP-P	95-15-001
388-47-125	AMD-P	95-14-078
388-47-125	AMD-E	95-14-079
388-47-125	REP-P	95-15-001
388-47-127	AMD-P	95-14-078
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388-47-130	AMD-P	95-14-078
388-47-130	AMD-E	95-14-079
388-47-130	REP-P	95-15-001
388-47-135	AMD-P	95-14-078
388-47-135	AMD-E	95-14-079
388-47-135	REP-P	95-15-001
388-47-140	REP-P	95-15-001
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388-47-210	REP-P	95-15-001
388-47-215	REP-P	95-15-001
388-47-220	REP-P	95-15-001
388-47-300	REP-P	95-15-001
388-49-020	AMD	95-06-028
388-49-020	PREP	95-14-006

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388-49-080	AMD	95-11-122
388-49-110	PREP	95-08-007
388-49-110	AMD-P	95-09-034
388-49-110	AMD	95-11-123
388-49-150	PREP	95-14-118
388-49-150	AMD-P	95-15-059
388-49-170	PREP	95-14-118
388-49-170	AMD-P	95-15-059
388-49-160	AMD	95-06-030
388-49-190	AMD	95-06-027
388-49-190	PREP	95-06-025
388-49-190	AMD-P	95-09-033
388-49-190	AMD	95-12-001
388-49-250	AMD	95-06-026
388-49-260	AMD	95-06-029
388-49-380	PREP	95-09-032
388-49-410	AMD-P	95-03-044
388-49-410	AMD	95-06-031
388-49-420	AMD-P	95-03-045
388-49-420	AMD	95-06-032
388-49-430	AMD-P	95-03-044
388-49-430	AMD	95-06-031
388-49-480	PREP	95-04-013
388-49-480	AMD-P	95-05-013
388-49-480	AMD	95-07-122
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388-49-500	AMD-P	95-09-004
388-49-500	AMD	95-11-120
388-49-505	PREP	95-07-071
388-49-505	AMD-P	95-09-003
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388-49-600	PREP	95-14-007
388-49-600	AMD-P	95-15-057
388-49-640	PREP	95-14-006
388-49-640	AMD-P	95-15-058
388-49-660	PREP	95-14-006
388-49-660	AMD-P	95-15-058
388-49-670	PREP	95-14-006
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388-51-210	AMD	95-03-047
388-51-220	NEW	95-03-047
388-51-250	AMD	95-03-047
388-60	PREP	95-10-024
388-73	AMD-C	95-05-024
388-73	PREP	95-16-057
388-73-010	AMD-S	95-07-024
388-73-010	AMD-W	95-11-051
388-73-012	AMD-S	95-07-024
388-73-012	AMD-W	95-11-051
388-73-014	AMD-S	95-07-024
388-73-014	AMD-W	95-11-051
388-73-01950	AMD-S	95-07-024
388-73-01950	AMD-W	95-11-051
388-73-026	AMD-S	95-07-024
388-73-026	AMD-W	95-11-051
388-73-036	AMD-S	95-07-024
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388-73-054	AMD-S	95-07-024
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388-73-074	AMD-S	95-07-024
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388-73-076	AMD-S	95-07-024
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388-73-118	AMD-S	95-07-024
388-73-118	AMD-W	95-11-051
388-73-144	AMD-S	95-07-024
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388-73-146	AMD-S	95-07-024
388-73-146	AMD-W	95-11-051
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388-73-212	AMD-W	95-11-051
388-73-213	REP-S	95-07-024
388-73-213	REP-W	95-11-051
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388-73-216	REP-S	95-07-024
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388-73-278	NEW-W	95-11-051
388-73-304	AMD-S	95-07-024
388-73-304	AMD-W	95-11-051
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388-73-524	NEW-W	95-11-051
388-73-606	AMD-S	95-07-024
388-73-606	AMD-W	95-11-051
388-77	PREP	95-15-036
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388-77-006	REP-P	95-15-068
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388-77-810	REP-P	95-15-068
388-77-820	REP-P	95-15-068
388-77-900	REP-P	95-15-068
388-77A	PREP	95-15-036
388-77A-010	REP-P	95-15-068
388-77A-020	REP-P	95-15-068
388-77A-030	REP-P	95-15-068
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388-77A-041	REP-P	95-15-068
388-77A-050	REP-P	95-15-068
388-77A-055	REP-P	95-15-068
388-86	PREP	95-15-008
388-86-005	PREP	95-13-020
388-86-005	AMD-P	95-14-058
388-86-005	AMD-E	95-14-060
388-86-009	REP-P	95-15-023
388-86-00902	REP-P	95-15-023
388-86-020	REP-E	95-16-115
388-86-021	REP-E	95-16-115
388-86-022	PREP	95-15-012
388-86-030	PREP	95-08-043
388-86-030	PREP	95-13-020
388-86-030	AMD-P	95-14-058
388-86-030	AMD-E	95-14-060
388-86-073	PREP	95-13-020
388-86-073	AMD-P	95-14-058
388-86-073	AMD-E	95-14-060
388-86-075	PREP	95-13-020
388-86-075	AMD-P	95-14-058
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388-86-090	PREP	95-13-020
388-86-090	AMD-P	95-14-058

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388-86-098	AMD-P	95-14-058
388-86-098	AMD-E	95-14-060
388-87	PREP	95-15-008
388-87-005	AMD-P	95-16-115
388-87-020	PREP	95-15-047
388-87-020	AMD-E	95-16-114
388-87-050	REP-P	95-16-115
388-87-072	AMD	95-04-033
388-91	PREP	95-15-032
388-91-005	REP-P	95-16-014
388-91-007	PREP	95-13-021
388-91-007	REP-P	95-14-059
388-91-007	REP-E	95-14-061
388-91-007	REP-P	95-16-014
388-91-010	PREP	95-13-021
388-91-010	AMD-P	95-14-059
388-91-010	AMD-E	95-14-061
388-91-010	REP-P	95-16-014
388-91-013	REP-P	95-16-014
388-91-015	REP-P	95-16-014
388-91-016	REP-P	95-16-014
388-91-020	PREP	95-13-021
388-91-020	AMD-P	95-14-059
388-91-020	AMD-E	95-14-061
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388-91-030	REP-P	95-16-014
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388-91-040	REP-P	95-16-014
388-91-050	REP-P	95-16-014
388-96	PREP	95-12-022
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388-96-010	AMD-P	95-14-120
388-96-032	AMD-E	95-14-119
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388-96-108	AMD-E	95-14-119
388-96-108	AMD-P	95-14-120
388-96-204	AMD-E	95-14-119
388-96-204	AMD-P	95-14-120
388-96-210	AMD-E	95-14-119
388-96-210	AMD-P	95-14-120
388-96-216	REP-E	95-14-119
388-96-216	REP-P	95-14-120
388-96-220	AMD-E	95-14-119
388-96-220	AMD-P	95-14-120
388-96-221	AMD-E	95-14-119
388-96-221	AMD-P	95-14-120
388-96-224	AMD-E	95-14-119
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388-96-229	AMD-E	95-14-119
388-96-229	AMD-P	95-14-120
388-96-384	AMD-E	95-14-119
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388-96-902	REP-E	95-14-119
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388-96-904	AMD-E	95-14-119
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388-150	PREP	95-16-057
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388-155	PREP	95-16-057
388-160	PREP	95-16-057
388-165	PREP	95-05-068
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388-215-1000	PREP	95-11-066
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388-215-1000	AMD	95-14-048
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388-215-1140	PREP	95-16-041
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388-216-2150	PREP	95-09-012
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388-216-2350	PREP	95-14-081
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388-216-2450	PREP	95-09-012
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388-216-2450	AMD	95-14-049
388-216-2650	PREP	95-09-012
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388-216-2650	AMD	95-14-049
388-216-2800	PREP	95-09-012
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388-218-1050	AMD	95-04-048
388-218-1050	PREP	95-11-007
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388-218-1200	AMD-P	95-09-035
388-218-1200	AMD	95-11-124
388-218-1350	PREP	95-08-023
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388-218-1450	PREP	95-08-023
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388-218-1730	PREP	95-08-023
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388-218-1730	AMD	95-11-124
388-219-3000	PREP	95-06-035
388-225-0020	PREP	95-05-039
388-225-0020	AMD-P	95-08-010
388-225-0020	AMD	95-11-046
388-225-0300	REP-P	95-08-010
388-225-0300	REP	95-11-046
388-235-9000	AMD	95-03-048
388-250-1200	AMD-P	95-05-014
388-250-1200	AMD	95-07-123
388-250-1700	AMD	95-03-046
388-250-1700	PREP	95-16-015
388-265-1750	PREP	95-09-044
388-265-1750	AMD-P	95-09-054
388-265-1750	AMD-E	95-09-055
388-265-1750	AMD	95-11-119
388-290	PREP	95-13-061

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388-300-3900	NEW-P	95-15-001
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388-330	PREP	95-16-057
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388-330-010	AMD-E	95-16-087
388-330-010	RESCIND	95-16-100
388-330-010	AMD-W	95-16-101
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388-330-035	NEW-E	95-16-087
388-330-035	RESCIND	95-16-100
388-330-035	NEW-W	95-16-101
388-500-0005	PREP	95-13-020
388-500-0005	AMD-P	95-14-058
388-500-0005	AMD-E	95-14-060
388-503-0320	PREP	95-15-037
388-503-0370	PREP	95-13-020
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388-503-0370	AMD-E	95-14-060
388-504-0470	PREP	95-14-005
388-505-0590	AMD	95-04-047
388-505-0590	PREP	95-07-090
388-505-0590	AMD-P	95-13-085
388-505-0590	AMD-P	95-14-037
388-505-0590	AMD-W	95-14-038
388-506-0610	AMD-P	95-07-049
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388-507-0710	AMD	95-05-022
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388-507-0710	AMD-P	95-13-087
388-507-0710	AMD-W	95-14-038
388-508-0805	PREP	95-06-071
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388-513-1300	NEW	95-06-025
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388-515-1505	PREP	95-12-011
388-515-1530	PREP	95-11-077
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388-521-2140	PREP	95-13-020
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388-522-2230	AMD	95-15-039
388-527-2710	REP-P	95-14-116
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388-529-2950	PREP	95-13-020
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388-535	PREP	95-15-008
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388-538	PREP	95-12-033
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388-538-120	AMD-P	95-15-023
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388-538-140	AMD-P	95-15-023
388-538-150	AMD-P	95-15-023
390-05-190	AMD-E	95-14-076
390-05-210	AMD-E	95-14-076

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390-16-314	NEW-E	95-14-076
390-17-050	REP-E	95-14-076
390-17-052	REP-E	95-14-076
391-35-300	NEW-E	95-07-026
391-45-431	REP-E	95-06-087
391-45-560	NEW-E	95-07-026
392-121	PREP	95-10-032
392-121	PREP	95-14-015
392-121	PREP	95-15-090
392-121-106	AMD-E	95-04-055
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392-121-106	AMD	95-10-011
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392-121-182	AMD-P	95-14-140
392-121-188	AMD-P	95-14-140
392-122	PREP	95-14-014
392-122	PREP	95-15-089
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392-122-205	AMD	95-08-025
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392-122-214	REP	95-08-025
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392-122-221	AMD	95-08-025
392-122-230	AMD-P	95-05-020
392-122-230	AMD	95-08-025
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392-141-145	REP-P	95-15-075
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392-141-176	NEW-P	95-15-075
392-141-185	AMD-P	95-15-075
392-142-005	AMD-P	95-13-100
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392-142-213	NEW-P	95-13-100
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392-142-265	AMD-P	95-13-100
392-162	PREP	95-15-052
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392-162-085	AMD-P	95-15-076
392-162-095	AMD-P	95-15-076
392-162-105	PREP	95-15-051
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399-30-040	AMD-P	95-07-109
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419-72-080	AMD	95-09-049
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419-72-095	REP	95-09-049
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434-110-075	AMD-P	95-12-099
434-110-075	AMD	95-16-130
434-120-025	PREP	95-06-049
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434-120-210	PREP	95-06-049
434-120-215	PREP	95-06-049
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448-13-170	AMD-P	95-16-118
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448-13-210	AMD-P	95-16-118
448-13-220	AMD-P	95-16-118
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458-14-015	PREP	95-07-139
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458-14-056	PREP	95-07-139
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458-14-066	PREP	95-07-139
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458-14-116	PREP	95-07-139
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458-16A-010	NEW	95-06-041
458-16A-020	NEW	95-06-042
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458-20-211	PREP	95-05-025
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458-20-258	AMD-W	95-15-093
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458-30-590	AMD	95-06-043
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458-40-610	AMD-P	95-10-064
458-40-610	AMD-C	95-15-066
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458-40-650	AMD-P	95-10-064
458-40-650	AMD	95-14-084
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458-40-660	AMD-P	95-11-041
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458-40-670	AMD-C	95-15-067
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458-53-030	PREP	95-09-083
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458-53-105	PREP	95-09-083
458-53-105	NEW-P	95-13-036
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458-53-120	PREP	95-09-083
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458-53-130	PREP	95-09-083
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458-53-135	PREP	95-09-083
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458-53-140	PREP	95-09-083
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458-53-141	PREP	95-09-083
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458-53-142	PREP	95-09-083
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458-53-150	PREP	95-09-083
458-53-150	REP-P	95-16-035
458-53-160	PREP	95-09-083
458-53-160	AMD-P	95-16-035
458-53-163	PREP	95-09-083
458-53-163	REP-P	95-16-035
458-53-165	PREP	95-09-083
458-53-165	REP-P	95-16-035
458-53-180	PREP	95-09-083

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468-51	PREP	95-10-001A
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