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IN THIS ISSUE

(Subject/Agency index at back of issue)

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DENNIS W. COOPER
Code Reviser

WASHINGTON STATE REGISTER

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

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

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

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

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

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

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

3. PRINTING STYLE—INDICATION OF NEW OR DELETED MATTER

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

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

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

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

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

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

5. EFFECTIVE DATE OF RULES

(a) Permanently adopted agency rules take effect thirty days after the rules and the agency order adopting them are filed with the code reviser. This effective date may be delayed, but not advanced, and a delayed effective date will be noted in the promulgation statement preceding the text of the rule.

(b) Emergency rules take effect upon filing with the code reviser and remain effective for a maximum of ninety days from that date.

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

6. EDITORIAL CORRECTIONS

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

7. INDEX AND TABLES

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

1979
DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Distribution Date	First Agency Action Date [2]	Closing Dates [1] OTS[3] 10 pages 10 pages maximum (14 days)	Non-OTS 29 pages and 11 to 29 pages (28 days)	Non-OTS and 30 pages or more (42 days)
79-01	Jan 17	Feb 6	Jan 3	Dec 20, 1978	Dec 6, 1978
79-02	Feb 21	Mar 13	Feb 7	Jan 24	Jan 10
79-03	Mar 21	Apr 10	Mar 7	Feb 21	Feb 7
79-04	Apr 18	May 8	Apr 4	Mar 21	Mar 7
79-05	May 16	Jun 5	May 2	Apr 18	Apr 14
79-06	Jun 20	Jul 10	Jun 6	May 23	May 9
79-07	Jul 18	Aug 7	Jul 3	Jun 20	Jun 6
79-08	Aug 15	Sep 4	Aug 1	Jul 18	Jul 3
79-09	Sep 19	Oct 9	Sep 5	Aug 22	Aug 8
79-10	Oct 17	Nov 6	Oct 3	Sep 19	Sep 5
79-11	Nov 21	Dec 11	Nov 7	Oct 24	Oct 10
79-12	Dec 19	Jan 8, 1980	Dec 5	Nov 21	Nov 7

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

[2]"No proceeding shall be held on any rule until twenty days have passed from the distribution date of the register in which notice thereof was contained." RCW 28B.19.030(2) and 34.04.025(2). These dates represent the twentieth day after the distribution date of the immediately preceding Register.

[3]OTS is the acronym used for the Order Typing Service offered by the Code Reviser's Office which is briefly explained in WAC 1-12-220 and WAC 1-13-240.

WSR 79-02-001
ADOPTED RULES
DEPARTMENT OF NATURAL RESOURCES
[Order, Filed January 4, 1979]

Be it resolved by the Department of Natural Resources acting at Olympia, Washington that it does promulgate and adopt the annexed rules relating to Geothermal resources drilling and completion practices in accordance with RCW 79.76.050(2).

This action is taken pursuant to Notice No. WSR 78-09-120 filed with the code reviser on 9/6/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 79.76.050(2) and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED November 14, 1978.
By Bert L. Cole
Commissioner of Public Lands

Chapter 332-17 WAC
GEOTHERMAL DRILLING RULES AND REGULATIONS

NEW SECTION

WAC 332-17-010 INSPECTION. The department shall inspect all geothermal operations for the purpose of obtaining compliance with the rules, regulations, and orders promulgated by authority of the Geothermal Resources Act, chapter 43, Laws of 1974 ex. sess.

NEW SECTION

WAC 332-17-020 GENERAL RULES. General rules shall be statewide in application unless otherwise specifically stated and shall be applicable to all lands within the jurisdiction of the state of Washington.

NEW SECTION

WAC 332-17-030 SUPREMACY OF SPECIAL RULES AND ORDERS. Special rules and orders will be issued as required and shall prevail as against general rules if in conflict therewith.

NEW SECTION

WAC 332-17-100 APPLICATION FOR PERMIT TO COMMENCE DRILLING, REDRILLING OR DEEPENING. (1) The owner or operator of any well, or proposed well, before commencing the drilling, redrilling, or deepening of any wells shall file with the department a written application in triplicate of the intention to commence such drilling, redrilling or deepening accompanied by a fee of two hundred dollars as prescribed in RCW 79.76.070, except no fee is required for the drilling of core holes. The application shall be on forms as prescribed by the department and contain the following:

(a) The name of operator or company and address.

(b) Description of the lease or property including acres together with the name and address of the owner or owners of surface and mineral rights.

(c) The proposed location of the well or wells including a typical layout showing the position of mud tanks, reserve pits, cooling towers, pipe racks, etc.

(d) Existing and planned access and lateral roads.

(e) Location and source of water supply and road building material.

(f) Location of supporting facilities.

(g) Other areas of potential surface disturbances.

(h) The topographic features of the land, including drainage patterns.

(i) Methods for disposing of waste materials.

(j) The proposed drilling and casing plan.

(k) A surveyed plat showing the surface and expected bottom-hole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys of each well or wells. The scale shall not be less than 1:24,000.

(l) A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to, the prevention or control of:

(i) fires,

(ii) soil erosion,

(iii) pollution of surface and ground waters,

(iv) damage to fish and wildlife or other natural resources,

(v) air and noise pollution, and

(vi) hazards to public health and safety during operational activities.

(m) Such other pertinent information or data which the department may require to support the application for the development of geothermal resources and the protection of the environment.

Provisions for monitoring may be required as deemed necessary by the department to ensure compliance with these regulations.

The collection of data concerning existing air and water quality, noise, seismic and land subsidence activities, and the ecological system of the area may be required as deemed necessary by the department.

(2) An application for the drilling of core holes shall contain the following:

(a) Name and address of the operator or company.

(b) Name and number, location of the core hole or holes to the nearest quarter-quarter section or lot.

(c) Proposed depth of each core hole, but not to exceed 750 feet into bedrock.

(d) A map of sufficient scale to show topography and drainage patterns, access roads, and the proposed core hole locations. A metes and bounds description of each core hole location shall be provided to the department within thirty days of completion of the core hole or the approved core hole program.

(3) Well names and numbers shall not be changed without first obtaining the written approval of the department.

NEW SECTION

WAC 332-17-110 CASING REQUIREMENTS. (1) All wells shall be cased to protect or minimize damage to the environment, surface and ground waters, geothermal resources and health and property. The department shall approve proposed well spacing and well casing programs or prescribe such modifications to the programs as the department determines necessary for proper development, giving consideration to such factors as:

(a) Topographic characteristics of the area.

(b) Hydrologic, geologic, or reservoir characteristics of the area.

(c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use.

(d) Protection of correlative rights.

(e) Minimizing well interference.

(f) Unreasonable interference with multiple use of lands.

(g) Protection of the environment.

(2) Casing specifications shall be established on an individual well basis. The following specifications are general, but should be used as guidelines in submitting drilling permit applications.

(a) Conductor pipe. Annular space shall be cemented solid from the shoe to surface. An annular blowout preventer, or equivalent, remotely controlled hydraulically operated including a drilling spool with side outlets or equivalent may be required by the department. A kill line and blowdown line with appropriate fittings shall be connected to the drilling spool when same is required.

Conductor casing shall be set to a minimum depth of 15 meters (50 feet).

(b) Surface casing. This casing shall be set at a depth equivalent to, or in excess of, ten percent of the proposed depth of the well, provided, however, such depth shall not be less than 60 meters (200 feet) or extend less than 30 meters (100 feet) into bedrock. Surface casing holes shall be logged with an induction electric log, or equivalent, prior to running surface casing.

(c) Intermediate casing. This casing shall be required whenever anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncased fresh water aquifers, uncontrollable lost circulation zones, or other drilling hazards are present or occur, and whenever the surface casing has not been cemented through competent rock units. Intermediate casing strings shall be cemented solid if possible from the shoe to surface. If a liner is used as an intermediate string, the lap shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next casing string has been achieved. The liner overlap shall be a minimum of 30 meters (100 feet). The test shall be recorded in the driller's log and may be witnessed by a representative of the department.

(d) Production casing. This casing may be set above or through the producing or injection zone and cemented above the objective zones. Production casings shall be cemented to the surface or lapped into the intermediate string. Overlap shall not be less than 30 meters (100 feet) and shall be pressure tested. Lap or casing failure shall require repair, recementing, and successful retesting.

(e) Cementing of casing. Conductor and surface casing strings shall be cemented with a quantity of cement sufficient to fill the annular space from the shoe to surface. A high temperature resistant admix shall be used in cementing production casing unless waived by the department, and shall be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones.

A temperature or cement bond log may be required by the department if an unsatisfactory cementing job is indicated.

(f) Pressure testing. Prior to drilling out the casing shoe after cementing, all casing strings set to a depth of 152 meters (500 feet) or less except for conductor casing, shall be pressure tested to a minimum pressure of 35 bars (500 psi). Casing strings set to a depth of 152 meters (500 feet) or greater shall be pressure tested to a minimum pressure of 69 bars (1,000 psi) or 0.045 bars/meter (0.2 psi/ft) whichever is greater. Such test shall not exceed the rated working pressure of the casing or the blowout preventor stack assembly, whichever is lesser.

NEW SECTION

WAC 332-17-120 BLOWOUT PREVENTION. Blowout prevention and related control equipment shall be installed, tested immediately thereafter, and properly maintained ready for use until drilling operations are completed. Certain components, such as packing elements and ram rubbers, shall be of high temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings shall be steel and have temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Unless otherwise specified, blowout prevention equipment shall have manually operated gates and remotely controlled hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 69 bars (1,000 psi) remaining on the accumulator. Dual control stations shall be installed with a high pressure backup system. One control panel shall be located at the driller's station and one control panel shall be located on the ground at least 15 meters (50 feet) away from the wellhead or rotary table. Blowout prevention assemblies involving the use of air or other gaseous fluid drilling systems may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, a banjo-box or an approved substitute therefore and a blind ram blowout preventer or gate valve, respectively. Exceptions to the requirements of this paragraph will be considered by the department for areas of known surface stability and low subsurface formation pressure and temperatures.

(1) Conductor casing. One remotely controlled hydraulically operated expansion type preventer or acceptable alternative, including a drilling spool with side

outlets or equivalent, may be required before drilling below conductor casing.

(2) Surface, intermediate and production casing. Prior to drilling below any of these strings, blowout prevention equipment shall include a minimum of:

(a) One expansion-type preventer and accumulator or a rotating head,

(b) A manual and remotely controlled hydraulically operated double ram blowout preventer or equivalent having a temperature derated minimum working pressure rating which exceeds the maximum anticipated surface pressure at the anticipated reservoir fluid temperature,

(c) A drilling spool with side outlets or equivalent,

(d) A fillup line,

(e) A kill line equipped with at least one valve, and

(f) A blowdown line equipped with at least two valves and securely anchored at all bends and at the end.

(3) Testing and maintenance. Ram-type blowout preventers and auxiliary equipment shall be tested to a minimum of 69 bars (1,000 psi) or to the working pressure of the casing or assembly, whichever is the lesser. Expansion-type blowout preventers shall be tested to 70 percent of the above pressure testing requirements.

(a) The blowout prevention equipment shall be pressure tested:

(i) When installed,

(ii) Prior to drilling out plugs and/or casing shoes,

(iii) Not less than once each week, alternating the control stations, and

(iv) Following repairs that require disconnecting a pressure seal in the assembly.

(b) During drilling operations, blowout prevention equipment shall be actuated to test proper functioning as follows:

(i) Once each trip for blind and pipe rams, but not less than once each day for pipe rams, and

(ii) At least once each week on the drill pipe for expansion-type preventers.

All flange bolts shall be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems shall be inspected daily to check the mechanical condition and effectiveness and to ensure personnel acquaintance with the method of operation. Blowout prevention and auxiliary control equipment shall be cleaned, inspected and repaired, if necessary, prior to installation to assure proper functioning. Blowout prevention controls shall be plainly labeled, and all crew members shall be instructed on the function and operation of such equipment. A blowout prevention drill shall be conducted weekly for each drilling crew. All blowout prevention tests and crew drills shall be recorded on the driller's log.

(4) Related well control equipment. A full opening drill string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock shall be installed between the kelly and the swivel.

NEW SECTION

WAC 332-17-130 DRILLING FLUID. The properties, use and testing of drilling fluids and the conduct of related drilling procedures shall be such as are necessary to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control shall be maintained in the field area readily accessible for use at all times.

(1) Drilling fluid control. Before pulling drill pipe, the drilling fluid shall be properly conditioned or displaced. The hole shall be kept reasonably full at all times, however, in no event shall the annular mud level be deeper than 30 meters (100 feet) from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques shall be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The conditions contained herein shall not apply when drilling with air or aerated fluids.

(2) Drilling fluid testing. Mud testing and treatment consistent with good operating practice shall be performed daily or more frequently as conditions warrant. Mud testing equipment shall be maintained on the drilling rig at all times. The following drilling fluid system monitoring or recording devices shall be installed and operated continuously during drilling operations, with mud, occurring below the shoe of the conductor casing:

(a) High-low level mud pit indicator including a visual and audio-warning device, if applicable,

(b) Degassers if applicable, and desilters and desanders if required for solids control,

(c) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of the hole shall be monitored, read, and recorded on the driller's or mud log for a minimum of every 9 meters (30 feet) of hole drilled below the conductor casing, and

(d) A hydrogen sulfide indicator and alarm shall be installed in areas suspected or known to contain hydrogen sulfide gas which may reach levels considered to be dangerous to the health and safety of personnel in the area.

No exceptions to these requirements will be allowed without the specific prior permission of the department.

NEW SECTION

WAC 332-17-140 WELL LOGGING. All wells shall be logged with an induction electric log or equivalent from total depth to the shoe of the conductor casing. The department may grant an exception to this requirement when well conditions make it impractical or impossible to meet the above requirements.

NEW SECTION

WAC 332-17-150 REMOVAL OF CASING. No person shall remove casing or any portion thereof from any well without first obtaining prior written approval from the department. In the request to remove casing, the applicant must describe the condition of the well, the proposed casing to be removed, all casing in the hole, location of plugs, and perforations.

NEW SECTION

WAC 332-17-160 DRILLING BOND. The owner or operator who proposes to drill, redrill, or deepen a

well for geothermal resources shall file with the department a good and sufficient bond in the sum of fifteen thousand dollars for each well or a fifty thousand dollar blanket bond for one or more wells being drilled, redrilled, or deepened at any time. The bond shall be filed with the department at the time of filing the application to drill, redrill, or deepen a well or wells. Approval of the bond by the department must be obtained prior to the commencement of drilling, redrilling, or deepening. The bond shall be made payable to the state of Washington, conditioned for performance of the duty to properly:

(1) Drill all geothermal wells,

(2) Operate and maintain producing wells, and

(3) Plug each dry or abandoned well in accordance with applicable rules and regulations of the department.

The bond shall be executed by such owner or operator as principal and by a surety company authorized to do business in the state of Washington as surety, conditioned upon the faithful compliance by the principal with the laws, rules, regulations, and orders under the Geothermal Resources Act and shall secure the state against all losses, charges, and expenses incurred by the state in obtaining such compliance by the principal of the bond.

A single core-hole bond shall be in the sum of five thousand dollars and a blanket core-hole bond shall be in the sum of twenty-five thousand dollars.

NEW SECTION

WAC 332-17-165 CANCELLATION OF BOND. Termination and/or cancellation of any bond will not be permitted until the well, or wells, for which the bond has been issued have been properly abandoned or another valid bond for such well or wells has been submitted therefore and approved by the department. A bond may be canceled upon transfer of the jurisdiction of the well to and acceptance of jurisdiction by the department of ecology. No bond shall be released until the department in writing shall have authorized such release.

NEW SECTION

WAC 332-17-200 TRANSFER OF JURISDICTION TO DEPARTMENT OF ECOLOGY. Transfer of jurisdiction over a well to the department of ecology may be permitted provided it has been established that it is not technologically practical to produce electricity commercially or usable minerals cannot be derived from the well and provided, further, the department of ecology has by affidavit indicated its willingness to assume such responsibility. Transfer of such jurisdiction will relieve the owner or operator of further compliance with the provisions of the Geothermal Resources Act and these rules and regulations, however, the owner or operator shall be subject to applicable laws and regulations relating to wells drilled for appropriation and use of ground waters.

NEW SECTION

WAC 332-17-300 PROPER COMPLETION AND ABANDONMENT. Completion and abandonment of any well or wells shall be conditioned upon implementation of adequate procedures to protect the environmental and esthetic qualities of the drill site, access roads, and other areas that were disturbed as a result of drilling or related operations.

(1) Completion. For the purposes of the Geothermal Resources Act and these rules and regulations, a well will be considered as properly completed when drilling has been completed and a production head has been installed on the well pending actual utilization in the production of geothermal resources as defined in this act. Suspension of a well after completion and prior to actual production shall not exceed six months duration unless approved in writing by the department.

(2) Abandonment. A well shall be properly abandoned for the purposes of this act when:

(a) Drilling, redrilling, or deepening operations have ceased; or geothermal resources cannot be produced from the well; or the well no longer commercially produces geothermal resources; and proper cement plugs have been placed by the owner or operator and approved by the department; and

(b) The owner or operator has taken all appropriate steps to protect surface and ground waters and prevent the escape of deleterious substances to the surface.

(3) Site restoration. Cellars, pads, structures, and other facilities shall be removed. All drilling supplies and scrap shall be removed. The surface shall be graded and revegetated as appropriate to the immediate area or as otherwise specified by the department.

NEW SECTION

WAC 332-17-310 ABANDONMENT PROCEDURES. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the department. The owner or operator shall give notice to the department of the intention to abandon the well and the date and time abandonment procedures will commence.

(1) The notice shall specify the condition of the well and the proposed method of abandonment. The owner or operator shall furnish such additional information concerning the well condition and abandonment procedures as may be required by the department.

(2) The owner or operator shall within twenty-four hours after giving notice of intent to abandon provide the department with a written notice setting forth the proposed abandonment procedures and the condition of the well.

(3) All wells to be abandoned shall have cement plugs placed in the well as prescribed herein. Such cement shall consist of a high temperature resistant admix unless waived by the department in accordance with the particular circumstances existing in the well.

(a) Cased holes.

(i) A cement plug shall be placed across all perforations in the casing, extending 30 meters (100 feet) below and 30 meters (100 feet) above the perforated interval.

(ii) A cement plug shall be placed across all casing stubs, laps, and liner tops, extending a minimum of 15 meters (50 feet) below and 15 meters (50 feet) above such stub, lap, or liner top.

(iii) Casing shoes shall be straddled by a cement plug with a minimum of 30 meters (100 feet) below and 30 meters (100 feet) above and below the shoe.

(iv) All annular space open to the surface shall be filled with cement to the surface.

(v) All casing exposed to the surface shall be cut off 6 feet below ground surface unless otherwise designated by the department.

(vi) A surface plug shall be placed in the casing extending for a minimum of 10 meters (30 feet) below the approved cut off top of the casing. The casing shall be capped by welding a steel plate on the casing stub.

(b) Open holes. Cement plugs shall be placed across fresh water zones, geothermal resource zones, to isolate formations, and to prevent interformational migration or contamination of fluids. Such plugs shall extend a minimum of 30 meters (100 feet) above and below all such zones.

(4) All intervals between plugs shall be filled with drilling mud.

(5) Within thirty days after plugging a well the owner or operator shall file an affidavit with the department setting forth in detail the method used in plugging the well and restoring the site. The affidavit shall be made on a form supplied by the department.

NEW SECTION

WAC 332-17-320 SUSPENSION. Drilling equipment shall not be removed from any well where drilling operations have been suspended before adequate measures have been taken to close the well and protect the surface and subsurface resources including fresh water aquifers. A suspended well shall be mudded and cemented as set forth in WAC 332-17-310 of these rules and regulations or as otherwise approved by the department except that WAC 332-17-310(3)(a)(iv)-(vi) will not be required.

NEW SECTION

WAC 332-17-340 NOTICE OF CHANGE OF OWNERSHIP. Every person who acquires the right of ownership or right of operation of a geothermal well or wells shall within ten days notify the department in writing of the newly acquired ownership or right of operation and provide a bond equivalent to the bond supplied by the prior owner or operator. Each notice shall contain the following:

(1) Name, address, and signature of the person from whom the well or land was acquired;

(2) Name and location of such well or wells;

(3) Date of acquisition; and

(4) Description of the land upon which such well or wells is situated.

NEW SECTION

WAC 332-17-400 RECORDS. The owner or operator of any well or wells shall keep or caused to be kept careful and accurate logs, core records, and history of the drilling of the well. The logs and tour reports shall be kept in the local office of the owner or operator and shall be subject during business hours to inspection by the department except during casing or abandonment operations when appropriate logs will be available at the well site.

Records that shall be filed with the department as set forth in RCW 79.76.210 are:

(1) The drilling log and core record showing the lithologic characteristics and depths of formations encountered, and the depths and temperatures of water-bearing and steam-bearing strata, and the temperature, chemical compositions, and other chemical and physical characteristics of fluids encountered. Core records shall show the depth, lithologic character, and the fluid content of cores obtained.

(2) The well history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, recompletion, and abandonment of the well.

(3) The well summary report shall accompany the drilling logs and well history report. It shall show the spud date, completion date, abandonment date, casing summary, fresh water zones, producing zones, total depth, well location, tops of formations penetrated and bottom hole temperature.

(4) Production records shall be submitted monthly to the department on or before the 10th of each month for the preceding month on a form approved by the department.

(5) Electric logs, directional logs, physical or chemical logs, tests, water analysis, surveys including temperature surveys, and such other logs or surveys as may be run.

(6) A set of ditch samples if taken at not less than 30 meters (100 feet) intervals.

NEW SECTION

WAC 332-17-410 VERTICAL AND DIRECTIONAL WELLS. Deviation surveys shall be taken on all wells during the normal course of drilling at intervals not to exceed 152 meters (500 feet). The department may require a directional survey giving both inclination and azimuth or a dipmeter to be obtained on all wells. In calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction. All surveys shall be filed with department as set forth in WAC 332-17-400. Wells are considered to be directional if inclination from vertical exceeds an average of five degrees. In directional wells directional surveys shall be obtained at intervals not to exceed 30 meters (100 feet) prior to, or upon setting any casing string or lines (except conductor casing) and total depth.

NEW SECTION

WAC 332-17-420 DEPARTMENT TO WITNESS TESTS. Sufficient notice shall be given in advance to the department of the date and time when the owner or operator expects to run casing, test casing,

conduct a drill stem test, or log a well in order that the department may have a representative on the drill site as a witness.

NEW SECTION

WAC 332-17-430 WELL DESIGNATION. The owner or operator shall place in a conspicuous location near the well site a sign setting forth the name of the owner or operator, lease name, well number, permit number, and the quarter-quarter section or lot, township, and range of the well location. Such well designation shall maintained until the well has been abandoned.

NEW SECTION

WAC 332-17-440 WELL SPACING. The department will approve proposed well spacing programs or prescribe such modifications to the programs as it determines necessary for proper development, giving consideration to such factors as:

(1) Topography of the area;

(2) Geologic conditions of the reservoir;

(3) Minimum number of wells required for adequate development; and

(4) Protection of environment.

NEW SECTION

WAC 332-17-450 RIGHT OF ENTRY. Department representatives shall have the right to enter upon any lands and examine such records related to the drilling, redrilling, deepening, or the completion, or the abandonment of, or production from any geothermal well to ensure compliance with the Geothermal Resources Act and these rules. Any owner or operator who denies the right of entry of a department representative or willfully hinders or delays the enforcement of the provisions of the act and these rules or who otherwise violates, fails, neglects, or refuses to comply with any of the provisions of the act or these rules will be subject to the penalties as set forth in RCW 79.76.260.

NEW SECTION

WAC 332-17-460 PITS OR SUMPS. The owner or operator shall provide pits and/or sumps of adequate capacity and design to retain all fluids and materials necessary to the drilling, production, and related operations on the well. No contents of pits and/or sumps shall be allowed to:

(1) Contaminate streams, artificial canals, waterways, ground waters, lakes, or rivers;

(2) Adversely affect the environment, persons, plants, and wildlife; and

(3) Adversely affect esthetic values of the property or adjacent properties.

When pits and/or sumps are no longer needed, they shall be pumped out and the contents disposed of in approved disposal sites unless otherwise approved by the department.

WSR 79-02-002
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-1—Filed January 5, 1979]

I, Gordon Sandison, director of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is Chum salmon are no longer present in these areas so these orders are no longer necessary.

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 5, 1979.

By Gordon Sandison
Director

REPEALER

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

WAC 220-28-007F0E	*CLOSED AREA (78-137)*
WAC 220-28-007G0C	*CLOSED AREA (78-121)*
WAC 220-28-010D0G	*CLOSED AREA (78-127)*
WAC 220-28-013B0G	*CLOSED AREA (78-124)*
WAC 220-28-013G0C	*CLOSED AREA (78-106)*

WSR 79-02-003
NOTICE OF PUBLIC MEETINGS
BOARD FOR VOLUNTEER FIREMEN
[Memorandum, Admin. Ass't.—January 5, 1979]

This is to notify you that the State Board for Volunteer Firemen holds its business meetings quarterly on the third Friday of January, April, July, and October. The meeting place is the secretary's office in the Temple of Justice. The regular meeting dates for 1979 are January 19th, April 20th, July 20th, and October 19th at 1:30 p.m.

WSR 79-02-004
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed January 8, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 16.57 RCW, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning chapter 16.57 RCW. Regulations relating to custom farm slaughtering and providing additional funds, amending WAC 16-620-240, 16-620-260 and repealing WAC 16-620-007;

that such agency will at 1:00 p.m., Wednesday, March 14, 1979, in the Large Conference Room, General Administration Bldg., Olympia, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 4:00 p.m., Monday, March 26, 1979, in the Directors Office, Department of Agriculture, Olympia, Washington.

The authority under which these rules are proposed is chapter 16.57 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 12, 1979, and/or orally at 1:00 p.m., Wednesday, March 14, 1979, General Administration Bldg., Olympia, Washington.

Dated: January 8, 1979
By: Bob Armstrong
Assistant Director

AMENDATORY SECTION (Amending Order 1373, filed 7/2/74)

WAC 16-620-240 SLAUGHTER TAG. In addition to such identification, any licensed slaughterer shall attach the official Washington State Department paper slaughter tag set to each of the four quarters. These tags must remain on the quarters, for identification, until processing. Any person buying hides from custom farm slaughterers or persons slaughtering livestock for their own use shall record the type of hide and make such record available to the Department upon request. In lieu of such recording, such hide buyer shall notify the Department that he has purchased a hide and make the records or hide available for the Department's inspection: PROVIDED, That the Director may inspect hides for brands and other identification and the holder of the hide at the time of the inspection shall make that hide available at the Department's request.

AMENDATORY SECTION (Amending Order 1373, filed 7/2/74)

WAC 16-620-260 FEE. Only the Department of Agriculture will provide such identifying paper tags to any licensed custom slaughterer or custom cutting and wrapping facility upon request and the fee for each such set of paper tags shall be ((~~thirty-five (35¢) cents~~)) one dollar ($1.00) for beef tags and fifty cents (50¢) for hog and sheep tags.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-620-007 PROMULGATION.

WSR 79-02-005
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LIBRARY
[Memorandum—January 5, 1979]

The Washington State Library Commission will hold the following meetings:

March 8, Olympia Public Library, Olympia
June 14, Spokane area (place to be decided)

Meetings begin at 10:00 a.m.

WSR 79-02-006
NOTICE OF PUBLIC MEETINGS
URBAN ARTERIAL BOARD
[Memorandum—January 9, 1979]

Beginning at 9:30 a.m., Thursday, January 18, 1979

1. Minutes of UAB meeting, October 19, 1978
2. Report of Chairman
3. Apportionment of funds deposited into the Urban Arterial Trust Account between October 1, 1978 and December 31, 1978
4. Allocation of Urban Arterial Trust Funds to previously authorized projects for the first quarter of 1979
5. Review obligation status of Urban Arterial Trust Funds
6. Review active projects which have exceeded the completion date approved by the Urban Arterial Board
7. Proposed authorization of Urban Arterial Trust Funds for preliminary proposal projects
8. Report on completed audits of Urban Arterial projects
9. Review proposed legislative changes to UAB functional classification requirements

WSR 79-02-007
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed January 10, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 70.79 RCW, that the Board of Boiler Rules intends to adopt, amend, or repeal rules concerning 1978 Summer and 1978 Winter Addenda to the ASME Boiler and Pressure Vessel Code, amending WAC 296-104-200;

that such agency will at 10:00 a.m., Tuesday, March 20, 1979, in Conference Room 412, 300 West Harrison, Seattle, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Tuesday, March 20,

1979, in Conference Room 412, 300 West Harrison, Seattle, WA.

The authority under which these rules are proposed is RCW 70.79.030.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 20, 1979, and/or orally at 10:00 a.m., Tuesday, March 20, 1979, Conference Room 412, 300 West Harrison, Seattle, WA.

Dated: January 9, 1979
By: John C. Hewitt
Director

AMENDATORY SECTION (Amending Order 77-12, filed 7/5/78)

WAC 296-104-200 INSPECTION OF SYSTEMS—STANDARD FOR NEW CONSTRUCTION. The standard for new construction shall be the 1977 edition of the ASME Code with all addenda made thereto prior to ((~~April 1, 1978.~~)) February 1, 1979. The 1977 code as applicable may be used on and after the date of issue and becomes mandatory twelve months after adoption by the Board as defined in Paragraph (2) of RCW 70.79.050. The Board recognizes that the ASME code states that new editions (of the code) becomes mandatory on issue and that subsequent addenda becomes mandatory six months after the date of issue. Also, in circumstances such as nuclear systems the time period for addenda becoming mandatory is defined in the Code of Federal Regulations. Note: Editions of the ASME Code including semi-annual addendas will be adopted in accordance with the Administrative Procedures Act. Check with the Office of the Chief Boiler Inspector for current code date.

WSR 79-02-008
ADOPTED RULES
DEPARTMENT OF GAME
[Order 129—Filed January 10, 1979]

Be it resolved by the Game Commission, State of Washington, acting at Yakima, Washington, that it does promulgate and adopt the annexed rules relating to the regulations of Game Department license dealers.

This action is taken pursuant to Notice No. WSR 78-11-093 filed with the Code Reviser on November 1, 1978.

This rule is promulgated under the general rule-making authority of the Game Commission as authorized in RCW 77.12.040.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW) or the Administrative Procedure Act (chapter 34.04 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

This order, after being first recorded in the Order Register of this governing body, shall be forwarded to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED January 8, 1979.
by Ralph W. Larson
Director

AMENDATORY SECTION (Amending Regulation 51, filed November 26, 1963.)

WAC 232-12-510 REQUIREMENTS OF LICENSE DEALERS. (1) The Director of Game, with the approval of the state game commission, may deputize persons, firms, or corporations as license dealers in such numbers as deemed necessary, for the purpose of issuing hunting and fishing licenses.

(2) All persons, firms, or corporations so deputized shall provide the Director of Game with a good and sufficient bond in such amount as the director shall determine, such bond to guarantee full and complete payment for any and all licenses sold or not remitted by the dealer.

(3) License dealers shall remit all moneys collected from the sale of completely sold books of hunting and fishing licenses ((~~on or before the end of each calendar month.~~))by the 10th day of the following month in which the licenses are sold. At the end of each license year, license dealers shall remit for all remaining sold licenses by the final date specified by the Director of Game. Failure to comply with this regulation may result in the cancellation of a license dealership.

WSR 79-02-009
PROPOSED RULES
DEPARTMENT OF GAME
[Filed January 10, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 42.30 RCW, that the state Game Commission intends to adopt, amend, or repeal rules concerning regulations implementing State Environmental Policy Act, amending chapter 232-18 WAC;

that such agency will at 9:00 a.m., Monday, April 2, 1979, in the Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m, Monday, April 2, 1979, in the Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA.

The authority under which these rules are proposed is RCW 77.12.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to April 2, 1979, and/or orally at 9:00 a.m., Monday, April 2, 1979, Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA.

Dated: January 10, 1979
By: Wallace F. Kramer
Wildlife Management Chief

Chapter 232-18 WAC
GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

WAC

232-18-025	Scope and coverage of this chapter
232-18-040	Definitions
232-18-050	Use of the environmental checklist form
232-18-060	Scope of a proposal and its impacts for the purpose of lead agency determination, threshold determination, and EIS preparation
232-18-100	Summary of information which may be required of a private applicant

WASHINGTON STATE DEPARTMENT OF GAME GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-025 SCOPE AND COVERAGE OF THIS CHAPTER. (1) ((~~It is the intent of Department of Game that~~)) Compliance with the guidelines of this chapter shall constitute complete procedural compliance with SEPA for all actions as defined in WAC 232-18-040(2).

(2) This chapter applies to all "actions" as defined in WAC 232-18-040(2) and applies to all activities of Department of Game. Furthermore, although these guidelines do not apply to actions of the department exempted under WAC 232-18-150(2), the department accepts the responsibility of attempting to follow the intent of the SEPA, chapter 43.21C RCW, in its decision making process for exempt actions.

(3) To the fullest extent possible, Department of Game shall integrate the procedures required by this chapter with existing planning and licensing procedures. These procedures should be initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

(4) Decision-making occurring within Department of Game on all activities which may adversely impact the environment shall include identification and consideration of all reasonable alternatives and mitigative measures as specified in this chapter.

(5) As part of all authorizations made by Department of Game such conditions shall be imposed as may be warranted to mitigate adverse effects on the environment, when such authorization applies to an activity which may adversely affect the environment.

(6) In cases where Department of Game judges that an activity which the department is considering for authorization would cause serious, substantial, and long-term adverse environmental effect which outweigh in balance the beneficial effects of the activity Department of Game shall not authorize that activity.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-040 DEFINITIONS. The following words and terms have the following meanings for the purposes of this chapter, unless the context indicates otherwise:

(1) ((~~Acting Agency.~~)) Acting agency means an agency with jurisdiction which has received an application for a license, or which is the initiator of a proposed action.

(2) ((~~Action.~~)) Action means an activity potentially subject to the environmental impact statement requirements of RCW 43.21C.030(2)(c) and (2)(d). (See ((~~the provisions of~~)) WAC 197-10-170, 197-10-175 and 197-10-180 for activities that are exempted from the threshold determination and environmental impact statement requirements of SEPA ((~~and CEP~~)) guidelines((~~, due to CEP's determination that such activities are minor, not "major," actions even though such activities are within one of the subcategories below~~)).) All actions fall within one of the following subcategories:

(a) Governmental licensing of activities involving modification of the physical environment.

(b) Governmental action of a project nature. This includes and is limited to:

(i) the decision by an agency to undertake any activity which will directly modify the physical environment, whether such activity will be undertaken directly by the agency or through contract with another, and

(ii) the decision to purchase, sell, lease, transfer or exchange natural resources, including publicly owned land, whether or not ((~~it directly modifies the environment~~)) the environment is directly modified.

(c) Governmental action of a nonproject nature. This includes and is limited to:

(i) the adoption or amendment of legislation, ordinances, rules or regulations which contain standards controlling use or modification of the physical environment;

(ii) the adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) the adoption of any policy, plan or program which will govern the development of a series of functionally related major actions, but not including any policy, plan or program for which approval must be obtained from any federal agency prior to implementation;

(iv) creation of, or annexations to, any city, town or district;

(v) adoptions or approvals of utility, transportation and solid waste disposal rates;

(vi) capital budgets; and

(vii) road, street and highway plans.

(3) ((~~Agencies with Expertise. Agencies~~)) Agency with expertise means ((~~those agencies to which a draft environmental impact statement shall be sent pursuant to~~)) an agency listed in WAC 197-10-465, unless ((~~they are~~)) it is also ((~~agencies~~)) an agency with jurisdiction.

(4) ((~~Agencies with Jurisdiction. Agencies~~)) Agency with jurisdiction means ((~~those agencies~~)) an agency from which a nonexempt license is required for a proposal or any part thereof((~~, or~~)); which will act upon an application for a grant or loan for a proposal((~~;~~)); or ((~~agencies~~)) which ((~~are proposing~~)) proposes or ((~~initiating~~)) initiates any governmental action of a project or nonproject nature. The term does not include ((~~those agencies~~)) an agency authorized to adopt rules or standards of general applicability which govern the proposal in question, when no license or approval is required for a specific proposal((~~s, nor does~~)). The term also does not include ((~~agencies,~~)) an agency involved in approving a grant((~~s~~)) or loan((~~s,~~)) which serves only as a conduit((~~s~~)) between the primary administering agency and the recipient of the grant or loan. Federal agencies with jurisdiction are ((~~instrumentalities~~)) agencies of the federal government from which a license is required, or which will receive an application for a grant or loan for a proposal.

(5) ((~~Agency or Agencies.~~)) Agency or agencies means all state agencies and local agencies as defined in this section. The term does not include any agency or division of the federal government. Whenever a specific agency has been named in these guidelines and the functions of that agency have been transferred to another agency, then the term shall mean ((~~such~~)) the successor agency.

(6) ((~~CEP.~~)) CEP means the council on environmental policy. As directed by the legislature, the council on environmental policy ceased to exist on July 1, 1976, and its duties were transferred to the Department of Ecology (DOE). All references to CEP in these guidelines should be read to mean Department of Ecology.

(7) ((~~Consulted Agency.~~)) Consulted agency means any agency with jurisdiction or with expertise which is ((~~consulted, or from which information is requested by a lead agency during the threshold determination, pre-draft consultation, or consultation on a draft environmental impact statement~~)) requested by the lead agency to provide information during a threshold determination or predraft consultation or which receives a draft environmental impact statement. An agency shall not be considered to be a consulted agency merely because it receives a proposed declaration of nonsignificance.

(8) ((~~Contact Person.~~)) Contact person means that person designated by the director of the department to carry out the duties, functions, and authority of the Department of Game when the department is acting as a consulted agency.

(9) ((~~County/City.~~)) County/city means a county, city or town. ((~~For the purposes of chapter 197-10 WAC~~)) In this chapter, duties and powers are assigned to a county, city or town as a unit((~~, with~~)). The delegation of responsibilities among the various departments of a county, city or town ((~~being~~)) is left to the legislative or charter authority of the individual counties, cities or towns.

(10) ((~~Declaration of Non-Significance.~~)) Declaration of nonsignificance means the written decision by the responsible official ((~~of the lead agency~~)) that a proposal will not have a significant adverse environmental impact and that therefore no environmental impact statement is required. A form substantially consistent with that in WAC 232-18-355 shall be used for this declaration when the department is acting as lead agency.

(11) ((~~Declaration of Significance.~~)) Declaration of significance means the written decision by the responsible official that a proposal will or could have a significant adverse environmental impact and that therefore an environmental impact statement is required. A form substantially consistent with that in WAC 232-18-355 shall be used by the responsible official for this declaration.

(12) ((~~Department.~~)) Department means Department of Game unless otherwise indicated.

(13) ((~~Draft EIS.~~)) Draft EIS means an environmental impact statement prepared prior to the final detailed statement.

(14) EIS. EIS means the detailed statement required by RCW 43.21C.030(2)(c). ((~~It~~)) This term may refer to either a draft or final environmental impact statement, or both, depending upon context.

(15) ((~~Environment.~~)) Environment means, and is limited to, those areas listed in WAC 232-18-444.

(16) ((~~Environmental Checklist.~~)) Environmental checklist means the form contained in WAC 232-18-365.

(17) ((~~Environmental Document.~~)) Environmental document means every written public document prepared or utilized as a result of the requirements of this chapter.

(18) ((~~Environmentally Sensitive Area.~~)) Environmentally sensitive area means an area designated and mapped by a county/city pursuant to WAC 197-10-177((~~, and within which~~)). Certain categorical exemptions do not apply within environmentally sensitive areas.

(19) ((~~Final EIS.~~)) Final EIS means an environmental impact statement prepared to reflect comments to the draft EIS. It may ((~~consist of~~)) be a new document, or ((~~of~~)) the draft EIS ((~~together with supplementary~~)) supplemented by material prepared pursuant to WAC 232-18-570, 232-18-580 or 232-18-695.

(20) ((~~Lands Covered by Water.~~)) Lands covered by water means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes and swamps. Certain categorical exemptions do not apply to lands covered by water.

(21) ((~~Lead Agency.~~)) Lead agency means the agency designated by ((~~the provisions of~~)) WAC 197-10-200 through 197-10-270 or 197-10-345((~~, which is~~)). The lead agency is responsible for making the threshold determination and preparing or supervising preparation of the draft and final environmental impact statements.

(22) ((~~License.~~)) License means any form of written permission given to any person, organization or agency to engage in any activity, as required by law or agency rule. A license thus includes ((~~the whole~~)) all or part of any agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular project((~~;~~)). The term does not include a license required solely for revenue purposes ((~~is not included~~)).

(23) ((~~Licensing.~~)) Licensing means the agency process in granting, renewing or modifying a license.

(24) ((~~List of Elements of the Environment.~~)) List of elements of the environment means the list ((~~contained~~)) in WAC 232-18-444 which must be attached to every environmental impact statement.

(25) ((~~Local Agency.~~)) Local agency means any political subdivision, regional governmental unit, district, municipal or public corporation including cities, towns and counties. The term does not include the departments of a city or county.

(26) ((~~Major Action.~~)) Major action means any "action" as defined in this section which is not exempted by WAC 197-10-170, 197-10-175 and 197-10-180.

(27) ((~~Non-Project EIS.~~)) Nonproject EIS means an environmental impact statement prepared for a proposal for any governmental action of a nonproject nature as defined under "action" in this section.

(28) ((~~Physical Environment.~~)) Physical environment means and is limited to those elements of the environment listed under "physical environment" in WAC 232-18-444(2).

(29) ((~~Private Applicant.~~)) Private applicant means any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(30) ((~~Private Project.~~)) Private project means any proposal ((~~for which the primary initiator or sponsor is~~)) primarily initiated or sponsored by an individual or entity other than an "agency" as defined in this section.

(31) ((~~Proposal.~~)) Proposal means a specific request to undertake any activity submitted to, and ((~~which is~~)) seriously considered by, an agency or a decision-maker within an agency, as well as any action or activity which may result from approval of any such request. ((~~Further definition of~~)) The scope of a proposal for the purposes of lead agency determination, the threshold determination, and impact statement preparation is ((~~contained~~)) further defined in WAC 232-18-060.

(32) ((~~Responsible Official.~~)) Responsible official means the Director of the Department. The responsible official shall effect or direct accomplishment of the duties and functions of Department of Game when the department is acting as the lead agency under these guidelines pursuant to chapter 197-10 WAC.

(33) ((~~Aide to Responsible Official. Aide to~~)) Responsible official ((~~herein after~~)) (R.O.) Aide means the chief of that division of the department possessing the greatest degree of authority over an "action". The R.O. Aide shall carry out duties and functions as directed by the responsible official, for purposes of assuring Department of Game's compliance with these guidelines and chapter 197-10 WAC when Department of Game is acting as lead agency. Although the R.O. Aide may delegate duties and functions assigned him/her under this chapter((~~;~~)), the R.O. Aide, alone, is wholly responsible for the proper accomplishment of such duties and functions.

(34) ((~~SEPA.~~)) SEPA means the state environmental policy act of 1971, chapter 43.21C RCW as amended.

(35) ((~~State Agency.~~)) State agency means any state board, commission or department except those in the legislative or judicial branches. The term includes the office of the governor and the various divisions thereof, state universities, colleges and community colleges.

(36) ((~~Threshold Determination.~~)) Threshold determination means the decision by a lead agency whether or not an environmental impact statement is required for a proposal.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-050 USE OF THE ENVIRONMENTAL CHECKLIST FORM. When the department is lead agency the form provided in WAC 232-18-365 for an environmental checklist is to be initially completed by an action proponent, whether public or private, either alone or together with the R.O. Aide, usually in conjunction with a license application. This form must be used in the threshold determination; it will also be helpful in making the lead agency designation and in predraft consultation. However, where there is an agreement between the proponent ((~~of a non-exempt action (whether a private applicant or an agency which is not the lead agency)~~)) and the R.O. Aide that an EIS is required, the completion of the environmental checklist is unnecessary. ((~~Where the action proponent and the lead agency are the same entity, and a decision to prepare an EIS has been made, then no checklist is required.~~))

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-060 SCOPE OF A PROPOSAL AND ITS IMPACTS FOR THE PURPOSES OF LEAD AGENCY DETERMINATION, THRESHOLD DETERMINATION, AND EIS PREPARATION. (1) The proposal considered by the department as the acting agency during the lead agency determination procedure, and by the department as the lead agency during the threshold determination and EIS preparation, shall be the total proposal including its direct and indirect impacts. Whenever the word "proposal" or the term "proposed action" is used in this chapter, the discussion in subsection (2) ((~~hereof is applicable~~)) of this section applies. In considering the environmental impacts of a proposal during the threshold determination and EIS preparation, the discussion in subsection (3) ((~~hereof~~)) of this section is applicable.

(2) The total proposal is the proposed action, together with all proposed activity ((~~which is~~)) functionally related to it. Future activities are functionally related to the present proposal if:

(a) The future activity is an expansion of the present proposal, facilitates or is necessary to operation of the present proposal ((~~or is necessary thereto~~)); or

(b) The present proposal facilitates or is a necessary prerequisite to future activities.

The scope of the proposal is not limited by the jurisdiction of the department when the department is acting as lead agency. The fact that future ((~~impacts~~)) parts of a proposal will require future approvals by the department or other governmental agencies shall not be a bar to their present consideration, so long as the plans for those future ((~~elements~~)) parts are ((~~sufficiently~~)) specific enough to allow some evaluation of their potential environmental impacts. The department when it is an acting agency and/or lead agency should be alert to the possibility that a proposal may involve other agencies with jurisdiction which may not be taking any action until sometime in the future. ((~~For example, in a proposal for a plat approval, another agency with jurisdiction may be the appropriate sewer district, even though installation of sewers may not occur until several years later.~~))

(3) The impacts of a proposal include its direct impacts as well as its reasonably anticipated indirect impacts. Indirect impacts are those which result from any activity which is induced by a proposal. These include, but are not limited to, ((~~consideration of~~)) impacts resulting from growth induced by the proposal, or the likelihood that the present action will serve as a precedent for future actions. (For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects.) Contemporaneous or subsequent development of a similar nature, however, need not be considered in the threshold determination unless there will be some causal connection between ((~~such~~)) this development and one or more of the governmental decisions necessary for the proposal in question.

(4) The lead agency may divide proposals involving extensive future actions ((~~may be divided, at the discretion of Department when it is lead agency,~~)) into segments with an EIS prepared for each segment. In such event, the earlier EIS shall describe the later segments of the proposal and note that future environmental analysis will be required for these future segments. The segmentation allowed by this subsection shall not be ((~~applied~~)) used at the threshold determination stage to determine that any segment of a more extensive significant proposal is insignificant; nor shall segmentation be applied so as to require significant duplication of analysis contained in an earlier EIS.

(5) For proposed projects, ((~~such as highways, streets, pipelines or utility lines or systems~~)) where the proposed action is related to a large existing or planned network, the department when acting as lead agency may at its option treat the present proposal as the total proposal, or select only some of the future elements for present consideration in the threshold determination and EIS. These categorizations shall be logical with relation to the design of the total system or network itself, and shall not be made merely to divide a larger system into exempted fragments.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-100 SUMMARY OF INFORMATION WHICH MAY BE REQUIRED OF A PRIVATE APPLICANT. (1) There are three areas of these guidelines where the department is allowed to require information from a private applicant. These are:

(a) Environmental checklist;

(b) Threshold determination; and,

(c) Draft and final EIS.

((~~The responsible official may determine that any information supplied by a private applicant is insufficient and require~~)) Further information((;)) may be required if ((~~in the judgment of~~)) the responsible official determines that the information initially supplied was not reasonably adequate to fulfill the purpose for which it was required. An applicant may ((~~choose to~~)) voluntarily submit, at any time, information beyond that which may be required under these guidelines.

(2) Environmental checklist. A private applicant is required to complete an environmental checklist as set forth in WAC 232-18-365 either concurrently with or after filing the application. Explanations for each "yes" and "maybe" answer indicated thereon are required. The department may not require a complete assessment or "mini-EIS" at this stage. (See WAC 232-18-310.)

(3) Threshold determination. When the department is acting as lead agency it shall make an initial review of a completed checklist without requiring more information from a private applicant. ((~~If, and only if, the R.O. Aide determines as a result of his/her initial review that the information available to him/her is not reasonably sufficient to determine the environmental impacts of the proposal~~)) After completing this initial review, the R.O. Aide may require further information from the applicant, including explanation of "no" answers on the checklist. This information shall be limited to those elements on the environmental checklist for which, as determined by the R.O. Aide, information accessible to the department is not reasonably sufficient to evaluate the environmental impacts of the proposal. Field investigations or research by the applicant reasonably related to determining the environmental impacts of the proposal may be required. (See WAC 232-18-330.)

(4) Draft and final EIS preparation. At the option of the department, an EIS may be prepared by the applicant or by a consultant acceptable to both the applicant and the responsible official. The EIS will be prepared under the direction of the responsible official at applicant's cost, including payment for agency consultation time and cost of any materials prepared by the agency for inclusion into the EIS. (See WAC 232-18-420). Alternatively, the responsible official may require a private applicant to provide data and information which is not in the possession of the department relevant to any or all areas to be covered by an EIS. A private applicant shall not be required to provide information which is the subject of a predraft consultation request until the consulted agency has responded, or the forty-five days allowed for response by the consulted agency has expired, whichever is earlier.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-150 EXEMPTIONS EXCLUSIVE—CEP APPROVAL OF CHANGES IN EXEMPTIONS. (1) The only actions exempt from the threshold determination requirements of this chapter are those which are categorically exempted in WAC 197-10-170, 197-10-175 and 197-10-180. Except to specify emergencies as allowed in WAC 232-18-180, the department shall ((~~add~~)) create additional exemptions in these guidelines only after obtaining approval of CEP in accordance with either subsection (2) or (3) of WAC 197-10-150.

(2) The following activities of the Department of Game are exempted by WAC 197-10-175(6):

(a) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(b) The issuance of falconry permits.
(c) The issuance of all hunting or fishing licenses, permits or tags.
(d) Artificial game feeding.
(e) The issuance of scientific collector permits.
(f) All hydraulic project approvals (RCW 75.20.100) for activity incidental to a class I, II, III or IV forest practice as defined in ((~~chapter 200, Laws of 1975 ex. sess. [chapter 76.09 RCW];~~)) RCW 76.09.050 and regulations adopted thereunder, (except those forest practices designated by the forest practices board as being special forest practices and therefore subject to SEPA evaluation); and ((~~other~~)) hydraulic project approvals for removal of streambed materials where the cost or fair market value of the total ((~~proposal~~)) project is ((~~five~~)) one thousand ((~~($5,000.00)~~)) dollars or less and other hydraulic project approvals where the cost of the total proposal is five thousand or less except for proposals involving realignment into a new channel ((~~or gravel removal~~)).

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-190 USE AND EFFECT OF CATEGORICAL EXEMPTIONS. (1) Those activities excluded from the definition of "action" in WAC 197-10-040(2), or categorically exempted in WAC 197-10-170, 197-10-175 and 197-10-180, and WAC 232-18-150(2) are exempt from the threshold determination (including completion of the environmental checklist) and EIS requirements of these guidelines, chapter 197-10 WAC and RCW 43.21C.030(2)(c) and (2)(d). The department in accordance with chapter 197-10 WAC shall allow no exemption for the sole reason that actions are considered to be of a "ministerial" nature or of an environmentally regulatory or beneficial nature.
(2) If a department proposal includes a series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not, the proposal is not exempt.
((~~(3)~~)) For these proposals ((~~in (2) above,~~)) exempt activities or actions may be undertaken prior to the threshold determination((~~, subject to the timing considerations in WAC 197-10-055~~)). For each such proposal the department shall determine a lead agency. If the department is acting as lead agency, a threshold determination shall be made prior to any major action with respect to the proposal, and prior to any decision by the department irreversibly committing itself to adopt or approve the proposal.
((~~(4)~~)) (3) If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a significant environmental impact, the proposal is not exempt. The determination that a proposal is not exempt because of this subsection shall be made only for the R.O. Aide for that proposal.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-203 DETERMINATION OF LEAD AGENCY—PROCEDURES. (1) The first agency receiving or initiating a proposal for a major action, or for any part of a proposal when the total proposal involves a major action, shall determine the lead agency for that proposal. ((~~To ensure that the lead agency is determined early,~~)) The R.O. Aide shall determine the lead agency for all proposals for a major action which are received, unless the lead agency has been previously determined or the department's R.O. Aide is aware that another agency is ((~~in the process of~~)) determining the lead agency. The lead agency shall be determined by using the criteria in WAC 232-18-205 through 232-18-245.
(2) If the R.O. Aide determines that another agency is the lead agency, a copy of the application received, together with the determination of lead agency and explanation thereof shall be mailed to such lead agency. If the agency receiving this determination agrees that it is the lead agency, it shall so notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition CEP for a lead agency determination pursuant to WAC 197-10-260.
(3) If the department's R.O. Aide determines that the department is the lead agency, he/she shall immediately mail a copy of this determination and explanation thereof to all other agencies with jurisdiction over the proposal. The department shall then proceed, as the lead agency, to the threshold determination procedure of WAC 232-18-300 through 232-18-375. If another agency with jurisdiction objects to the lead agency determination, and the dispute cannot be resolved by agreement, the agencies shall immediately petition CEP for a lead agency determination pursuant to WAC 197-10-260.
(4) If the department receives a lead agency determination to which it objects the R.O. Aide shall either resolve the dispute, withdraw the department's objection, or petition to CEP for a lead agency determination within fifteen days of receiving the determination.
(5) To make the lead agency determination, the R.O. Aide must determine to the best of his/her ability the other agencies with jurisdiction over the proposal. This can be done by requesting the information from a private applicant, or through consultation with the information centers established pursuant to RCW 90.62.120, within the Environmental Coordination Procedures Act of 1973 (ECPA).

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-205 LEAD AGENCY DESIGNATION—DEPARTMENT PROPOSALS. For all proposals initiated by the department, the department shall be the lead agency. In the event that two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will ((~~assume the status of~~)) be lead agency. For the purposes of this section, a proposal by the department does not include proposals to license private activity.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-240 AGREEMENTS AS TO LEAD AGENCY STATUS. ((~~Nothing herein shall prohibit the Department from assuming the role of lead agency as a result of an agreement among all agencies with jurisdiction.~~)) The department may assume lead agency if all agencies with jurisdiction agree.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-300 THRESHOLD DETERMINATION REQUIREMENT. (1) Except as provided in subsection (2) ((~~hereof~~)) of this section, a threshold determination shall be made for every proposal for a major action. The responsible official shall be responsible for making the threshold determination. ((~~Only the Department shall make a threshold determination, except when lead agency duties are shared or assumed pursuant to WAC 232-18-245 and 232-18-345, respectively.~~))
(2) The threshold determination requirement ((~~of completion of an environmental checklist~~)) may be omitted, unless predraft consultation occurs, when:
(a) Both the responsible official and the sponsor (public or private) of a proposal agree that an EIS is required, or
(b) The department is the sponsor and the responsible official and the department decide((~~s~~)) that an EIS is required.
((~~(3) When the provisions of subsection (2) above have been utilized, compliance with requirements for use of the environmental checklist contained in WAC 232-18-305 through 232-18-375 may be disregarded.~~))

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-305 TIMING FOR THRESHOLD DETERMINATION. The R.O. Aide shall insure that a completed threshold determination is listed ((~~with the SEPA Information Center of the Department~~)) within fifteen days after the checklist is initially filled out, unless further information is required. The initial review of a completed environmental checklist can usually be completed in a matter of hours. If further information is required to make the threshold determination, the time required will vary, depending upon the nature of the proposal and the information required. When a ((~~threshold determination is expected to require more than fifteen days to complete and a~~)) private applicant requests notification of the date when a threshold determination will be made, the R.O. Aide shall ((~~transmit to~~)) so notify the private applicant ((~~a written statement as to the expected date of decision~~)) in writing.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-310 THRESHOLD DETERMINATION PROCEDURES—ENVIRONMENTAL CHECKLIST. (1) The R.O. Aide shall insure that an environmental checklist substantially in the form provided in WAC 232-18-365 is completed for any proposed major action before the responsible official makes the threshold determination. ((~~The proposal's proponent shall complete the checklist either alone or together with R.O. Aide. Explanations of every~~)) Every "yes" and "maybe" answer on the checklist shall be ((~~provided, and~~

~~persons~~)) explained. Persons completing the checklist may ((~~provide explanations of~~)) also explain "no" answers. Persons filling out an environmental checklist may make reference to studies or reports which are available to the agency to which the checklist is being submitted.

(2) ((~~An environmental checklist may be required by the R.O. Aide if he/she receives an application for a major action, or (if one has not been previously completed) an environmental checklist shall be required by the R.O. Aide prior to when the responsible official made the threshold determination.~~

~~(3)~~)) No environmental checklist or threshold determination is required for proposals that are exempted by WAC 197-10-170, 197-10-175 ((~~and~~)), 197-10-180 and ((~~WAC~~)) 232-18-150(2).

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-320 THRESHOLD DETERMINATION PROCEDURES—INITIAL REVIEW OF ENVIRONMENTAL CHECKLIST. ((~~(1)~~)) If the department is lead agency, the R.O. Aide shall conduct an initial review of the environmental checklist for the proposal together with any supporting documentation. This initial review shall be made without requiring further information from the applicant. In making this initial review, the R.O. Aide shall independently evaluate each item on the checklist and indicate ((~~thereon~~)) the results of this evaluation.

(((~~(2) After completing the initial review of the environmental checklist, the responsible official shall apply the criteria of WAC 232-18-060 and 232-18-360 to the checklist as evaluated by R.O. Aide. This process will lead to one of three determinations:~~

~~(a) The proposal will not have a significant adverse impact upon the quality of the environment; in which case, the R.O. Aide shall initiate the negative threshold determination procedures of WAC 232-18-340; or;~~

~~(b) The proposal will have a significant adverse impact upon the quality of the environment; in which case the R.O. Aide shall initiate the EIS preparation procedures of WAC 232-18-350 and 232-18-400 through 232-18-695; or;~~

~~(c) There is not sufficient information available to the R.O. Aide to enable him/her to reasonably make a determination of the environmental significance of the proposal; in which case the R.O. Aide shall implement one or more of the information gathering mechanisms in WAC 232-18-330.~~))

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-330 THRESHOLD DETERMINATION PROCEDURES—INFORMATION IN ADDITION TO CHECKLIST. (1) The threshold determination by the responsible official must be based upon information reasonably sufficient to determine the environmental impact of a proposal. ((~~In the event that~~)) If, after an initial review of the environmental checklist, the R.O. Aide determines the information available to him/her is not reasonably sufficient to make this determination, one or more of the following may be initiated:

(a) The applicant may be required to furnish further information. This additional information shall be limited to ((~~those categories~~)) the subjects on the environmental checklist. An applicant may be required to provide explanations of any "no" answers to questions on the checklist.

(b) The R.O. Aide may initiate further studies, including physical investigations on the subject property, directed toward providing additional information on the environmental impacts of the proposal.

(c) The R.O. Aide may consult with other agencies with jurisdiction over the proposal, requesting substantive information as to potential environmental impacts of the proposal which lie within the area of expertise of the particular agency so consulted. ((~~Agencies so consulted~~)) Consulted agencies shall respond in accordance with the requirements of WAC 197-10-500 through 197-10-540.

(2) When, ((~~during the course of collecting further information on a proposal,~~)) the R.O. Aide obtains information reasonably sufficient to assess the adverse environmental impacts of the proposal, the responsible official shall immediately ((~~be contacted for~~)) make a threshold determination utilizing the criteria of WAC 232-18-360 and 232-18-365. In the event that the further investigations authorized by this section do not provide information reasonably sufficient to assess any potential adverse environmental impacts of the proposal, an EIS shall be prepared.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-340 THRESHOLD DETERMINATION PROCEDURES—NEGATIVE DECLARATIONS. (1) In the event the responsible official determines a proposal will not have a significant adverse impact on the quality of the environment, the R.O. Aide shall prepare a proposed or final declaration of nonsignificance, as appropriate, substantially in the form provided in WAC 232-18-355.

(2) The R.O. Aide shall prepare a final declaration of nonsignificance for all proposals except for those listed in subsection (3) ((~~below~~)) of this section.

(3) Upon making a threshold determination of nonsignificance for any of the following proposals the responsible official shall direct the R.O. Aide to prepare a proposed declaration of nonsignificance, and insure compliance with the requirements of subsections (4) through (6) ((~~below~~)) of this section prior to taking any further action on the proposal:

(a) Proposals ((~~for which there is~~)) which have another agency with jurisdiction except that, when the hydraulic project approval (HPA) is the only license required by a private applicant, and the Departments of Game and Fisheries are the only agencies with jurisdiction, written agreement may be obtained with Department of Fisheries to omit the proposed declaration of nonsignificance and issue a final declaration of nonsignificance.

(b) Proposals involving demolition of any structure or facility not exempted by WAC 197-10-170(1)(n) or 197-10-180.

(c) Proposals involving issuance of clearing or grading permits not exempted by WAC 197-10-170, 197-10-175 or 197-10-180.

(4) The R.O. Aide shall ((~~list~~)) issue all proposed declarations of nonsignificance ((~~in the "Proposed Declaration of Non-Significance Register" at the Department SEPA public information center. All such declarations shall be attached to the environmental checklist as evaluated by R.O. Aide and transmitted to any~~)) by sending the proposed declaration and environmental checklist to other agencies with jurisdiction ((~~and to the SEPA public information center of the Department~~)).

(5) Any person or agency may submit written comments on the proposed declaration of nonsignificance to the R.O. Aide within fifteen days from the date of its ((~~listing in the register~~)) issuance. The R.O. Aide shall take no further action on the proposal which is the subject of the proposed declaration of nonsignificance for fifteen days from the date of ((~~its listing in the register~~)) issuance. If comments are received, the responsible official shall reconsider his/her proposed declaration ((~~in light thereof,~~)) however, the responsible official is not required to modify the proposed declaration of nonsignificance to reflect the comments received ((~~thereon~~)).

(6) After the fifteen day time period has elapsed, and after considering any comments, the responsible official shall either direct adoption of the proposed declaration as a "Final Declaration of NonSignificance," or determine that the proposal is significant, or direct the R.O. Aide to initiate the additional information gathering mechanisms of WAC 232-18-330(1).

(7) When a final declaration of nonsignificance results from a proposed declaration of nonsignificance, that final declaration of nonsignificance shall be sent to the department of ecology headquarters office in Olympia. The department of ecology shall list it on the "SEPA register" as specified in WAC 197-10-831. This subsection shall not apply to proposed declarations of nonsignificance, to final declarations of nonsignificance issued in accordance with WAC 232-18-340(2), or to final declarations of nonsignificance made under the "agreement with other agency" provision of WAC 232-18-340(3)(a). Checklists need not be sent.

(8) Issuance of proposed and final declarations of nonsignificance completes the procedural requirements of these guidelines unless another agency with jurisdiction assumes lead agency duties and responsibilities pursuant to WAC 197-10-345.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-345 ASSUMPTION OF LEAD AGENCY STATUS BY DEPARTMENT—PREREQUISITES, EFFECT AND FORM OF NOTICE. (1) ((~~Notwithstanding the lead agency determination criteria of WAC 232-18-200 through 232-18-260,~~)) If the department has jurisdiction over a proposal ((~~and objects to such determination upon review of a proposed declaration of non-significance~~)) and upon review of a proposed declaration of nonsignificance for that proposal, objects to the threshold determination, the responsible official may, at his/her discretion direct the R.O. Aide to transmit

to the initial lead agency a completed "Notice of Assumption of Lead Agency Status". ((~~Such form of~~)) This notice shall be substantially similar to that described in subsection (4) ((~~below~~)) of this section. Assumption of lead agency status, ((~~if it is to occur,~~)) shall take place within fifteen days of ((~~the listing of the proposal in the "Proposed Declaration of Non-Significance Register"~~)) issuance of the proposed declaration of nonsignificance, as provided for in WAC 232-18-340.

(2) The ((~~responsible official, prior to transmittal of the notice described in subsection (4) below and an attached declaration of significance, shall make a finding that an EIS is required for the proposal. This finding~~)) affirmative threshold determination by the department shall be based only upon information contained in the environmental checklist attached to the proposed declaration of nonsignificance transmitted by the lead agency and any other information possessed by the department.

(3) As a result of ((~~the transmittal of~~)) transmitting a completed form of the notice contained in subsection (4) ((~~below~~)) of this section and attached declaration of significance, the department shall become the "new" lead agency and shall ((~~begin preparation of~~)) expeditiously prepare a draft and a final EIS. In addition, all other responsibilities and authority of a lead agency under this chapter shall be transferred to the department.

(4) The form of "Notice of Assumption of Lead Agency Status" is as follows:

FORM OF NOTICE OF ASSUMPTION OF LEAD AGENCY STATUS

Description of Proposal .....

Proponent .....

Location of Proposal .....

Initial Lead Agency .....

New Lead Agency .....

This proposal was determined by the (initial lead agency) to have no significant adverse impact upon the environment, according to the proposed declaration of nonsignificance dated ..... A review of the information relative to the environmental checklist has been made by the Department of Game and in its opinion an EIS is required for the proposal. Consequently, notice is hereby given that the department, a former consulted agency with jurisdiction assumes the responsibility of lead agency status from the initial lead agency, including, but not limited to, the duty to prepare a draft and final EIS on the proposal.

Responsible Official .....
Position/Title .....
Address/Phone .....

Date ..... Signature .....

(5) A completed form of notice, together with a declaration of significance, shall be transmitted to the initial lead agency, any other agencies with jurisdiction and the proponent of the proposal. ((~~A copy of the notice shall be retained in the Department SEPA public information center.~~))

(6) The department may still comment critically upon a proposed declaration of nonsignificance without assuming lead agency status. The department has not assumed lead agency status ((~~pursuant to this section~~)) unless a notice substantially in the form of subsection (4) ((~~hereof~~)) of this section is completed and transmitted. The decision to not assume lead agency status pursuant to this section creates no new legal obligation upon the department.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-350 AFFIRMATIVE THRESHOLD DETERMINATION. (1) In the event the responsible official determines that the proposal will have a significant adverse effect upon the quality of the environment, the responsible official shall direct the R.O. Aide to prepare a declaration of significance using the form in WAC 232-18-355 ((~~which~~)). This form shall be retained in the files of the department((~~: The R.O. Aide shall then list the proposal in the "EIS in Preparation Register" maintained at the SEPA public information center of the Department, and then~~)) with a copy sent to the applicant in the case of a private project. If the proposal is not modified by the applicant resulting in a withdrawal of the affirmative threshold determination as allowed by WAC 232-18-370, the R.O. Aide shall begin the EIS preparation procedures of WAC 232-18-400 through 232-18-695.

(2) ((~~After~~)) If the additional information gathering mechanisms of WAC 232-18-330 have been utilized, and ((~~when there exists a reasonable belief by~~)) the responsible official reasonably believes that the proposal could have a significant adverse impact, the ((~~procedure contained in subsection (1) above shall also be followed~~)) affirmative threshold determination shall be made.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-355 FORM OF DECLARATION OF SIGNIFICANCE/NONSIGNIFICANCE. (1) A declaration substantially in the form set forth in subsection (2) of this section shall be used for declarations of nonsignificance. This form shall be attached to the environmental checklist together with any other information obtained pursuant to WAC 232-18-330, and maintained in the files of the department. ((~~The form without the attachments shall also be retained in the SEPA public information center of the Department for one year after issuance.~~))

(2) The form is as follows:

FORM FOR (PROPOSED/FINAL) DECLARATION OF (SIGNIFICANCE/NONSIGNIFICANCE)

Description of Proposal .....

Proponent .....

Location of Proposal .....

Lead Agency .....

This proposal has been determined to (have/not have) a significant adverse impact upon the environment. An EIS (is/is not) required under RCW 43.21C.030(2)(c). This decision was made after review by the Department of Game of a completed environmental checklist and other information on file.

Responsible Official .....
Position/Title .....

Date ..... Signature .....

(3) If the form is for a declaration of environmental significance, the R.O. Aide may add to the information contained in subsection (2) of this section a listing of those environmental impacts which led to the responsible officials declaration, together with a brief explanation of what measures, if any, could be taken to prevent or mitigate the environmental impacts of the proposal to such an extent that the department would withdraw its declaration and issue a (proposed/final) declaration of nonsignificance.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-360 THRESHOLD DETERMINATION CRITERIA—APPLICATION OF ENVIRONMENTAL CHECKLIST. (1) The responsible official shall apply the questions in the environmental checklist to the total proposal, including its indirect effects (See WAC 232-18-060), to determine whether the proposal will result in a significant adverse impact upon the quality of the environment. The threshold decision shall be based solely upon this process. The questions contained in the environmental checklist are exclusive, and factors not listed therein shall not be considered in the threshold determination.

(2) The questions in the environmental checklist are not weighted. ((~~It is probable there will be affirmative~~)) While some yes answers to several of these questions ((~~while~~)) are likely the proposal ((~~would~~)) may still not ((~~necessarily~~)) have a significant adverse impact((~~;~~)). However, a single affirmative answer could indicate a significant adverse impact, depending upon the nature of the impact and location of the proposal. The nature of the existing environment is an important factor. The same project may have a significant adverse impact in one location, but not in another location. The absolute quantitative effects of the proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment. The responsible official shall also be alert to the possibility that several marginal impacts when taken together will result in a significant adverse environmental impact. For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted. If, after the R.O. Aide has utilized the additional information gathering mechanisms of WAC 232-18-330, the impacts of the proposal are still in doubt, and there exists a reasonable belief by the responsible official that the proposal could have a significant adverse impact, an EIS is required.

(3) It should also be remembered that proposals designed to improve the environment (such as sewage treatment plants or ((~~pollution control requirements~~)) fish hatcheries) may also have adverse environmental impacts. The question at the threshold determination level is not whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather if the proposal involves any significant adverse impacts upon the quality of the environment. If it does, an EIS is required. No test of balance shall be applied at the threshold determination level.

(4) Additional research or field investigations by either the department or by the private applicant is required when the information available to the department is not sufficient for it to make a determination of the potential adverse environmental impacts (See WAC 232-18-330). It is expected, however, that many proposals can be evaluated entirely through an office review (See WAC 232-18-320) of the environmental checklist, and that for other proposals, the majority of the questions in the environmental checklist may be answered in the same manner.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-365 ENVIRONMENTAL CHECKLIST. (1) The form in subsection (2) ((~~hereof~~)) of this section is the environmental checklist. The language of the questions shall not be changed. The questions appearing in the environmental checklist are exclusive, and considerations which do not appear in it or in WAC 232-18-360 shall not be used in making a threshold determination. This checklist does not supersede or void application forms required under any other federal or state statute or local ordinance, but rather is ((~~supplementary thereto~~)) supplemental.

(2) Environmental checklist form:

Introduction: The State Environmental Policy Act of 1971, chapter 43.21C RCW, requires all state and local governmental agencies to consider environmental values both for their own actions and when licensing private proposals. The Act also requires that an EIS be prepared for all major actions significantly affecting the quality of the environment. The purpose of this checklist is to help the agencies involved determine whether or not a proposal is such a major action.

Please answer the following questions as completely as you can with the information presently available to you. Where explanations of your answers are required, or where you believe an explanation would be helpful to government decision makers, include your explanation in the space provided, or use additional pages if necessary. You should include references to any reports or studies of which you are aware and which are relevant to the answers you provide. Complete answers to these questions now will help all agencies involved with your proposal to undertake the required environmental review without unnecessary delay.

The following questions apply to your total proposal, not just to the license for which you are currently applying or the proposal for which approval is sought. Your answers should include the impacts which will be caused by your proposal when it is completed, even though completion may not occur until sometime in the future. This will allow all of the agencies which will be involved to complete their environmental review now, without duplicating paperwork in the future.

NOTE: This is a standard form being used by all state and local agencies in tne State of Washington for various types of proposals. Many of the questions may not apply to your proposal. If a question does not apply, just answer it "no" and continue on to the next question.

ENVIRONMENTAL CHECKLIST FORM

I. BACKGROUND

1. Name of Proponent .....
2. Address and Phone Number of Proponent:
   .....
   .....
   .....
3. Date Checklist Submitted .....
4. Agency Requiring Checklist .....
5. Name of Proposal, if applicable:
   .....
6. Nature and Brief Description of the Proposal (including but not limited to its size, general design elements, and other factors that will give an accurate understanding of its scope and nature):
   .....
   .....
   .....
7. Location of Proposal (describe the physical setting of the proposal, as well as the extent of the land area affected by any environmental impacts, including any other information needed to give an accurate understanding of the environmental setting of the proposal):
   .....
   .....
   .....
8. Estimated Date for Completion of the Proposal:
   .....
9. List of all Permits, Licenses or Government Approvals Required for the Proposal (federal, state and local—including rezones):
   .....
   .....
   .....
10. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain:
    .....
    .....
11. Do you know of any plans by others which may affect the property covered by your proposal? If yes, explain:
    .....
    .....
12. Attach any other application form that has been completed regarding the proposal; if none has been completed, but is expected to be filed at some future date, describe the nature of such application form:
    .....
    .....

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required)

	YES	MAYBE	NO
(1) Earth. Will the proposal result in:			
(a) Unstable earth conditions or in changes in geologic substructures?	...	...	...
(b) Disruptions, displacements, compaction or overcovering of the soil?	...	...	...
(c) Change in topography or ground surface relief features?	...	...	...
(d) The destruction, covering or modification of any unique geologic or physical features?	...	...	...
(e) Any increase in wind or water erosion of soils, either on or off the site?	...	...	...
(f) Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	...	...	...
Explanation:			
.....			
(2) Air. Will the proposal result in:			
(a) Air emissions or deterioration of ambient air quality?	...	...	...
(b) The creation of objectionable odors?	...	...	...
(c) Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	...	...	...

YES MAYBE NO

Explanation: .....

.....

(3) Water. Will the proposal result in:

(a) Changes in currents, or the course or direction of water movements, in either marine or fresh waters? ... ...

(b) Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff? ... ...

(c) Alterations to the course or flow of flood waters? ... ...

(d) Change in the amount of surface water in any water body? ... ...

(e) Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity? ... ...

(f) Alteration of the direction or rate of flow of ground waters? ... ...

(g) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations? ... ...

(h) Deterioration in ground water quality, either through direct injection, or through the seepage of leachate, phosphates, detergents, waterborne virus or bacteria, or other substances into the ground waters? ... ...

(i) Reduction in the amount of water otherwise available for public water supplies? ... ...

Explanation: .....

.....

(4) Flora. Will the proposal result in:

(a) Change in the diversity of species, or numbers of any species of flora (including trees, shrubs, grass, crops, microflora and aquatic plants)? ... ...

(b) Reduction of the numbers of any unique, rare or endangered species of flora? ... ...

(c) Introduction of new species of flora into an area, or in a barrier to the normal replenishment of existing species? ... ...

(d) Reduction in acreage of any agricultural crop? ... ...

Explanation: .....

.....

(5) Fauna. Will the proposal result in:

(a) Changes in the diversity of species, or numbers of any species of fauna (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects or microfauna)? ... ...

(b) Reduction of the numbers of any unique, rare or endangered species of fauna? ... ...

(c) Introduction of new species of fauna into an area, or result in a barrier to the migration or movement of fauna? ... ...

(d) Deterioration to existing fish or wildlife habitat? ... ...

Explanation: .....

.....

(6) Noise. Will the proposal increase existing noise levels? ... ...

Explanation: .....

.....

(7) Light and Glare. Will the proposal produce new light or glare? ... ...

Explanation: .....

.....

(8) Land Use. Will the proposal result in the alteration of the present or planned land use of an area? ... ...

Explanation: .....

.....

(9) Natural Resources. Will the proposal result in:

(a) Increase in the rate of use of any natural resources? ... ...

(b) Depletion of any nonrenewable natural resource? ... ...

Explanation: .....

.....

(10) Risk of Upset. Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions? ... ...

Explanation: .....

.....

(11) Population. Will the proposal alter the location, distribution, density, or growth rate of the human population of an area? ... ...

Explanation: .....

.....

(12) Housing. Will the proposal affect existing housing, or create a demand for additional housing? ... ...

Explanation: .....

.....

(13) Transportation/Circulation. Will the proposal result in:

(a) Generation of additional vehicular movement? ... ...

(b) Effects on existing parking facilities, or demand for new parking? ... ...

(c) Impact upon existing transportation system? ... ...

YES MAYBE NO

(d) Alterations to present patterns of circulation or movement of people and/or goods? ... ...

(e) Alterations to waterborne, rail or air traffic? ... ...

(f) Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? ... ...

Explanation: .....

.....

(14) Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

(a) Fire protection? ... ...

(b) Police protection? ... ...

(c) Schools? ... ...

(d) Parks or other recreational facilities? ... ...

(e) Maintenance of public facilities, including roads? ... ...

(f) Other governmental services? ... ...

Explanation: .....

.....

(15) Energy. Will the proposal result in:

(a) Use of substantial amounts of fuel or energy? ... ...

(b) Demand upon existing sources of energy, or require the development of new sources of energy? ... ...

Explanation: .....

.....

(16) Utilities. Will the proposal result in a need for new systems, or alterations to the following utilities:

(a) Power or natural gas? ... ...

(b) Communications systems? ... ...

(c) Water? ... ...

(d) Sewer or septic tanks? ... ...

(e) Storm water drainage? ... ...

(f) Solid waste and disposal? ... ...

Explanation: .....

.....

(17) Human Health. Will the proposal result in the creation of any health hazard or potential health hazard (excluding mental health)? ... ...

Explanation: .....

.....

(18) Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? ... ...

YES MAYBE NO

Explanation: .....

.....

(19) Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? ... ...

Explanation: .....

.....

(20) Archeological/Historical. Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? ... ...

Explanation: .....

.....

III. SIGNATURE

I, the undersigned, state that to the best of my knowledge the above information is true and complete. It is understood that the lead agency may withdraw any declaration of nonsignificance that it might issue in reliance upon this checklist should there be any willful misrepresentation or willful lack of full disclosure on my part.

Proponent: .....

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-370 WITHDRAWAL OF AFFIRMATIVE THRESHOLD DETERMINATION. If at any time after the ((~~entry~~)) issuance of a declaration of significance, the proponent modifies the proposal so that, in the judgment of the responsible official, all significant adverse environmental impacts ((~~resulting therefrom~~)) which might result are eliminated, the declaration of significance shall be withdrawn and a declaration of nonsignificance ((~~entered~~)) issued instead. ((~~The R.O. Aide shall direct revision of the registers at the Department's SEPA public information center accordingly.~~)) If the proponent of a proposal is a private applicant, the proposal shall not be considered modified until all license applications for the proposal are revised to reflect the modification or other binding commitment is made by the applicant.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-375 WITHDRAWAL OF NEGATIVE THRESHOLD DETERMINATION. (1) Except after a nonexempt license has been issued for a private project, the R.O. Aide with approval from responsible official may withdraw any proposed or final declaration of nonsignificance when new information becomes available indicating that the proposal may have significant adverse environmental impacts.

(2) The R.O. Aide with approval from responsible official may withdraw any proposed or final declaration of nonsignificance at any time when:

(a) The proposal has been modified after the threshold determination, and such modification may cause the proposed action to have significant adverse environmental impacts, or

(b) The negative threshold determination was procured by misrepresentation or lack of full disclosure by the proponent of the proposal.

(3) Whenever a negative threshold determination is withdrawn pursuant to this section, the responsible official shall immediately reevaluate the proposal and make a revised threshold determination pursuant to WAC 232-18-300 through 232-18-360.

(4) Whenever a final declaration of nonsignificance has been withdrawn for one of the reasons in subsection (2) ((~~hereof~~)) of this section, and the responsible official ((~~upon~~)) after reevaluation determines that the proposal will have significant adverse environmental impacts, the department shall initiate procedures to suspend, modify or revoke, as appropriate, any nonexempt licenses issued for the proposal until compliance with the procedures of chapter 197-10 WAC is met.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-400 DUTY TO BEGIN PREPARATION OF A DRAFT EIS. After compliance with WAC 232-18-350, relating to preparation of a declaration of significance ((~~and the listing of the proposal in the "EIS in Preparation Register,"~~)) the R.O. Aide with approval of the responsible official shall prepare the draft and final EIS in compliance with WAC 232-18-410 through 232-18-695.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-410 PREDRAFT CONSULTATION PROCEDURES. (1) Predraft consultation ((~~is consultation by~~)) occurs when the department consults with another agency with jurisdiction or expertise prior to completion of the draft EIS. Predraft consultation with another agency on proposals for private projects shall only be initiated by the department when requested by a private applicant participating in the preparation of the draft EIS. Predraft consultation with another agency on public proposals may be initiated at the option of the department.

(2) Predraft consultation is ((~~commenced~~)) begun when the R.O. Aide sends to the consulted agency a packet of the following material related to the proposal:

(a) Any application for licenses for the proposal ((~~in the possession of~~)) possessed by the department.

(b) A copy of the environmental checklist included in WAC 232-18-310, as reviewed pursuant to WAC 232-18-320.

(c) Any information in addition to the checklist resulting from application of WAC 232-18-330.

(d) Any other information deemed relevant to the proposal by the R.O. Aide such as:

(i) Prior EISs;

(ii) Portions of applicable plans or ordinances; or,

(iii) Prior scientific studies applicable to the site.

(3) Chapter 197-10 WAC gives agencies so consulted forty-five days from receipt of the packet to respond in writing to the department. The required contents of the consulted agency response are governed by WAC 197-10-500 through 197-10-540.

(4) The R.O. Aide shall incorporate the relevant information received from other agencies during the predraft consultation stage into the draft EIS, by either summarizing the major findings which are contained in each of the consulted agency's responses or utilizing all of the data received. In the event the R.O. Aide disagrees with any conclusion expressed in the information received from the consulted agency, the conclusion shall be set forth together with the position of the department. The information required by this subsection may be placed wherever in the draft EIS the R.O. Aide deems most appropriate. There is no requirement that either the draft or final EIS include responses to predraft consultation in a separate "response" section.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-420 PREPARATION OF EIS BY PERSONS OUTSIDE THE DEPARTMENT. (1) Preparation of the EIS is the responsibility of the R.O. Aide, under the direction of the responsible official. No matter who participates in the preparation of the EIS, it is nevertheless the EIS of the responsible official. The responsible official, prior to distributing the draft EIS, shall be satisfied that it complies with ((~~the provisions of~~)) chapter 197-10 WAC and these guidelines.

(2) An EIS may be prepared by a private applicant or agent thereof, or by an outside consultant retained by either a private applicant or the department. ((~~In such case,~~)) If an outside consultant is retained by the private applicant, the consultant must be acceptable to both the applicant and the responsible official. The responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document. The department reserves the option for payment as provided in WAC 232-18-100(4).

(3) If a person other than the department is preparing the EIS, the responsible official will coordinate any predraft consultation procedures so that the individual preparing the EIS immediately receives all substantive information submitted by consulted agencies. The responsible official shall also attempt to obtain any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any private party preparing an EIS access to all public records of the lead agency which ((~~are relevant~~)) relate to the subject ((~~matter~~)) of the EIS, pursuant to chapter 42.17 RCW (Public Disclosure and Public Records Law; Initiative 276, 1973).

(4) The department may require or authorize a private applicant to participate in the preparation of an EIS. The R.O. Aide may not require more information of a private applicant than allowed by this chapter, but may authorize a lesser degree of participation by a private applicant than allowed herein: PROVIDED, That nothing herein shall be construed to prohibit the department from charging any fee of an applicant which the department is otherwise authorized to charge (See WAC 197-10-860).

(5) No private applicant shall be required to participate in the preparation of an EIS except when consistent with these guidelines. A private applicant may, however, volunteer to provide any information or effort desired, so long as the contents and organization of the resulting EIS are supervised and approved by the responsible official as required by this section.

(6) The provisions of this section apply to both the draft and final EIS.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-425 ORGANIZATION AND STYLE OF A DRAFT EIS. (1) The required contents of a draft EIS for proposals of both a project and nonproject nature are set forth in WAC 232-18-440. The contents of a draft EIS prepared pursuant to that section shall be organized as set forth in subsections (2) and (3) of this section.

(2) Each draft EIS shall begin with an introduction, table of contents, distribution list, summary, and a description of the proposed action. The information contained in each section shall conform to the applicable requirements set forth in WAC 232-18-440(1) through 232-18-440(6). Organization variation is not permitted for these portions of the draft EIS.

(3) The organization and style of the remaining content of the EIS may be varied, at the option of the R.O. Aide, from the format set forth in WAC 232-18-440(7) through (14): PROVIDED, That all of the subject matters required by WAC 232-18-440 shall be contained somewhere within the draft EIS.

(4) The R.O. Aide ((~~that~~)) who prepares a draft EIS should keep in mind that the purpose of a draft EIS is to aid decision-makers in considering the significant environmental impacts of their decisions. This purpose is not served by EISs which are excessively detailed and overly technical. Clarity and conciseness of presentation are of crucial importance in ensuring that EISs prepared under these guidelines are considered and actually utilized in decision-making processes.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-440 CONTENTS OF A DRAFT EIS. (1) The following subsections set forth the required contents of a draft EIS: PROVIDED, That where the department is preparing a draft EIS in order to satisfy the requirements of NEPA, as well as SEPA, and the regulations of the applicable federal agency require items in addition to that set forth below, then the contents of the draft EIS may be ((~~expanded~~)) modified as necessary to meet the requirements of that federal agency.

(2) Introduction. The following information shall be ((~~succinctly set forth~~)) briefly given at the beginning of the draft EIS:

(a) Action sponsor, and a brief (one or two sentence) description of the nature of the proposal and its location (street address, or nearest crossroads or cross-streets).

(b) Name of department, responsible official, and the name and address of the R.O. Aide to whom comments, information and questions may be sent.

(c) Authors and principal contributors to the draft EIS and the nature or subject area of their contribution.

(d) List of all licenses which the proposal is known to require. The R.O. Aide shall attempt to make this list as complete and specific as possible. Licenses shall be listed by name and agency.

(e) Location of EIS background data.

(f) Cost to the public for a copy of the EIS pursuant to chapter 42.17 RCW.

(g) Date of issue of the draft EIS.

(h) Dates by which consulted agency and public comments must be received to be incorporated into the final EIS.

(3) Table of contents.

(4) Distribution list. The draft EIS shall include a list of the names of all agencies, federal agencies, organizations and persons to whom the draft EIS will be sent upon publication (See WAC 232-18-460).

(5) Summary of the contents of the draft EIS. Each draft EIS shall contain a summary of its contents as an aid to the agency decision-makers. The R.O. Aide is to bear in mind that agencies other than the department may be utilizing the EIS as an aid in decision-making. Therefore, care should be taken to ensure that the scope of the summary and the EIS is sufficiently broad to be useful to those other agencies being requested to license or approve a proposal. The summary shall contain only a short restatement of the main points discussed in the EIS for each of the ((~~various subject areas~~)) subjects covered. In the event impacts cannot be predicted with certainty, the reason for uncertainty together with the more likely possibilities should be concisely stated. ((~~In most cases it is expected that the summary will run two to five pages, but it shall not be more than ten pages.~~)) The summary shall include a brief description of the following:

(a) The proposal, including the purpose or objectives which are sought to be achieved by the sponsor.

(b) The direct and indirect impacts upon the environment which may result from the proposal.

(c) The alternatives considered, together with any variation in impacts which may result from each alternative.

(d) Measures which may be ((~~effectuated~~)) effected by the applicant, the department, or other agency with jurisdiction to mitigate or eliminate adverse impacts which may result from the proposal.

(e) Any remaining adverse impacts which cannot or will not be mitigated.

(6) Description of the proposal. The draft EIS shall include a description of the total proposal, including, but not limited to, the following:

(a) The name of the proposal and sponsors.

(b) The location of the project, or area affected by a nonproject action, including an address, if any, and a legal description: PROVIDED, That where the legal description is by metes and bounds, or is excessively lengthy, a map, in lieu of a legal description, shall be included which enables a lay person to precisely understand the location of the proposal.

(c) Reference to the file numbers, if known, of any other agencies involved so the proposal's location may be identified with precision by the consulted agency.

(d) If the proposal involves ((~~phases~~)) phased construction ((~~over a period of time,~~)) the timing of each ((~~construction~~)) phase should be identified((~~; and if it is anticipated that~~)). If later phases of the proposal ((~~will~~)) are expected to require future environmental analyses, these should be identified.

(e) A description of the major physical and engineering aspects of the proposal. This description should be tailored to the environmental impacts ((~~later discussed;~~)) with those physical aspects of the proposal causing the greater impacts being given the more detailed description. Inclusion of detailed engineering drawings and technical data should normally be avoided. Material of this nature should be retained in department files and supplied to consulted agencies upon request.

(f) A brief description of existing comprehensive land use plans and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(g) Within the general guidelines of this subsection, the R.O. Aide has discretion to determine the content and level of detail appropriate to adequately describe the proposal.

(7) Existing environmental conditions. This section shall include the following:

(a) A general assessment of the existing environment, covering those areas of the environment listed in WAC 232-18-444.

(i) The level of detail used in presenting the existing environment should be proportionate to the impacts the proposal will have if approved.

(ii) Areas of the environment which are not relevant to the identified impacts need only be mentioned generally, or not at all.

(iii) Inventories of the species of flora and fauna present on the site should be avoided((~~; rather, emphasis should be placed upon~~)). Those species and habitats which may be significantly affected should be emphasized.

(iv) This subsection shall be brief, nontechnical, and easily understandable by lay persons, and provide the necessary background for understanding the proposal's impacts.

(b) Specific reference shall be made to those inventories and data studies which provided the informational source for part or all of the contents of this subsection.

(8) The impact of the proposal on the environment. The following items shall be included in this subsection:

(a) The known impacts resulting from the proposal within any element of the environment listed in WAC 232-18-444, the effects of which are either known to be, or which may be significant (whether beneficial or adverse), shall be discussed in detail; impacts which are potential, but not certain to occur, shall be discussed within reason.

(b) Elements of the environment which will not be significantly affected shall be marked "N/A" (not applicable) as set forth in WAC 232-18-444(1).

(c) Direct and indirect impacts of the total proposal, as described in subsection (8)(a) ((~~above~~)) of this section shall be examined and discussed (for example, cumulative and growth-inducing impacts).

(d) The possibility that effects upon different elements of the environment will interrelate to form significant impacts shall be considered.

(9) The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity. The following items shall be included in this subsection:

(a) An identification of the extent to which the proposal involves trade-offs between short-term gains at the expense of long-term environmental losses.

(i) The phrases "short-term" and "long-term" do not refer to any fixed time periods, but rather are to be viewed in terms of the significant environmental impacts of the proposal.

(ii) Impacts which will narrow the range and degree of beneficial uses of the environment or pose long-term risks to human health shall be given special attention.

(b) A discussion of the benefits and disadvantages of reserving for some future time the implementation of the proposal, as opposed to possible approval of the proposal at this time.

(i) The department perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations.

(ii) Particular attention should be given to the possibility of foreclosing future options or alternatives by implementation of the proposal.

(10) Irreversible or irretrievable commitments of resources. The following items shall be included in this subsection:

(a) An identification of all substantial quantities of natural resources, including sources of energy and nonrenewable materials, which will be committed by the proposal on a permanent or long-term basis. Commitment of natural resources also includes the lost opportunities to make other uses of the resources in question.

(b) This subsection may be integrated with subsection (9) ((~~above~~)) of this section in order to more usefully present the information required by both sections.

(11) Adverse environmental impacts which may be mitigated. The following items shall be included in this subsection:

(a) A description of reasonable ((~~alterations~~)) changes to the proposal which may ((~~result in avoiding, mitigating or reducing~~)) avoid, mitigate, or reduce the risk of ((~~occurrence of~~)) any adverse impacts ((~~upon the environment~~)).

(b) Energy conservation measures, including more efficient utilization of conventional techniques (e.g., insulation) as well as newer methods.

(c) Each alternative discussed in (a) and (b) ((~~above~~)) of this subsection shall be evaluated in terms of its effect upon the environment, its technical feasibility, and its economic practicability.

(12) Alternatives to the proposal. This subsection shall include the following items:

(a) A description and objective evaluation of any reasonable alternative action which could feasibly attain the objective of the proposal.

(i) Reasonable alternatives shall include any action which might approximate the proposal's objective, but at a lower environmental cost or decreased level of environmental degradation.

(ii) Reasonable alternatives may be those which are capable of being effected by either the department or other agency having jurisdiction.

(b) The "no-action" alternative shall be evaluated and compared to the other alternatives.

(c) The adverse environmental effects of each alternative shall be identified.

(d) The analysis of alternatives should be sufficiently detailed to permit a comparative evaluation of each alternative and the proposal as described in subsection (6) of this section.

(e) ((~~In those instances where~~)) When the proposal is for a private project on a specific site, the alternatives considered shall be limited to the "no-action" alternative plus other reasonable alternative means of achieving the objective of the proposal on the same site or other sites owned or controlled by the same proponent (which may include only alterations for mitigation under subsection (11) of this section). This limitation shall not apply when the project proponent is applying for a rezone or contract rezone.

(f) Subsection (12) may be integrated with subsection (11) of this section in order to more usefully present the information required by both subsections.

(g) The use of the term "reasonable" is intended to limit both the number and range of alternatives that shall be described and evaluated in this subsection, as well as the amount or level of detail which the EIS shall employ for each alternative that is discussed and evaluated.

(13) Unavoidable adverse impacts. This subsection shall include the following items:

(a) A listing of those impacts included in subsection (8) of this section which are adverse but cannot, or will not, be mitigated or avoided ((~~by modifications to the project~~)).

(b) For any impact discussed in subsection (8) of this section which is determined to be nonadverse, the rationale for such determination shall be clearly stated.

(c) A discussion of the relationship between the environmental cost of the unavoidable adverse environmental impacts and the expected beneficial environmental impacts which will result from the implementation of the proposed action.

(14) Other issues. A draft EIS may contain a section labeled "Other Issues" within which those other problems and issues not pertaining to any element listed in WAC 232-18-444, but which are relevant to the proposal, shall be identified. The section shall be limited to a brief identification of such problems or issues.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-442 SPECIAL CONSIDERATIONS REGARDING CONTENTS OF AN EIS ON A NONPROJECT ACTION. (1) ((~~The requirements of~~)) WAC 232-18-440 ((~~apply~~)) applies to the contents of a draft EIS ((~~on a proposal~~)) for a nonproject action. The R.O. Aide, however, has greater flexibility in his/her approach to achieving compliance with the requirements of WAC 232-18-440 in writing an EIS for nonproject actions, because normally less specific details are known about the proposal and any implementing projects, as well as the anticipated impacts on the environment.

(2) The R.O. Aide should be ((~~alert to the fact~~)) aware that ((~~the Department is in the development and review of~~)) typically in developing and reviewing proposals for nonproject actions ((~~where~~)) the range of alternatives is ((~~typically more broad~~)) broader than ((~~that of~~)) in developing a proposal for a project action (which is often narrowed to a specific location and design). The proposal should be described in a manner which encourages consideration of a number of alternative methods of accomplishing its objective. For example, an objective of a department proposal should be stated as ((~~"the facilitation of the movement of people from point A to point B" rather than "the widening of an urban arterial in order to accommodate additional privately-owned passenger vehicles~~)) "increased opportunities for trout fishing in eastern Washington" rather than "the planting of one million additional trout in the Pend Oreille River basin."

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-444 LIST OF ELEMENTS OF THE ENVIRONMENT. (1) Every EIS shall have appended to it a list of the elements of the environment in subsections (2), (3) and (4) of this section. The R.O. Aide shall place "N/A" ("not applicable") next to an item when the proposal, including its indirect impacts, will not significantly affect the area (or subarea) of the environment in question. Items marked "N/A" need not be mentioned in the body of the EIS. Subsections (2) and (3) of this section correspond in subject matter to the questions contained in the environmental checklist used for threshold determination, and the questions in the checklist may be used to interpret this outline listing.

(2) ELEMENTS OF THE PHYSICAL ENVIRONMENT.

(a) Earth.
(i) Geology.
(ii) Soils.
(iii) Topography.
(iv) Unique physical features.
(v) Erosion.
(vi) Accretion/avulsion.

(b) Air.
(i) Air quality.
(ii) Odor.
(iii) Climate.

(c) Water.
(i) Surface water movement.
(ii) Runoff/absorption.
(iii) Floods.
(iv) Surface water quantity.
(v) Surface water quality.
(vi) Ground water movement.
(vii) Ground water quantity.
(viii) Ground water quality.
(ix) Public water supplies.

(d) Flora.
(i) Numbers or diversity of species.
(ii) Unique species.
(iii) Barriers and/or corridors.
(iv) Agricultural crops.

(e) Fauna.
(i) Numbers or diversity of species.
(ii) Unique species.
(iii) Barriers and/or corridors.
(iv) Fish or wildlife habitat.

(f) Noise.

(g) Light and glare.

(h) Land use.

(i) Natural resources.
(i) Rate of use.
(ii) Nonrenewable resources.

(j) Risk of explosion or hazardous emissions.

(3) ELEMENTS OF THE HUMAN ENVIRONMENT.

(a) Population.

(b) Housing.

(c) Transportation/circulation.
(i) Vehicular transportation generated.
(ii) Parking facilities.
(iii) Transportation systems.
(iv) Movement/circulation of people or goods.
(v) Waterborne, rail and air traffic.
(vi) Traffic hazards.

(d) Public services.
(i) Fire.
(ii) Police.
(iii) Schools.
(iv) Parks or other recreational facilities.
(v) Maintenance.
(vi) Other governmental services.

(e) Energy.
(i) Amount required.
(ii) Source/availability.

(f) Utilities.
(i) Energy.
(ii) Communications.
(iii) Water.
(iv) Sewer.
(v) Storm water.
(vi) Solid waste.

(g) Human health (including mental health).

(h) Aesthetics.

(i) Recreation.

(j) Archeological/historical.

(4) The following additional element shall be covered in all EISs, either by being discussed or marked "N/A", but shall not be considered part of the environment for other purposes:

(a) Additional population characteristics.

(i) Distribution by age, sex and ethnic characteristics of the residents in the geographical area affected by the environmental impacts of the proposal.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-450 PUBLIC AWARENESS OF AVAILABILITY OF DRAFT EIS. (((~~(1) Upon publication of the draft EIS, the responsible official shall list the proposal in the Department's "EIS Available Register" maintained at the agency's SEPA public information center.~~

~~(2)~~))) The R.O. Aide shall use any reasonable method calculated to inform the public ((~~of the availability of~~)) that the draft EIS is available and of the procedures for requesting a public hearing.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-455 CIRCULATION OF THE DRAFT EIS—REVIEW PERIOD. (1) ((~~According to chapter 197-10 WAC~~)) A consulted agency shall have ((~~a maximum of~~)) thirty-five days from the date of ((~~listing of the proposal in the "EIS Available Register"~~)) receipt in which to review the draft and forward its comments and information ((~~with respect thereto~~)) to the department. If a consulted agency with jurisdiction requires additional time to develop and complete new data on the proposal, a fifteen day extension may be granted by the department. Extensions may not be granted for any other purpose.

(2) There shall be allowed a period of thirty-five days from the date of ((~~the listing of the proposal in the "EIS Available Register"~~)) issuance for the public to forward to the department any comments upon or substantive information related to the proposal and the draft EIS.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-460 SPECIFIC AGENCIES TO WHICH DRAFT EIS SHALL BE SENT. (1) ((~~A copy of each~~)) The draft EIS shall be ((~~mailed no later than the day that it is listed in the "EIS Available Register"~~)) issued by mailing copies to the following:

(a) The Department of Ecology.

(b) Each federal agency having jurisdiction by law over a proposed action.

(c) Each agency having jurisdiction by law over, or environmental expertise pertaining to a proposed action, as defined by WAC 197-10-040 and 197-10-465 (required by RCW 43.21C.030(2)(d)).

(d) Each city/county in which adverse environmental effects identified in the draft EIS may occur if the proposed action is implemented. (This subsection does not apply to draft EISs for nonproject actions.)

(e) Each local agency or political subdivision which will be required to furnish additional public services as a result of implementation of the proposed action.

(f) The applicable regional planning commission, regional clearinghouse, statewide clearinghouse, or area-wide council of government which has been designated to review and coordinate local governmental planning under the A-95 review process and other federal regulations and programs (See RCW 36.64.080, 35.63.070 and 36.70.070).

(g) The department's SEPA public information center.

(h) Any person, organization or governmental agency that has expressed an interest in the proposal, or is known by the department to have an interest in the type of proposal being considered shall be sent a copy of the draft EIS.

(i) The public library serving the area in which a proposal is located.

(j) The principal daily newspaper(s) serving the area in which a proposal is located.

(2) An agency that receives a copy of the draft EIS does not become a "consulted agency" under these guidelines due to that factor alone. (See WAC 197-10-040, 197-10-465, 197-10-510 and 197-10-520 for those provisions that define a consulted agency.)

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-470 COST TO THE PUBLIC FOR REPRODUCTION OF ENVIRONMENTAL DOCUMENTS. When the department is lead agency it shall ((~~make available~~)) provide a copy of any environmental document, in ((~~the manner provided by~~)) accordance with chapter 42.17 RCW, charging only those costs allowed therein ((~~and~~)) plus mailing costs: ((~~PROVIDED, That~~)) However, no charge shall be levied for circulation of documents to other agencies ((~~which is~~)) as required by these guidelines.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-480 PUBLIC HEARING ON A PROPOSAL—WHEN REQUIRED. (1) If a public hearing on the proposal is held pursuant to some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any available environmental document((:));

(2) When the department is lead agency in all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

(a) The department determines, in its sole discretion, that a public hearing would assist the department in meeting its responsibility to implement the purposes and goals of SEPA and these guidelines; or,

(b) When fifty or more persons residing within the jurisdiction of the department, or who would be adversely affected by the environmental impact of the proposal, make written request to the department within thirty-five days of the ((~~listing of the proposal in the "EIS Available Register"~~)) issuance of the draft EIS; or,

(c) When two or more agencies with jurisdiction over a proposal make written request to the department within thirty-five days of the ((~~listing of the proposal in the "EIS Available Register".~~)) issuance of the draft EIS; or

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no later than fifty-one days from the ((~~listing of the proposal in the "EIS Available Register"~~)) issuance of the draft EIS and no earlier than fifteen days from such date of ((~~listing~~)) issuance.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-485 NOTICE OF PUBLIC HEARING ON ENVIRONMENTAL IMPACT OF THE PROPOSAL. (((~~(1)~~))) Notice of all public hearings to be held pursuant to WAC 232-18-480(2) shall be published in a newspaper of general circulation in the area where the project will be implemented. For nonproject actions the notice shall be published in the general area where the department has its principal office. The notice shall be published no later than five days preceding the hearing. For nonproject proposals having regional or statewide applicability, copies of the notice shall be transmitted to the Olympia bureaus of the associated press and united press international.

(((~~(2) A notation of the hearing date and location shall be entered in the "EIS Available Register" maintained at the Department's SEPA public information center.~~)))

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-500 DEPARTMENT RESPONSIBILITIES WHEN CONSULTED AS AN AGENCY WITH JURISDICTION. The contact person when responding to a consultation request prior to a threshold determination, participating in predraft consultation, or reviewing a draft EIS, shall insure immediate commencement of the research and, if necessary, field investigations which the department would normally conduct in conjunction with whatever license the department requires for a proposal; or, in the event no license is involved the contact person shall direct the appropriate person to investigate the impacts of the activity the department will undertake which gives the department jurisdiction over a portion of the proposal. The end result of these investigations would be that the contact person will be able to transmit to the lead agency substantive information on those environmental impacts of the proposal which are within the scope of the license or activity of the department. The contact person, in his/her response to the lead agency, should also indicate which of the impacts the department has discovered may be mitigated or avoided and how this might be accomplished, and describe those areas of environmental risks which remain after the department has conducted the investigations that may have been required. The contact person must transmit a written response to the lead agency within the time limits specified in the subcategories that follow:

(((~~(a)~~))) (1) If a threshold determination consultation request is received by the contact person((:)), the contact person must transmit a written response to the lead agency by such time as specified by the lead agency in the consultation request.

(((~~(b)~~))) (2) If a predraft consultation request is received by the contact person((:)), the contact person must transmit a written response to

the lead agency within ((45)) forty-five days of when the department received the consultation packet from the lead agency.

(((c))) (3) If a Draft EIS consultation request is received by the contact person. The contact person must transmit a written response to the lead agency within ((35)) thirty-five days from ((the date of listing of the proposal in the lead agency's "EIS Available Register")) receipt of the draft EIS.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-535 COST OF PERFORMANCE OF CONSULTED AGENCY RESPONSIBILITIES. The department shall not charge the lead agency for any costs incurred in complying with WAC 197-10-500 through 197-10-540, including, but not limited to, ((such functions as)) providing relevant data to the lead agency and the reproduction of various documents that are transmitted to the lead agency. This section shall not prohibit a consulted agency from charging those costs allowed by chapter 42.17 RCW, for the reproduction of any environmental document when the request for a copy of the document is from an agency other than the lead agency, or from an individual or private organization.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-540 LIMITATIONS ON RESPONSES TO CONSULTATION. ((In those instances where)) If part or all of the relevant data possessed by ((any)) a consulted agency is ((either)) voluminous in nature, extremely bulky or otherwise incapable of ready transmittal to the lead agency, or if it consists of a report or document published by another agency, or represents a standard text or other work obtainable at a public library, such data or information may be clearly identified or cited by the consulted agency in its comments to the lead agency and the data itself need not be transmitted. When the consulted agency identifies relevant data, files or other material pursuant to this section, it shall describe briefly the nature of such information and clearly indicate its relevance to the environmental analysis of the proposed action in question. If the details of the proposal supplied with the consultation request are not sufficient to allow a complete response, the consulted agency shall be required to transmit only that information it is capable of developing from the material sent to it with the consultation request.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-545 EFFECT OF NO WRITTEN COMMENT. If a consulted agency does not respond with written comments within thirty-five days of the ((date of listing of the draft EIS in the "EIS Available Register,")) receipt of the draft EIS or fails to respond within the fifteen-day extension period which may have been granted by the ((lead agency)) department, the ((lead agency)) department may assume that the consulted agency has no information relating to the potential impact of the proposal upon the subject area of the consulted agency's jurisdiction or special expertise. Any consulted agency which fails to submit substantive information to the ((lead agency)) department in response to a draft EIS is thereafter barred from alleging any defects in the ((lead agency's)) department's compliance with WAC 197-10-400 through 197-10-495, or with the contents of the final EIS.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-550 PREPARATION OF THE FINAL EIS—TIME PERIOD ALLOWED. The R.O. Aide shall prepare a final EIS within seventy-five days of the ((listing of the proposal in the "EIS Available Register")) issuance of the draft EIS. The R.O. Aide may extend the time period whenever the proposal is unusually large in scope, or the environmental impact associated with the proposal is unusually complex.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-570 PREPARATION OF THE FINAL EIS—CONTENTS—WHEN NO CRITICAL COMMENTS RECEIVED ON THE DRAFT EIS. (1) If the R.O. Aide does not receive any comments critical of the scope or content of the draft EIS, the R.O. Aide may prepare a statement to ((the)) that effect ((that no critical comments were received)) and circulate that statement in the manner prescribed in WAC 232-18-600.

(2) The statement prepared and circulated pursuant to subsection (1) ((above)) of this section, together with the draft EIS (which is not recirculated with the statement), shall constitute the "final EIS" for the proposal: PROVIDED, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-580 PREPARATION OF THE FINAL EIS—CONTENTS—WHEN CRITICAL COMMENTS RECEIVED ON THE DRAFT EIS. (1) When the R.O. Aide receives any comments critical of the scope or content of the draft EIS, whether made in writing or made orally at any public hearing on the environmental impact of the proposal, the R.O. Aide shall comply with either subsection (2) or (3) ((below)) of this section.

(2) The R.O. Aide may determine that no changes or only minor changes are required in either the draft EIS or the proposal, despite the critical comments that were received during the commenting period. The R.O. Aide must prepare a document containing a general response to the comments that were received, any minor changes to the EIS or proposal the text or summary of written comments, and a summary of the oral comments made by the public at any hearing held on the proposal or its environmental impacts. The R.O. Aide shall then circulate the document in the manner prescribed in WAC 232-18-600: PROVIDED, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies.

(3) The R.O. Aide may determine that it is necessary and appropriate to rewrite the contents of the draft EIS in order to respond to critical comments received during the commenting period. In such instances, the R.O. Aide shall circulate the rewritten EIS in the manner specified in WAC 232-18-600. The R.O. Aide shall ensure that the rewritten EIS evidences an affirmative response by the department to the critical comments, or alternatively, contains a summary of those critical comments with which it does not agree.

(4) A document prepared and circulated pursuant to subsection (2) or (3) ((above)) of this section shall constitute the "final EIS" for the proposal.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-600 CIRCULATION OF THE FINAL EIS. The final EIS shall be ((circulated)) issued by circulating it to the Department of Ecology, office of the governor or the governor's designee, the ecological commission, ((the Department's SEPA public information center,)) agencies with jurisdiction, and federal agencies with jurisdiction which received the draft EIS. It shall be made available to the public in the same manner and cost as the draft EIS.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-650 EFFECT OF AN ADEQUATE FINAL EIS PREPARED PURSUANT TO NEPA. (1) The requirements of this chapter relating to the preparation of an EIS shall not apply when an adequate final EIS has been prepared pursuant to the national environmental policy act of 1969 (NEPA), in which event such EIS may be utilized in lieu of a final EIS separately prepared under SEPA.

(2) The final EIS of a federal agency shall be adequate unless:

(a) A court rules that it is inadequate; or,

(b) The administrator of the United States Environmental Protection Agency issues a written comment pursuant to the Federal Clean Air Act, 42 USC § 1857, which determines it to be inadequate; or,

(c) The environmental elements of WAC 197-10-444, when applied locally, are not adequately treated in it.

(3) If, after review thereof, the department determines that the federal EIS is adequate, ((it shall be listed in the "EIS Available Register" in the SEPA public information center)) a notice to this effect shall be circulated as in WAC 232-18-600.

(4) If a hearing open to public comment upon the adequacy of the federal EIS has not previously been held within the state of Washington, a public hearing on the sole issue of the adequacy of the content of a federal EIS shall be held if, within thirty-five days of ((its listing in the register)) the notice in subsection (3) of this section, at least fifty persons who reside within ((the jurisdiction of the Department)) Washington state, or are adversely affected by the environmental impact of the proposal, make written request therefor. The

department shall reconsider its determination of adequacy in view of comments received at any such public hearing.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-660 USE OF PREVIOUSLY PREPARED EIS FOR A DIFFERENT PROPOSED ACTION. (1) The department may adopt and utilize a previously prepared EIS, or portion thereof, to satisfy certain of the EIS requirements applicable to a different proposed action, as set forth in subsections (2) and (3) ((~~below~~)) of this section. In such event, two requirements shall be met:

(a) The previous EIS or portion thereof, together with any supplement to it, shall meet the requirements of these guidelines applicable to an EIS for the new proposed action, and

(b) ((~~A previous EIS shall not be used without an explanatory supplement where any intervening change in conditions would make the previous EIS misleading when applied to the new proposed action~~)) Where any intervening change in conditions would make the previous EIS misleading when applied to the new proposed action, a previous EIS shall not be used without an explanatory supplement.

(2) When the new proposed action will have an impact on the environment that was not adequately analyzed in the previously prepared EIS, the R.O. Aide shall prepare a draft supplemental EIS and comply with the provisions of WAC 232-18-400 through 232-18-695. The contents of the draft and final supplemental EIS shall be limited to those impacts of the proposed action which were not adequately analyzed in the earlier EIS.

(3) When the new proposed action will not have an impact on the environment that is substantially different than the impacts of the earlier proposed action, the R.O. Aide may prepare a written statement setting forth the responsible official's decision under this subsection and ((~~list the proposal in the "EIS Available Register"~~)) circulate it as provided in WAC 232-18-600. The department shall not be required to prepare a new or supplemental draft or final EIS on the new proposed action when this subsection is determined to apply. ((~~The~~)) However, provisions of WAC 232-18-480 through 232-18-490, relating to a public hearing on the environmental impact of a proposal shall apply((~~, however, to proposed actions determined to be under the provisions of this subsection~~)).

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-690 USE OF ANOTHER AGENCY'S EIS BY THE DEPARTMENT. (1) When the department is considering an action which is ((~~identified as~~)) part of a proposal covered by a final EIS of a lead agency, and the department was consulted as an agency with jurisdiction during the consultation process on the previous EIS because of the action it is now considering, the department must utilize the previous EIS unchanged when it is considering its present action except under the conditions of subsection (2) ((~~hereof~~)) of this section.

(2) The department shall review and consider supplementing an EIS prepared by the lead agency only if:

(a) The proposal has been significantly modified since the lead agency prepared the EIS; or,

(b) The action now being considered was identified in the lead agency's EIS as one which would require further environmental evaluation; or,

(c) The level of design or planning for the proposal has become more detailed, revealing inadequately analyzed impacts; or,

(d) Technical data has become available which indicates the presence of a significant adverse environmental impact.

In such cases, the R.O. Aide shall prepare a supplement to the lead agency's EIS if, ((~~and only if,~~)) the R.O. Aide determines that significant adverse environmental impacts have been inadequately analyzed in the lead agency's EIS.

(3) If the department is not listed as a licensing agency in the draft EIS pursuant to WAC 197-10-440(2)(d) and did not receive a copy of the draft EIS, the department shall not be limited by the contents of the earlier EIS in preparing its statement.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-695 DRAFT AND FINAL SUPPLEMENTS TO A REVISED EIS. (1) In any case where the R.O. Aide is preparing a supplement to an earlier EIS or to an EIS prepared pursuant to NEPA, R.O. Aide shall prepare a draft supplemental EIS and comply with WAC 232-18-450 through 232-18-470. Copies of both the prior and supplemental EIS ((~~shall be maintained at the SEPA public information center, and copies of the prior EIS, as well as the supplement;~~)) shall be transmitted to the consulted agencies which had not previously received it.

(2) Upon preparation of the draft supplemental EIS, the R.O. Aide shall comply with WAC 232-18-550 through 232-18-580 and the final supplemental EIS, together with the ((~~earlier~~)) prior EIS, shall be regarded as a final EIS for all purposes of these guidelines.

AMENDATORY SECTION (Amending Order 79, filed 4/9/76)

WAC 232-18-700 NO ACTION FOR SEVEN DAYS AFTER PUBLICATION OF THE FINAL EIS. The department shall take no major action (as defined in WAC 232-18-040(26)) on a proposal for which an EIS has been required, prior to seven days from the ((~~publication of the final EIS and its listing in the "EIS Available Register" maintained at the agency's SEPA public information center~~)) issuance of the final EIS.

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 232-18-830 RESPONSIBILITY OF DEPARTMENT—SEPA PUBLIC INFORMATION CENTER.

(2) WAC 232-18-835 DEPARTMENT RESPONSIBILITIES TO REGIONAL SEPA PUBLIC INFORMATION CENTERS.

WSR 79-02-010
ADOPTED RULES
DEPARTMENT OF ECOLOGY
[Order DE 78-22—Filed January 10, 1979]

I, Elmer C. Vogel, deputy director of the Department of Ecology, do promulgate and adopt at the Department of Ecology, Lacey, Washington, the annexed rules relating to minimum standards for construction and maintenance of water wells, amending chapter 173-160 WAC.

This action is taken pursuant to Notice No. WSR 78-11-088 filed with the code reviser on 11/1/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.104.040(4) and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED December 21, 1978.

By Elmer C. Vogel
Deputy Director

AMENDATORY SECTION (Amending Order 73-6, filed 4/30/73)

WAC 173-160-090 DESIGN AND CONSTRUCTION—WELL COMPLETION—GENERAL. The well may be completed with screens, perforated liners or pipe, or open bottom; these shall be of sufficient strength to withstand the forces to which they are subjected during and after construction. It is the responsibility of the

well driller or designer to instruct the owner or his representative as to the most appropriate method of completion. Wells shall be completed in a manner which prevents the production of inordinate amounts of sand or turbid water.

(1) Standard Open Bottom Completion. Open bottom completion shall be considered appropriate only where the withdrawn waters are essentially free of sand, silt and turbidity.

(2) Perforated Pipe Completion. Perforated pipe completion shall be considered suitable only for a coarse-grained, permeable aquifer where the withdrawn waters are free of excessive sand, silt or turbidity.

Perforations above the static water level shall not be permitted. Wells may be completed with perforations as follows:

(a) In-place perforations with Star, Mills knife, or similar type perforators.

(b) Perforated pipe liners, either torch-cut, mill-slotted or punched. Such liners may be of steel, plastic or other suitable corrosion-resistant material, but if other than steel, a full evaluation of the structural stability of the liner must be made prior to its placement. They may be used in a natural development or gravel-packed type of construction. Where appropriate, the top of the liner shall be fitted with neoprene or lead packers or grout sealed to the well casing. The bottom of the liner shall be fitted with a suitable closure. The use of pre-perforated casing for working casing as the hole is being drilled is prohibited, except in those cases where the contractor can, through personal experience in the particular area of drilling, attest to the sufficiency of the pre-perforated casing in all respects for the specific well being constructed.

(3) Well Screens. Well screens (and well points) shall be constructed of one type of corrosion-resistant material. Where appropriate, suitable neoprene or lead packers or grout seal shall be fitted to the top of the well screen assembly. The bottom of well screens shall be fitted with a suitable closure.

(4) Alignment. A completed well must be so constructed that the drill hole and/or installed casing does not deviate from an alignment that would allow a 20 foot dummy section of pipe of no more than one diameter size smaller than the casing liner or drilled hole to be inserted to the bottom of the well without binding. Minimum specifications for casing sizes for various ranges in well yield or pumping rate are shown under WAC 173-160-09001.

NEW SECTION

WAC 173-160-09001 RECOMMENDED WELL DIAMETERS.

Anticipated Well Yield, in gpm	Nominal Size of Pump Bowls, in inches	Optimum Size of Well Casing, in inches	Smallest Size of Well Casing, in inches
Less than 100	4	6 ID	5 ID
75 to 175	5	8 ID	6 ID
150 to 400	6	10 ID	8 ID
350 to 650	8	12 ID	10 ID
600 to 900	10	14 OD	12 ID
850 to 1300	12	16 OD	14 OD
1200 to 1800	14	20 OD	16 OD
1600 to 3000	16	24 OD	20 OD

AMENDATORY SECTION (Amending Order 73-6, filed 4/30/73)

WAC 173-160-100 DESIGN AND CONSTRUCTION—SEALING MATERIALS. Puddling clay shall consist of any stable, fine-grained, impervious material with at least 50% bentonite with the maximum size of the remaining portion not exceeding that of coarse sand (.5 mm - .1 mm), which is capable of providing a water tight seal between the casing and formation throughout the depth required to protect against objectionable matter and which is reasonably free of shrinkage. Cement grout (neat cement) shall consist of either portland cement or quick setting cement mixed with not more than six gallons of water per sack of cement. Up to 5% bentonite clay, by weight, may be added to improve flow qualities and compensate for shrinkage. Pelletized bentonite may be used in all wells sealed to a depth not to exceed the 18' minimum standard.

AMENDATORY SECTION (Amending Order 73-6, filed 4/30/73)

WAC 173-160-200 UPPER TERMINAL OF WELL. The water-tight casing or curbing of any well shall extend not less than 6 inches above the established ground surface. In the case of public water supplies where the site is not subject to flooding, the pumphouse floor must be at least 1 foot above land surface, with a minimum of 6 inches of casing projecting above the floor; where the site is subject to flooding, the pumphouse floor must be at least 2 feet above the estimated water level of a ((50))100-year frequency flood. Any vent opening, observation ports or air-line equipment shall extend from the upper end of the well by water-tight piping to a point not less than 1 foot above the pumphouse floor or cover installed above ground surface. The terminals of these facilities shall be shielded or sealed so as to prevent entrance of foreign matter or pollutants. A subsurface connection is permitted on domestic wells if made with approved fittings or welding procedures approved by the department, provided that the connection must be above static water level, and the pump location must not be subject to flooding.

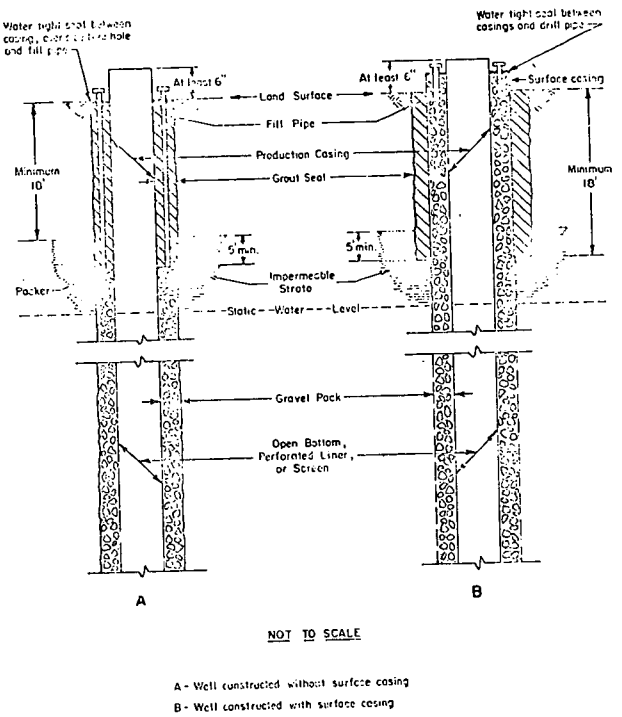

Figure 3. SEALING OF GRAVEL-PACKED WELLS

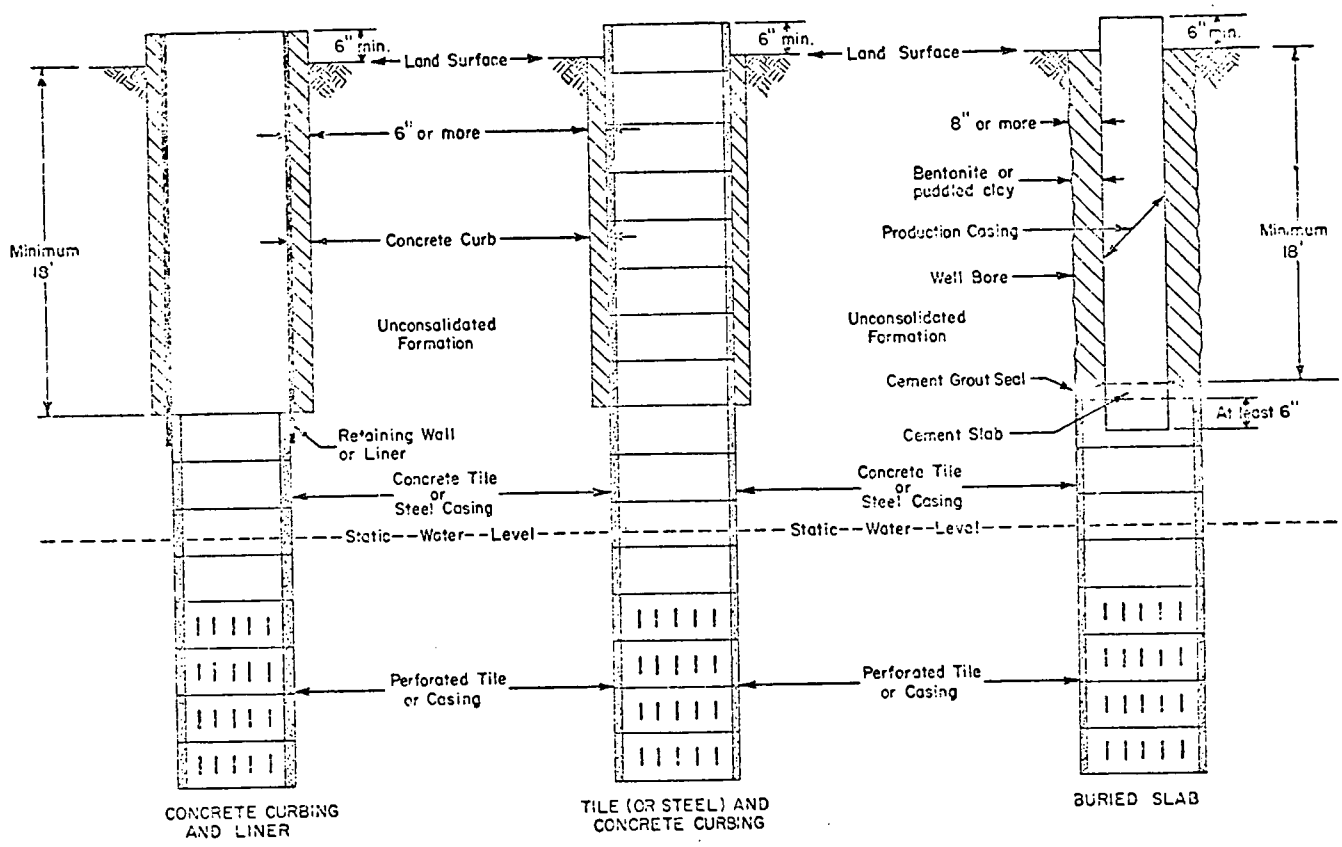

Figure 4. SEALING OF DUG WELLS

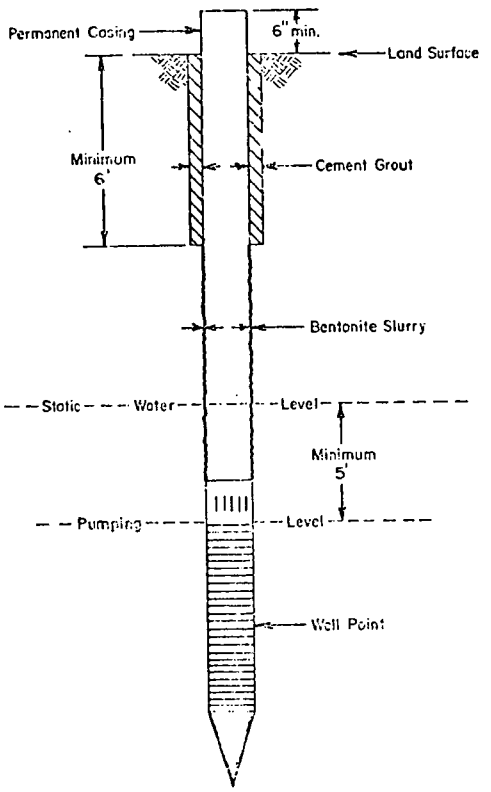

Figure 5. SEALING OF DRIVEN AND JETTED WELLS

AMENDATORY SECTION (Amending Order 73-6, filed 4/30/73)

WAC 173-160-290 ABANDONMENT OR DESTRUCTION OF WELLS. All wells including those which are not developed to provide a supply of water and are subsequently abandoned, shall be abandoned in the manner consistent with the meaning and intent of these regulations. The abandonment procedure of a well must be recorded and reported as required by the department.

WSR 79-02-011
ADOPTED RULES
DEPARTMENT OF LICENSING
(Osteopathic Examining Committee)
[Order 297—Filed January 11, 1979]

Be it resolved by the Osteopathic Examining Committee acting at Olympia, Washington that it does promulgate and adopt the annexed rules relating to osteopathic physicians' acupuncture assistants, adopting new sections WAC 308-138-100, 308-138-110, 308-138-120, 308-138-130, 308-138-140, 308-138-150, 308-138-160, 308-138-170 and 308-138-180.

This action is taken pursuant to Notice No. WSR 78-12-098 filed with the code reviser on 12/6/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.57A-.020 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 9, 1979.

By Joe Thomas DO
Chairman

NEW SECTION

WAC 308-138-100 EDUCATION. Each applicant for an authorization to perform acupuncture must present evidence satisfactory to the committee which discloses in detail the formal schooling or other type of training the applicant has previously undertaken which qualifies him as a practitioner of acupuncture. Satisfactory evidence of formal schooling or other training for thirty-six months in acupuncture totalling 1,400 or more

hours of study may include, but is not limited to, certified copies of certificates or licenses which acknowledge that the person has the qualifications to practice acupuncture, issued to an applicant by the government of the Republic of China (Taiwan), People's Republic of China, Korea or Japan. Whenever possible, all copies of official diplomas, transcripts and licenses or certificates should be forwarded directly to the committee from the issuing agency rather than from the applicant himself.

NEW SECTION

WAC 308-138-110 EQUIVALENCY EXAMINATION. (a) Applicants for registration who have not been issued a license or certificate to practice acupuncture from the governments listed in RCW 18.57A.070, or from a country or state with equivalent standards, must pass an equivalency examination prescribed by the committee.

(b) The examination shall be written and practical and shall examine the applicants' knowledge of anatomy, physiology, bacteriology, bio-chemistry, pathology, hygiene and acupuncture.

(c) The applicants shall provide his or her own needles and other equipment necessary for demonstrating the applicant's skill and proficiency in acupuncture.

NEW SECTION

WAC 308-138-120 EXPERIENCE. An applicant for an authorization as an osteopathic physician's acupuncture assistant must present satisfactory evidence to the committee that he or she has actually practiced acupuncture full time for at least three years.

NEW SECTION

WAC 308-138-130 INVESTIGATION. An applicant for an authorization to perform acupuncture shall, as part of his or her application, furnish written consent to an investigation of his or her personal background, professional training and experience by the committee or any person acting on its behalf.

NEW SECTION

WAC 308-138-140 ENGLISH FLUENCY. Each applicant must demonstrate sufficient fluency in reading, speaking and understanding the English language to enable the applicant to communicate with supervising physicians and patients concerning health care problems and treatment.

NEW SECTION

WAC 308-138-150 SUPERVISING PHYSICIANS' KNOWLEDGE OF ACUPUNCTURE. Osteopathic physicians applying for authorization to utilize the services of an osteopathic physician's acupuncture assistant shall demonstrate to the committee that the osteopathic physician possesses sufficient understanding of the application of acupuncture treatment, its contraindications and hazards so as to adequately supervise the practice of acupuncture.

NEW SECTION

WAC 308-138-160 UTILIZATION. (1) Persons authorized as osteopathic physicians' acupuncture assistants shall be restricted in their activities to only those procedures which a duly licensed, supervising osteopathic physician may request them to do. Under no circumstances may an osteopathic physician's acupuncture assistant perform any diagnosis of patients or recommend or prescribe any forms of treatment or medication.

(2) An acupuncture assistant shall treat patients only under the direct supervision of a physician who is present on the same premises where the treatment is to be given.

(3) An osteopathic physician shall not employ or supervise more than one acupuncture assistant.

NEW SECTION

WAC 308-138-170 X-RAYS AND LABORATORY TESTS. X-ray and laboratory tests are not approved techniques for use by osteopathic physicians' acupuncture assistants, and use of such techniques is expressly prohibited. No osteopathic physician's acupuncture assistant may prescribe, order, or treat by any of the following means or modalities:

(1) diathermy treatments

(2) ultrasound treatments

(3) infrared treatments

(4) electromuscular stimulation for the purpose of stimulating muscle contractions.

NEW SECTION

WAC 308-138-180 ETHICAL CONSIDERATIONS. The following acts and practices are unethical and unprofessional conduct warranting appropriate disciplinary action:

(1) The division or "splitting" of fees with other professionals or nonprofessionals as prohibited by chapter 19.68 RCW. Specifically, a person authorized by this board shall not:

(a) Employ another to so solicit or obtain, or remunerate another for soliciting or obtaining, patient referrals.

(b) Directly or indirectly aid or abet an unlicensed person to practice acupuncture or medicine or to receive compensation therefrom.

(2) Use of testimonials, whether paid for or not, to solicit or encourage use of the licensee's services by members of the public.

(3) Making or publishing, or causing to be made or published, any advertisement, offer, statement or other form of representation, oral or written, which directly or by implication is false, misleading or deceptive.

WSR 79-02-012
ADOPTED RULES
DEPARTMENT OF LICENSING
[Order PL-298—Filed January 11, 1979]

I, R. Y. Woodhouse, director of State of Washington Department of Licensing, do promulgate and adopt at Olympia, Washington the annexed rules relating to licensed cosmetology schools recognizing up to 400 hours spent at a cosmetology school operated by and within the confines of a state correctional institution.

This action is taken pursuant to Notice No. WSR 78-12-020 filed with the code reviser on 11/13/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.18.020 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 10, 1979.

By R. Y. Woodhouse
Director

NEW SECTION

WAC 308-24-335 STATE CORRECTIONAL INSTITUTIONS. A licensed cosmetology school may recognize up to the first four hundred hours spent at a cosmetology school operated by and within the confines of a state correctional institution. For the purposes of this rule, a state correctional institution is one established under any one or more of the following chapters: RCW 72.08; RCW 72.12; RCW 72.13; RCW 72.15; RCW 72.18; RCW 72.19; and RCW 72.20. These hours may be recognized only if completed in accordance with the following: (1) that the student's curriculum must be approved as set forth in RCW 18.18.190 and WAC 308-24-355; (2) that no charge is made for any student services and students are not compensated for any work that they perform; (3) that the institutional school's facilities are subject to and conform to the requirements of RCW 18.18.210 and WAC 308-24-450; (4) that the class consist of six students or less in the program at any one time; and (5) that the school be regularly inspected in accordance with RCW 18.18.108 and WAC 308-24-470.

WSR 79-02-013
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-2—Filed January 11, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington the annexed rules relating to commercial fishing regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is incidental catches of chinook have been observed in Pacific Cod set net catches during late January and early February in Port Townsend Bay and Kilisut Harbor during the last two seasons. Dogfish set nets should also be prohibited to prevent early fishing for cod under the guise of fishing dogfish (with resultant incidental salmon catch).

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 11, 1979.

By Gordon Sandison
Director

NEW SECTION

WAC 220-48-09100A CLOSED AREA - SET NET Notwithstanding the provisions of WAC 220-48-091 and WAC 220-48-096, effective immediately until February 10, 1979, it shall be unlawful to take, fish for or possess bottomfish taken with set net gear in that portion of Marine Fish-Shellfish Area 25B southerly and westerly of a line from Point Hudson to Marrowstone Point and north of the Indian Island Bridge.

WSR 79-02-014
ADOPTED RULES
STATE BOARD OF HEALTH
[Order 173—Filed January 12, 1979]

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

Rep	WAC 248-102-030	Panel of consultants appointed.
Amd	WAC 248-102-040	Establishment of diagnosis.
Rep	WAC 248-102-050	Eligibility for financial support for treatment and followup care.
Rep	WAC 248-102-060	Financial support, services, and facilities not compulsory.

This action is taken pursuant to Notice No. WSR 78-07-081 and 78-09-121 filed with the code reviser on 7/5/78 and 9/6/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 70.83.050 which directs that the Washington State Board of

Health has authority to implement the provisions of chapter 70.83 RCW.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED November 1, 1978.

By Irma Goertzen
John A. Beare, MD

WAC 248-102-040 ESTABLISHMENT OF DIAGNOSIS. (1) Upon receipt of ((~~a report of a positive screening test, the department shall contact the attending physician of the subject of the test, or the family of the subject if no attending physician can be identified.~~

~~(a) If no attending physician can be identified, the department shall, with the assistance of the Panel of Consultants, assist the family in finding a physician able and willing to serve this function.~~

~~(2) If at least two positive screening tests have been recorded, at least one of which shall have been a blood test, the department shall offer to the attending physician and the family to provide financial support for and assistance in arranging and carrying out further diagnostic studies for the subject.~~

~~(3) If such offer is accepted, the department shall assist the family and the attending physician in selecting a member of the Panel of Consultants who is able and willing to act as the Consultant in the case of the subject.~~

~~(4) The attending physician, acting with the advice of the Consultants, and with the permission of the family shall devise a plan for further diagnostic study. The department shall cooperate with the attending physician with the advice of the Consultants in carrying out plans for diagnostic study to the extent that funds are available for this purpose~~)) specimens from hospitals and maternity care facilities, the department shall perform the appropriate laboratory screening tests for abnormal levels of substances in the blood relating to the detection of congenital hypothyroidism and phenylketomuria.

(2) If levels so obtained suggest the presence of these diseases in an infant, they will not constitute a final laboratory or medical diagnosis. The department will promptly notify the attending physician, or the family of the infant tested if no attending physician can be identified.

(3) The department shall offer to the attending physician or the family assistance in arranging further diagnostic studies for the subject, and financial support for these studies, to qualified families.

REPEALER

The following section of the Washington Administrative Code are repealed:

(1) WAC 248-102-030 PANEL OF CONSULTANTS APPOINTED.

(2) WAC 248-102-050 ELIGIBILITY FOR FINANCIAL SUPPORT FOR TREATMENT AND FOLLOWUP CARE.

(3) WAC 248-102-060 FINANCIAL SUPPORT, SERVICES, AND FACILITIES NOT COMPULSORY.

WSR 79-02-015
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE ADVISORY COUNCIL ON VOCATIONAL EDUCATION
[Memorandum—January 12, 1979]

The next regular meeting of the Washington State Advisory Council on Vocational Education is scheduled for Friday, February 16, 1979. This meeting, which starts at 9:30 a.m., will be held in Olympia, Washington, at the Greenwood Inn.

WSR 79-02-016
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed January 12, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 41.06.040, that the State Personnel Board intends to adopt, amend, or repeal rules concerning:

AMD	WAC 356-10-030	Positions—Allocation—Reallocation
AMD	WAC 356-10-050	Positions—Reallocation upward, incumbents
AMD	WAC 356-10-060	Allocation—((~~Appeals~~)) Request for review
AMD	WAC 356-18-060	Paid sick leave—Use;

that such agency will at 10:00 a.m., Thursday, February 8, 1979, in the Board Meeting Room, 600 South Franklin, Olympia, WA 98504 conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Thursday, February 8, 1979, in the Board Meeting Room, 600 South Franklin, Olympia, WA 98504.

The authority under which these rules are proposed is RCW 41.06.040 and 21.06.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to February 6, 1979, and/or orally at 10:00 a.m., Thursday, February 8, 1979, Board Meeting Room, 600 South Franklin, Olympia, WA.

This notice is connected to and continues the matter noticed in Notice Nos. WSR 78-12-025 and 78-12-073 filed with the code reviser's office on 11/15/78 and 12/4/78.

Dated: January 11, 1979
By: Leonard Nord
Secretary

WSR 79-02-017
NOTICE OF PUBLIC MEETINGS
STATE HOSPITAL COMMISSION
[Memorandum—January 16, 1979]

The Hospital Commission will hold its second meeting of January on Monday, January 29, 1979, beginning at 9:30 a.m., at the University Tower Hotel, N. E. 45th and Brooklyn Avenue, Seattle, Washington.

Future Dates

March 8, 22 – same place and time
April 19 – same place and time

WSR 79-02-018
EMERGENCY RULES
EDMONDS-EVERETT COMMUNITY COLLEGES
[Order 78-12-10, Resolution 78-12-10—Filed January 16, 1979]

Be it resolved by the board of trustees of the Washington State Community College District V, acting at the District Office, Board Room, Paine Field, that it does promulgate and adopt the annexed rules relating to faculty tenure, dismissal and reduction in force, chapters 132E-128 and 132E-129 WAC.

We find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is the collective bargaining agreement expired 12/15/78. The board adopted policy regarding tenure, dismissal and reduction in force as required by statutes to assure continued ability to manage the personnel affairs of the district.

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

This rule is promulgated pursuant to RCW 28B.50-.030, 28B.50.140(13) and 28B.50.852 which directs that the Washington State Community College District V has authority to implement the provisions of RCW 28B-.52.030, 28B.50.140(13) and 28B.50.852.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED December 18, 1978.
By John T. Moss
Interim Chancellor

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-010 ((~~GENERAL DEFINITIONS. As used in the context of this section: (1) "Chief administrative officer" shall mean the President of Community College District 5.~~

~~(2) "President" shall mean the College President~~

~~(3) "Personnel" shall mean those individuals employed on the college campus.~~

~~(4) "Personnel Policies" shall mean those policies which have been duly negotiated by the Edmonds and Everett Faculty Associations with the presidents of Edmonds and Everett Colleges, with the president of District 5, and with the Board of Trustees of District 5.~~

~~(5) "Faculty" shall mean individuals employed on the college campus whose major function is directly concerned with the educational processes, i.e., instructors and educational support personnel such as counselors, librarians, etc.~~

~~(6) "Tenured faculty" shall mean those faculty members granted tenure by the appointing authority and those granted tenure by the appointing authority according to the processes set forth in the section on tenure.~~

~~(7) "Nontenured faculty" shall mean faculty members holding a probationary faculty appointment as defined in the section on tenure.~~

~~(8) "Administrators" shall mean those positions carrying the title of President or Dean.~~

~~(9) "Administrative position" shall mean the position held by administrative officers, Directors, and Division Chairmen (nonteaching capacity).~~

~~(10) "Academic community" shall mean students, faculty, administrators, and the Board of Trustees as a collegiate group.~~

~~(11) "Instructional Process" shall mean the total educational experiences provided by the academic community.~~

~~(12) "College Committees" shall mean the committee structure as set forth in the faculty manual.~~

~~(13) "Procedures" shall mean the rules, regulations and practices used in the implementation of policy.~~)) TENURE—PURPOSE. (1) To protect faculty employment rights and faculty involvement in the establishment and protection of these rights.

(2) To define a reasonable and orderly process for the appointment of faculty members to tenure status, and for the nonrenewal of probationary faculty members.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-020 ((~~DEFINITIONS RELATING TO TENURE. (1) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for sufficient cause and by due process.~~

~~(2) "Faculty appointment" shall mean full-time employment as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments; "faculty appointment" shall also mean department heads, division heads and administrator to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor, or librarian.~~

~~(3) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time~~

~~which may be terminated without cause upon expiration of the probationer's terms of employment.~~

~~(4) "Probationer" shall mean any individual holding a probationary faculty appointment.~~

~~(5) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority.~~

~~(6) "Appointing authority" shall mean the Board of Trustees of a community college district.~~

~~(7) "Review Committee" shall mean a committee composed of the probationer's faculty peers and the administrative staff of the community college providing that the majority of the committee shall consist of the probationer's faculty peers.~~

~~(8) The terms "faculty peers" and/or "teaching faculty" for general purposes of implementing the provisions of the Tenure Act, shall mean full-time faculty whose principle duties are nonadministrative in nature. With reference to the composition of Tenure Committee, the individual colleges may choose to interpret "faculty peers" as meaning faculty most closely associated professionally with the probationer.~~

~~(9) "Division Chairmen" for the purposes of implementing the Tenure Act shall be considered as holding administrative positions and shall not be considered as teaching faculty or faculty peers.))~~ TENURE—DEFINITIONS. As used in this chapter the following terms and definitions shall mean:

(1) "Appointing authority" shall mean the Board of Trustees of Community College District V.

(2) "Tenure" shall mean a faculty appointment for an indefinite period of time which may be revoked only for adequate cause and by due process.

(3) "Faculty appointment" shall mean full-time employment as a teacher, counselor, librarian, media specialist or other positions for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments and except special faculty appointments as permitted by applicable law. Faculty appointment shall also mean department heads, division heads and administrators to the extent that such department heads, division heads or administrators have had or do have status as a teacher, counselor or librarian.

(4) "Probationary faculty appointment" shall mean a faculty appointment for a designated period of time which may be terminated without cause upon expiration of the probationer's term of employment.

(5) "Probationer" shall mean any individual holding a probationary faculty appointment.

(6) "Administrative appointment" shall mean employment in a specific administrative position as determined by the appointing authority.

(7) "Regular college year" shall mean that period of time extending from the beginning of the fall quarter through the end of the following spring quarter. Such definition shall include any summer quarter worked in lieu of a fall, winter or spring quarter.

(8) "President" shall mean the President of Community College District V.

(9) "College" shall mean Everett or Edmonds Community College.

(10) "Appointment review committee" shall mean an ad hoc committee composed of the probationer's tenured faculty peers, a student representative and a member of the administrative staff of the college: PROVIDED, That a majority of the committee shall consist of the probationer's tenured faculty peers.

(11) "Nonrenewal" shall mean the decision of the Board of Trustees not to renew the contract of a probationary faculty member for the succeeding academic year.

(12) "Full-time" shall mean assignment to a full load during each regular college year.

(13) "A faculty peer" shall mean an individual holding a tenured faculty appointment.

(14) "Teaching faculty" as used herein shall mean the same as faculty appointment.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-030 ((~~FACULTY TENURE. (1) All employees of the community college district except presidents who were employed in the community college district at the effective date of chapter 283, Laws of 1969 ex. sess. and held or have held a faculty appointment with the community college district or its predecessor school district shall be granted tenure by their appointing authority not withstanding any other provision of RCW 28B.50.850 through 28B.50.869. It shall be the policy of Community College District 5 to establish a system of faculty tenure which protects the concepts of faculty employment rights and faculty involvement as prescribed in chapter 283, Laws of 1969 ex. sess. The positions of division chairmen, directors and deans shall not be accorded tenure status, but division chairmen, directors and deans who were tenured faculty members prior to their appointment to an administrative position shall retain their tenure status as teachers, and division chairmen, directors and deans to the extent that they have had or have status as teachers, counselors or librarians shall qualify for tenure status as faculty.~~

~~(2) Tenure shall be granted only to full-time faculty appointments. The positions of division chairman, director and dean shall not be accorded tenure status, but division chairmen, directors and deans to the extent that such division chairmen, directors, and deans have had or do have status as a teacher, counselor or librarian shall qualify for tenure status as a faculty member. The appointing authority shall award or deny tenure within a period of time not to exceed three consecutive regular college years (excluding summer sessions) with notification to be given to the probationer prior to the last day of winter quarter. The appointing authority may award or withhold tenure at any time, after it has given reasonable consideration of the recommendations of the appropriate review committee and the president. If no official notice is sent to the probationer by the last day of the winter quarter of the third year, the probationer is automatically awarded faculty tenure.~~)) TENURE—APPOINTMENT REVIEW COMMITTEES—PURPOSE OF THE COMMITTEES AND SELECTION OF MEMBERSHIP. Each probationer shall have a five

member appointment review committee assigned to him or her by November 1 of the first year of his/her appointment. Appointment review committees shall serve as ad hoc committees until such time as the probationer is either granted tenure or his/her employment in a probationary faculty appointment is terminated.

(1) Tenured faculty in the probationer's division shall submit to the district president or his designee a list of three or more nominees who are tenured faculty to serve on the appointment review committee. The tenured teaching faculty and department heads acting as a body shall elect two nominees as members of the appointment review committee.

(2) The probationer at the same time may submit to the district president or his designee a list of two or more nominees who are tenured faculty to serve on the appointment review committee. The tenured teaching faculty and department heads acting as a body shall elect one nominee as a member of the appointment review committee: PROVIDED, That in the event the probationer does not submit nominations, the teaching faculty shall then vote to select a third appointment review committee member in accordance with subsection (1) of this section.

(3) The administrative representative on the committee shall be appointed by the district president or his/her designee.

(4) The full-time student member on each appointment review committee shall be chosen by the student association in such manner as the members thereof shall determine.

(5) If a vacancy occurs upon any appointment review committee, a replacement shall be appointed by the academic employee organization from among the tenured faculty members in the probationer's discipline or related disciplines in the case of a vacancy in a faculty position on the committee; by the Student Body President in the case of a vacancy in the student position on the committee; or by the district president or his/her designee in the case of a vacancy in the administrative position on the committee.

(6) Insofar as possible, at least one member of the committee should be in the probationer's academic discipline or field of specialization.

AMENDATORY SECTION (Amending Order 75-1, filed 1/31/75)

WAC 132E-128-040 ((~~REVIEW COMMITTEES. The Tenure Review Committees for the purpose of recommending the granting or withholding of tenure for probationary faculty shall be composed of the probationer's faculty peers, the administrative staff, and a full-time student providing that the majority of each committee shall consist of the probationer's faculty peers selected whenever possible from his subject or performance area.~~

~~Each review committee shall be composed of seven members, four of whom shall be members of the faculty and faculty department heads acting in a body. The two members representing the administration shall be appointed by the president. The student shall be chosen by the student association in such a manner as the members thereof shall determine. All review committees shall be formed by October 15th of each year at a meeting called by the president.~~)) TENURE—APPOINTMENT REVIEW COMMITTEES—DUTIES AND RESPONSIBILITIES. The general duty and responsibility of the appointment review committee shall be to evaluate the probationer, to advise him/her of his/her strengths and weaknesses and to develop with him/her programs to overcome his/her deficiencies. The evaluation process shall place primary importance upon the probationer's effectiveness in his/her appointment. The appointment review committee shall be responsible for making a recommendation, in accordance with the procedures in WAC 132E-128-050, as to whether the probationer shall be granted tenure, be given an additional probationary year, or terminated by the nonrenewal of his/her probationary status.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-050 ((~~DISMISSAL FOR CAUSE. (1) A tenured faculty member shall not be dismissed except for sufficient cause, nor shall a faculty member who holds a probationary faculty appointment be dismissed prior to the written terms of his appointment except for sufficient cause.~~

~~(2) "Sufficient Cause", for the purpose of implementing these tenure regulations, shall mean:~~

~~(a) Violations of section 40, chapter 283, Laws of 1969 ex. sess.: Aiding and abetting or participating in:~~

~~(i) Any unlawful act of violence~~

~~(ii) Any unlawful act resulting in destruction of community property~~

~~(iii) Any unlawful interference with the orderly conduct of the educational process~~

~~(b) Behavior which, while officially representing the College, substantially interferes with the performance of a staff member's assigned duties.~~

~~(c) Substantial violations of procedures which have been promulgated as a result of policies negotiated either at the local college level, district administration level, or with the Board of Trustees for Community College District 5.~~)) TENURE—APPOINTMENT REVIEW COMMITTEES—OPERATING PROCEDURES. (1) The first meeting of an appointment review committee shall be upon the call of the district president or his/her designee. A chairperson shall be elected by the committee at its first meeting.

(2) All meetings of an appointment review committee after the first shall take place upon the call of the chairperson. Appointment review committees may meet with or without the probationer. The committee shall determine whether the probationer's presence is necessary or advisable; in any event the committee shall meet with the probationer at least twice per quarter.

(3) The evaluative process employed by each appointment review committee shall include the stipulations outlined below:

(a) The first order of business for each appointment review committee shall be to establish, in consultation with the probationer, and the probationer's division chairperson, the procedures it will follow in evaluating

the performance and professional competence of the probationer assigned thereto.

(b) Criteria to be used in the evaluation shall be limited to faculty-staff relationships, instructional and/or guidance skills, general college service and knowledge of subject matter.

(c) Evaluation shall be based partly on first-hand observations of the probationer's performance in his position. The evaluation process shall also include a self-evaluation by the probationer, an evaluation by his discipline peer group, evaluation by the probationer's students, and an evaluation by the probationer's immediate administrator.

(d) All evaluative judgments shall be in written narrative report form.

(4) When deficiencies in the performance of a probationer have been noted by an appointment review committee the following steps should be taken by the committee:

(a) Areas of deficiency should be put in writing and discussed at a conference with the probationer as soon as these deficiencies are recognized.

(b) The appointment review committee should develop with the probationer a written program to improve these deficient areas.

(c) Frequent conferences should follow step (b) of this subsection to provide for follow-up evaluations as well as program revisions to help the probationer improve.

(5) Each appointment review committee, as a result of its ongoing evaluation of the probationer, shall periodically advise the probationer, in writing, of his/her progress during the probationary period and receive the probationer's written acknowledgement thereof. The following written reports, at the minimum, will be rendered to the probationer, the district president, and the appointing authority on or before the times specified herein during each regular college year that such appointee is on probationary status; or, as is also required, within fifteen days of the president's written request therefor, except that the recommendation for tenure or continued probationary status shall not be required when the committee in an earlier report has recommended nonrenewal:

(a) A written progress report by the end of fall quarter outlining the probationer's strengths and weaknesses. This report shall also include a list of steps that can be taken by the probationer to improve any such deficiencies.

(b) A written evaluation of the probationer's performance and progress including the degree to which the probationer has overcome stated deficiencies, on or before February 1.

(c) A written recommendation regarding the renewal or nonrenewal of the probationer's contract for the ensuing regular college year, on or before February 1.

(d) A written recommendation for tenure or continued probationary status, on or before February 1.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-060 ((~~PROCEDURES FOR DISMISSAL FOR SUFFICIENT CAUSE. In all instances which involve charges which may lead to the dismissal of a faculty member of "sufficient cause" as distinguished from non-renewal of a probationary appointment:~~

~~(1) The appropriate college dean shall investigate all matters regarding complaints which may lead to the dismissal of a tenured faculty member or a probationary faculty member prior to the expiration of such probationary appointee's employment term. If the appropriate dean has cause to believe that a faculty member should be dismissed for cause, he shall so advise the president. If after careful examination of all evidence available, the president believes that "sufficient cause" exists to bring dismissal charges, the president shall, in a personal interview with the faculty member, inform him of the actions which are contemplated against him and then shall offer him an opportunity to resign. If after a three-day interval such resignation is not tendered and the president still believes the circumstances and facts warrant dismissal, the president may begin dismissal proceedings.~~

~~(2) Prior to the dismissal of a tenured faculty member, or a faculty member holding an unexpired probationary appointment, the case shall first be reviewed by the Special Review Committee. The review shall include testimony from all interested parties including, but not limited to, other faculty members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself. The Special Review Committee shall have the authority to obtain all necessary documents, records, and other materials and shall prepare recommendations concerning the action it proposes should be taken and shall submit such recommendation to the appointing authority prior to the final action of the appointing authority.~~

~~(3) The president shall begin dismissal proceedings by requesting the meeting of a Special Review Committee.~~

~~(4) The president shall submit to the Special Review Committee and to the accused a written statement specifying in detail the conduct which in his view constitutes grounds for dismissal.~~

~~(5) The Special Review Committee shall, after receiving the written charge from the president, establish a date for a review hearing within ten calendar days, excluding holidays, and inform in writing the faculty member so charged of the time, date and place of said hearing.~~

~~(6) The Special Review Committee in the conduct of such hearing shall:~~

~~(a) Hear testimony from all interested parties, including but not limited to, other faculty members and students.~~

~~(b) Afford the faculty member whose case is being reviewed the right to have legal counsel present at the hearings, to cross-examine witnesses and to present evidence in his own behalf.~~

~~(c) Keep a written record of all proceedings before such committee.~~

~~(7) Following the conclusion of such dismissal hearings, the Special Review Committee shall submit to the appointing authority within ten calendar days (exclusive of holidays) from the day the review began, a written recommendation for or against dismissal along with the written transcript of the hearings. Copies of this recommendation and all records of these hearings shall also be made available to the accused faculty member. In cases where the Review Committee is not unanimous in its decision, the accused faculty member (or the appointing authority) shall have the right to ask that a minority report be made to the appointing authority.~~

~~(8) The appointing authority shall within five calendar days (exclusive of holidays) notify the accused faculty member in writing of its decision. The decision shall be based solely upon the original charges and only on the basis of evidence made of record at the hearing.))~~ TENURE—AUTHORITY OF THE BOARD OF TRUSTEES. The appointing authority shall provide for the award of faculty tenure following a probationary period not to exceed three consecutive regular college years, excluding summer quarter. Provided, the appointing authority may award or withhold tenure at any time, after it has given reasonable consideration to the recommendations of the appropriate review committee. The probationer shall be deemed to have been awarded tenure if no official notice is sent to the probationer by the last day of the winter quarter of the third consecutive year in which a contract is issued. The regular college year in all instances shall be deemed to begin with fall quarter regardless of the quarter in which the probationer begins full-time employment.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-070 ((~~RIGHT OF THE FACULTY MEMBER TO APPEAL. Any faculty member dismissed pursuant to sections 32 through 45 of the chapter 283, Laws of 1969 ex. sess., RCW 28B.50.850 through 28B.50.869, shall have the right to appeal the Board of Trustees and the Special Review Committee's decision within ten days of receipt of the notice in accordance with RCW 34.04.090 through 34.04.140 (Administrative Procedure Act), as now or hereafter amended. For the purposes of chapter 34.04 RCW any appeal pursuant to this provision shall be considered a contested case as defined in RCW 34.04.010(3).~~)) TENURE—RIGHTS AND REASONABLE EXPECTATIONS OF THE PROBATIONER. (1) Sufficient rapport should be established between the probationer and his/her appointment review committee so that the purposes of the classroom visits and evaluation sessions are clear.

(2) The classroom visits should be arranged with the probationer so that he/she will be prepared for the visit.

(3) The probationer should have been acquainted with the evaluative instrument prior to its use.

(4) Conferences with the probationer should be scheduled and should cover each category on the evaluation instruments used in the preparation for the conference(s).

(5) When a disagreement occurs between the probationer and his/her appointment review committee over any area of evaluation, the probationer may submit a written statement of these disagreements, and shall be entitled to a written response from the committee.

(6) A probationer shall be formally notified of nonrenewal by the end of winter quarter of the applicable year.

AMENDATORY SECTION (Amending Order 72-1, filed 2/1/73)

WAC 132E-128-080 ((~~SUSPENSION OF THE FACULTY MEMBER. During the proceedings involving the dismissal for cause of a tenured or probationary faculty member that faculty member may be suspended from his regular duties and assigned comparable duties pending the outcome of the proceedings.~~)) DISMISSAL OF TENURED AND PROBATIONARY FACULTY MEMBERS. (1) Reasons for dismissal of a tenured or probationary faculty member. A tenured faculty member shall not be dismissed from his/her appointment except for sufficient cause, nor shall a faculty member who holds a probationary appointment be dismissed prior to the written terms of the appointment except for sufficient cause.

(2) Composition of and selection of the dismissal review committee. A six member ad hoc dismissal review committee created for the express purpose of hearing dismissal cases shall be established no later than seven working days after the affected faculty member(s) request a hearing. The following procedures will be employed in the selection of the members and alternate members:

(a) The six seats on the committee shall be designated Position 1, Position 2, Position 3, Position 4, Position 5 and Position 6.

(b) The administrative appointment shall hold Position 6 and shall be appointed by the district president or his/her designee.

(c) The student appointment shall hold Position 5 and shall be appointed by the appropriate Student Body President.

(d) The four members representing the faculty peers on the dismissal review committee shall be selected by a majority of the teaching faculty in the following manner:

(i) Two nominees shall be nominated for each of Positions 1 through 4 by a selection process developed and administered by the academic employee organization.

(ii) These nominees shall be voted upon by all those who hold a tenured faculty appointment.

(iii) Those nominees who receive a majority of the vote cast shall be considered elected. The four nominees not selected shall be the alternates and shall be identified as Alternate 1, Alternate 2, Alternate 3 and Alternate 4.

(e) The dismissal review committee shall also include an impartial and neutral hearing officer who shall be appointed by the Board of Trustees.

(3) Procedures relating to the dismissal of a tenured or probationary faculty member.

(a) Preliminary proceedings concerning the fitness of a faculty member. Reasons to question the fitness of a faculty member shall be documented by a letter to the

faculty member. The college president shall discuss the letter with him/her in a personal conference. The matter may be settled by mutual consent at this point. In any event, the letter of censure shall be forwarded to the district president. The college president shall place the letter in the employee's personnel file unless mutually agreed otherwise.

(b) Initiation of formal proceedings:

(i) If the district president determines that the faculty member is to be dismissed the district president shall deliver a short and plain written notice of dismissal to the faculty member which shall contain:

(A) the grounds for dismissal in reasonable particularity;

(B) a statement of the legal authority and jurisdiction under which a hearing requested by the faculty member would be held;

(C) reference to any particular statutes or rules involved.

(ii) After receiving the district president's notice of dismissal, the affected faculty member may request a hearing within the following ten days. Such request should be in written form and delivered to the district president's office.

(iii) The district president within ten days shall call into action the dismissal review committee and deliver the above statement to the members of the dismissal review committee, if the faculty member requests a hearing in accordance with subsection (ii) of this section.

(iv) If the district president receives a request for a hearing, the dismissal review committee shall, after receiving the written notice of dismissal from the district president, establish a date for a committee hearing giving the faculty member not less than ten days notice of such hearing, and shall inform the faculty member in writing of the time, date and place of such hearing.

(v) All matters regarding reduction-in-force shall be consolidated into one hearing.

(vi) Suspension of the faculty member during the proceedings involving him/her is justified only if immediate physical or emotional harm to himself/herself or others is threatened by his/her continuance. Any such suspension shall be with pay.

(c) The faculty member concerned shall be accorded the following procedural rights:

(i) The right to confront and cross-examine adverse witnesses, and the right to use civil rules of discovery.

(ii) The right to be free from compulsion to divulge information which he could not be compelled to divulge in a court of law;

(iii) The right to be heard in his own defense and to present witnesses, testimony and evidence on all issues involved;

(iv) The right to the assistance of the dismissal review committee in securing witnesses and evidence pursuant to chapter 28B.19 RCW.

(v) The right to counsel of his/her choosing who may appear and act on his behalf at all meetings and hearings.

(vi) The right to determine whether the hearing before the dismissal review committee shall be open or closed.

(d) Responsibilities of the dismissal review committee.

(i) To hear testimony from all interested parties, including but not limited to other faculty members and students and receive any evidence offered by same;

(ii) To allow the district administration to be represented by the attorney general;

(iii) To give the faculty member or his/her counsel and the representative designated by the president of the district the opportunity to argue orally before it.

(iv) To arrive at its recommendation in conference on the basis of the hearing. As soon as reasonably practicable the written recommendation of the committee, including any minority report if determined appropriate by the committee, will be presented to the district president, the affected faculty member, and the Board of Trustees.

(v) To provide a copy of the record of the hearing upon the request of any one of the above three parties.

(e) Duties of the hearing officer of the dismissal review committee.

(i) To make all rulings regarding the evidentiary and procedural issues presented during the course of the dismissal review committee hearings;

(ii) To meet and confer with the members of the dismissal review committee and advise them in regard to procedural and evidentiary issues considered during the course of the committee's deliberations;

(iii) To appoint a court reporter, who shall operate at the direction of the hearing officer and shall record all testimony, receive all documents and other evidence introduced during the course of hearing, and record any other matters related to the hearing as directed by the hearing officer;

(iv) To prepare, in accordance with the determination of the majority of the dismissal review committee, proposed findings and recommendations to the appointing authority. The hearing officer shall also be responsible for preparing and assembling a record for review by the appointing authority which shall include:

(A) all pleadings, motions and rulings;

(B) all evidence received or considered;

(C) a statement of any matters officially noticed;

(D) all questions and offers of proof, objections and rulings thereon;

(E) proposed findings and exceptions;

(F) a copy of the recommendations of the dismissal review committee.

(v) To furnish upon written request a transcribed copy of the above to the faculty member whose case has been heard.

(vi) To comply with the rules of evidence specified in RCW 28B.19.120 in conducting dismissal hearings.

(f) Consideration by the Board of Trustees. Within twenty days of the completion of the hearing, the dismissal review committee shall transmit to the Board of Trustees a full report, including findings of fact, stating its recommendation. The Board of Trustees shall adopt findings of fact and shall render a decision based upon the record. In rendering such decision, the board shall give careful consideration to the recommendations of the review committee.

If the findings of fact as adopted by the board are different from the proposed findings of fact by the hearing officer, the board shall issue preliminary findings of fact. Each side shall have an opportunity to argue before the board concerning any proposed changes in the findings of fact to be adopted.

(g) Time limits. In computing any time prescribed or allowed by these rules the day of the act, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday.

(h) Publicity. Except for such simple announcements as may be required, covering the time of the hearing and similar matters, no public statement about the case by either the dismissal review committee or administrative officers shall be made until all proceedings and appeals have been completed. Announcement of the final decision shall include a statement of the dismissal review committee's original recommendation, if this has not previously been made known.

(4) Right of the faculty member to appeal the decision of the dismissal review committee and/or the Board of Trustees. Any faculty member dismissed shall have the right to appeal the decision of the Board of Trustees within ten days of receipt of the notice in accordance with RCW 28B.19.150 (Administrative Procedure Act), as now or thereafter amended. For purpose of chapter 28B.19 RCW any appeal pursuant to the above stated provision shall be considered a contested case as defined in RCW 28B.19.020.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132E-128-090 RIGHTS OF TRANSFEREES.

AMENDATORY SECTION (Amending Order 73-1, filed 11/29/73)

WAC 132E-129-010 ((~~COMMUNITY COLLEGE DISTRICT 5---REDUCTION IN FORCE POLICY FOR TENURED AND PROBATIONARY FACULTY EMPLOYEES. The Board of Trustees perceives the Reduction in Force Policy as a document to be implemented only in the event of emergency in one or more of the five areas set forth in section 1. Further, the Board of Trustees will not apply this policy without considering all facets of the operation of Community College District 5:~~

~~(1) This policy establishes the procedure governing reduction in force and layoff of full-time faculty employees holding either faculty appointments or probationary faculty appointments, due to:~~

~~(a) Inadequacy of funding to the district or program.~~

~~(b) Program termination or reduction.~~

~~(c) Significant decreases in enrollment.~~

~~(d) Duly negotiated change in district educational policy.~~

~~(e) Changes in educational policy established by any agency having authority over Community College District 5.~~

~~(2) (a) Layoff units shall be assigned by the Layoff Unit Committee within the following divisions and/or departments at Everett Community College for the purposes of reduction in force:~~

~~Student Personnel Services,~~
~~Arts,~~
~~Business Administration,~~
~~Communications,~~
~~Life Sciences,~~
~~Nursing,~~
~~Physical Education,~~
~~Physical Sciences,~~
~~Social Sciences,~~
~~Vocational Education,~~
~~Library.~~

~~Layoff units shall be assigned by the Layoff Unit Committee within the following divisions and/or departments at Edmonds Community College for the purposes of reduction force:~~

~~Student Personnel Services,~~
~~Humanities,~~
~~Business,~~
~~Human Services,~~
~~Natural Science and Mathematics,~~
~~Social Sciences,~~
~~Library.~~

~~(b) Within a reasonable time, viz:~~

~~(i) 30 days after the beginning of each academic year, or~~

~~(ii) 30 days after hiring a new faculty employee, or~~

~~(iii) 30 days after the determination of layoff units required to implement this policy, or~~

~~(iv) 30 days after the assignment of an individual faculty employee has been significantly changed,~~

~~a layoff unit committee, consisting of two administrators appointed by the college president, one division chairman selected by all division chairmen at the appropriate college acting as a body, and two faculty members appointed by the recognized faculty employee organization, shall meet on each of the college campuses to assign each faculty employee to a layoff unit within a division and assign a layoff rank according to the provisions of section (3)(f) and section (3)(g) of this policy, and recommend such assignment to the college president. In the event of a tie vote by the layoff unit committee, the college president shall cast the tie-breaking vote. The college president shall review and subsequently publish and distribute to all faculty employees a list of those assignments. A faculty employee may not be a member of more than one layoff unit.~~

~~Any faculty employee who can demonstrate that his layoff unit is improper, may, within 15 calendar days from the time the assignment is published by the college president, appeal in writing to the layoff unit committee. If the assignment cannot be resolved by the committee, the faculty employee may then, within 15 calendar days of the layoff unit committee's appeal decision, using~~

~~similar timing and procedure, appeal to the college president, thence to the district president, and finally to the Board of Trustees.~~

~~(3) If a faculty employee holding either a full-time faculty or full-time probationary faculty appointment is to be laid off for any of the reasons set forth in section (1), the following criteria and procedures will be used:~~

~~(a) When the district president becomes aware of a problem(s) facing the college district which may necessitate a reduction in faculty employees, he shall immediately notify the recognized faculty employee organization of the problem. This notice shall be in writing and shall include a statement of the reasons for the potential reduction in force.~~

~~(b) The district president shall meet with the recognized faculty employee organization regarding the problem(s). Such meetings shall include exchanges of information to establish the need for such reductions in faculty together with any alternatives or options which either party feels are reasonably available. Such meetings shall conclude within ten (10) working days of the date of the first meeting. The district president will document the problem supplying data that may be reasonably produced.~~

~~(c) Following notification and discussion with the recognized faculty employee organization, the district president shall make an initial determination regarding the need for a reduction in force. This need shall be determined on the basis of the need for reduction in each division and/or department of each college. Any determination by the district president regarding such a reduction in force shall only be made after consultation with the president of the affected college, its dean of instruction and the chairman of the division and/or department affected.~~

~~(d) If the number of faculty is to be reduced, the district president and the two college presidents shall decide in the case of each affected college the number of faculty employees to be reduced in each division and/or department within that college, and what course offerings, and/or other services are most necessary to maintain quality education within Community College District 5. In making these decisions the presidents shall consider but not be limited to the following factors:~~

~~(i) As to each college, the enrollment and the trends in enrollment for not less than the period covered by the immediate past budgetary fiscal year and the current fiscal year.~~

~~(ii) The goals and objectives of Community College District 5, Everett Community College, Edmonds Community College, and the State Board for Community College Education.~~

~~(iii) Information concerning vacancies occurring through retirement, resignation, and sabbaticals or other leaves of absence.~~

~~(iv) In all budget categories, expenditures for the immediate past fiscal year, expenditures to date in the current fiscal year, and anticipated budgeted expenses in the coming fiscal year.~~

~~(v) Budgeted revenue experience for the past fiscal year, budgeted revenue experience in the current fiscal year and projected revenue for the coming fiscal year.~~

~~(vi) Outside funding.~~

~~(vii) Re-assignment of faculty employees within the college or transfer to vacancies for which any affected employees are qualified and which exist at the time of the reduction in force.~~

~~(e) Those duties associated with the course offerings and/or other services determined to be most necessary to Community College District 5 shall be considered needed duties of a faculty employee.~~

~~(f) If a reduction is necessary within a division and/or department, the following order of layoff will be utilized provided there are qualified faculty employees to replace and perform all the needed duties of the faculty employee(s) to be laid off.~~

~~(i) Faculty employee(s) exceeding the district's retirement age;~~

~~(ii) Part-time faculty employees, and temporary full-time faculty employees;*~~

~~(iii) Probationary appointees with the least seniority;~~

~~(iv) Full-time tenured faculty employees with the least seniority.~~

~~(g) Seniority shall be determined by establishing the length of service with the college and/or district and shall include all periods of contracted full-time employment except as broken by termination of employment. Service shall not be considered broken during military or approved leaves of absence, and periods of layoffs, which shall count as years of service to the college and/or district.~~

~~(h) A faculty employee shall be qualified to instruct courses which each college president, with advice from his/her respective deans of instruction and appropriate division chairperson determines the faculty employee is qualified to instruct.~~

~~(i) The district president and the two college presidents will review the impact of the proposed layoff to insure that it does not adversely affect the Affirmative Action program of District 5.~~

~~(j) Reduction in force lists for each college shall be established by division and/or department and shall be maintained by the district president. The names of full-time tenured faculty employees who have been laid off shall appear on those lists for all positions in which they have taught during their period of employment with Community College District 5, Everett Junior College, and/or Everett Community College and Edmonds Community College, or in which they have demonstrated qualifications to teach. Such faculty employees shall have their names maintained on applicable lists for a period of two (2) calendar years from the date of their layoff unless such faculty employee declines in writing within fifteen (15) calendar days an offer for which he/she is qualified or unless such faculty employee fails to respond within thirty (30) calendar days to an offer for which he/she is qualified sent by registered mail to his/her last known address. Notification of such offer shall also be provided to the recognized faculty employee organization.~~

~~(k) Any faculty employee holding a faculty appointment or probationary faculty appointment who is laid off under this policy shall have the following status:~~

~~(i) Faculty who are qualified shall, according to seniority, be offered unfilled positions at any location within the district, and shall have the right to fill any new position without going through the ordinary hiring process. This procedure shall be accomplished by a memo of transfer by the district president.~~

~~(ii) Any faculty employee laid off under this policy shall be the first person hired for positions for which he/she is qualified in all programs offered by the college, subject to the limitations set forth in paragraph (3)(h) of this regulation.~~

~~*Temporary full-time faculty employees such as replacements for tenured faculty on leave, appointments for short-term special projects, and instructors for specially funded pilot and/or experimental programs.))~~

OBJECTIVE AND DEFINITION. The objective of this policy is to provide a means whereby the reduction of the academic employee work force may be accomplished in an orderly manner in the event that emergency circumstances arise. Such circumstances are defined as follows:

(1) Inadequate funding to the college or to a specific program or individual discipline within the college.

(2) Program termination or reduction.

(3) Significant decreases in enrollment in the college or in some program or individual discipline.

(4) Changes in education policy.

AMENDATORY SECTION (Amending Order 73-1, filed 11/29/73)

WAC 132E-129-020 ((~~COMMUNITY COLLEGE DISTRICT 5—PROCEDURE FOR REDUCTION IN FORCE—CREATION OF SPECIAL REVIEW COMMITTEE. (1) A special review committee shall be created for the express purpose of hearing cases and making recommendations relating to the layoff of faculty employees holding full-time probationary appointments prior to the expiration of the written terms of their probationary appointments. This special review committee shall be established no later than October 30 of each academic year (except if this provision is passed after October 15, of any academic year, the special committee will be chosen within thirty days after passage of this provision), and shall be comprised of the following members:~~

~~(a) One member and one alternate chosen by the district president.~~

~~(b) Three faculty employees and three alternates elected by the full-time faculty and department heads acting in a body and through the recognized faculty employee organization.~~

~~(c) One division chairman and one alternate elected by the division chairmen acting as a body.~~

~~(2) All full-time faculty employees of District 5 shall be eligible for election.~~

~~(3) The term of appointment will be for one year.~~

~~(4) The special review committee will select one of its members to serve as chairman.~~

~~(5) In all instances in which the district president makes a preliminary determination under WAC 132E-129-010 that a reduction in force is necessary, he shall take the following steps:~~

~~(a) Notify in writing those faculty employees he is recommending to be laid off, which notice shall contain:~~

~~(i) The grounds for layoff in reasonable particularity.~~

~~(ii) A statement of the legal authority and jurisdiction under which the hearing is to be held, with reference to any applicable district rules and regulations.~~

~~(iii) A statement that if the faculty employee makes a request within 10 working days of receipt of the notice, he is entitled to a hearing before the special review committee.~~

~~(iv) A copy of the Community College District 5 Reduction in Force Policy.~~

~~(b) Call into action the special review committee and deliver a copy of the above notice to the chairman of the special review committee.~~

~~(6) After receiving the district president's recommendation for layoff, the affected faculty employee may request a hearing within the following ten (10) days. If the district president does not receive this request within ten (10) days, the faculty employee's right to a hearing shall be deemed waived.~~

~~(7) If the district president receives a written request for a hearing, he shall promptly notify both the special review committee and the Board of Trustees.~~

~~(8) The special review committee shall after receiving notice from the district president, establish a date for the hearing, providing the faculty employee, district president and Board of Trustees with twenty (20) days notice of such hearing, including the time, date and place of hearing.~~

~~(9) At the hearing the special review committee shall:~~

~~(a) Hear testimony from all interested parties and receive any evidence offered by same;~~

~~(b) Afford the faculty employee whose case is being heard the right of cross-examination and the opportunity to defend himself and be represented by legal counsel;~~

~~(c) Afford the college administration the right to be represented by an assistant attorney general;~~

~~(d) Prepare recommendations on the action they propose be taken and submit such recommendations to the Board of Trustees;~~

~~(10) The Board of Trustees, upon receipt of notice from the district president of the request for hearing, shall appoint an impartial hearing officer. Such hearing officer shall not be a voting member of the special review committee, and shall have the following responsibilities:~~

~~(a) Preside over and conduct the hearing.~~

~~(b) Make all rulings regarding the evidentiary and procedural issues presented during the course of the special review committee hearing;~~

~~(c) Meet and confer with the members of the special review committee and advise them in regard to procedural and evidentiary issues considered during the course of the committee's deliberations;~~

~~(d) Appoint a court reporter, who shall operate at the direction of the hearing officer, and shall record all testimony, receive all documents and other evidence introduced during the course of hearings, and record any other matters related to the hearing as directed by the hearing officer;~~

~~(c) Prepare and forward to the Board of Trustees within fifteen (15) calendar days of the conclusion of the hearing a complete record, which shall include:~~

~~(i) All pleadings, motions and rulings;~~

~~(ii) All evidence received or considered;~~

~~(iii) A statement of any matters officially noticed;~~

~~(iv) All questions and offers of proof, objections and rulings thereon;~~

~~(v) Proposed findings and exceptions;~~

~~(vi) A copy of the recommendations of the special review committee.~~

~~(11) A copy of the record prepared by the hearing examiner shall be transcribed and furnished upon request to the faculty employee whose case is being heard.~~

~~(12) In the case of a reduction in force of more than one faculty employee, the hearing examiner may consolidate all matters into a single hearing.~~

~~(13) The hearing shall be closed unless the faculty employee requests an open hearing.~~

~~(14) Within fifteen (15) calendar days of the conclusion of the hearing, the special review committee shall present the faculty employee, district president, and Board of Trustees with its recommendation on the action they propose be taken. The special review committee's recommendations shall be advisory only and in no respect binding in fact or law upon the Board of Trustees.~~

~~(15) The Board of Trustees shall meet within a reasonable time subsequent to its receipt of the special review committee recommendations to consider those recommendations. The Board of Trustees shall afford all parties the right to oral and written argument with respect to whether they will lay off the faculty employee involved. The Board of Trustees may hold such other proceedings and admit such other evidence as they deem advisable before reaching their decision. A record of the proceedings at the Board level shall be made and the final decision shall be based only upon the record made before the Board and the special review committee, including the briefs and oral arguments. The decision to lay off or not to lay off shall rest, with respect to both the facts and the decision with the Board of Trustees after giving reasonable consideration to the recommendations of the special review committee. The Board of Trustees shall within fifteen (15) days following the conclusion of their review, notify the affected faculty employee in writing of its final decision.~~

~~(16) Except for such simple announcements as may be required covering the time of the hearing and similar matters, no public communication about the case shall be made by the faculty employee, the faculty organization, the special review committee or administrative officers of the Board of Trustees until all administrative proceedings and appeals have been completed.~~

~~(17) Any laid off faculty employee shall have the right to seek judicial review of the final decision of the Board of Trustees within a reasonable time after receipt of the notice of layoff. The filing of an appeal shall not stay enforcement of the decision of the Board of Trustees.))~~

PROCEDURES FOR DETERMINING THE NECESSITY. (1) In the event that the district president determines that a reduction in force may be necessary, he shall give notice of the potential reduction in force and extent thereof to the recognized academic employee organization. This notice shall be in writing and shall include the reasons upon which the district president's conclusion shall have been based.

(2) Within five days from the date this notice is received, a three member committee of the recognized academic employee organization shall meet with the district president regarding the problems arising out of the emergency situation facing the college. Such meetings shall include exchange of information concerning:

(a) The potential need to implement a reduction in force; and

(b) Any alternatives or options which either party considers reasonably available. Such options may include:

(i) Examination of the college budget by the administration and academic employee organization for the purpose of identifying potential budget savings.

(ii) The transfer of academic employees from one area or division to another in instances wherein an individual has adequate qualifications.

(iii) Providing the means by which an academic employee threatened by a potential reduction in force can gain additional competencies in those areas considered necessary to the maintenance of quality education within District V. These means would include: Sabbatical leave priority, transfer to an administrative or nonteaching position, use of activity supervision as part of the academic load, arrangement of employment schedule, etc.

(iv) Use of summer quarter and/or night classes as a regular part of the college year, in an emergency situation, to give an employee a full academic load.

(v) Encouragement of nonmandatory early retirements in those instances wherein such retirements would work little or no hardship upon the retiree and would provide a means whereby the college might continue to offer employment to a less senior academic employee threatened by reduction in force.

During these discussions the district president will document his findings by supplying data that may be reasonably produced. Such meetings shall conclude within ten working days from the date of the first meeting between the district president and the recognized academic employee organization. In the event that the academic employee organization fails to respond to the notice issued by the district president, or upon the conclusion of ten days, the district president shall submit his recommendations to the Board of Trustees.

(3) In the event the district president determines a reduction in force to be necessary, he shall develop and submit to the Board of Trustees recommendations regarding the extent of such reduction. Such recommendations shall protect the instructional capacity and flexibility required to maintain the highest quality education possible for students. The academic employee organization may simultaneously present any alternatives to reduction at its discretion.

(4) The Board of Trustees in its role of appointing authority shall make the final determination regarding the necessity of a reduction in force and extent thereof. Any court review of such decisions shall not act as a stay

to any further actions taken by the employer in accordance with this Appendix.

NEW SECTION

WAC 132E-129-030 LAY-OFF UNITS. (1) Each division at each campus shall constitute a lay-off unit.

(2) The district personnel officer shall maintain an updated list reflecting new hires and changes in work assignments of each individual academic employee. Such list shall rank each employee in the appropriate unit in accordance with the seniority procedures defined herein and shall designate whether the individual is a probationary or tenured academic employee.

(3) Nonacademic employees who hold tenure under the laws of the state of Washington shall be included in the above lists for informational purposes only.

NEW SECTION

WAC 132E-129-040 SENIORITY. Seniority shall be determined by establishing the date of the signing of the first full-time contract for the most recent period of continuous full-time professional service for Community College District V which shall include all authorized leaves of absence. The longest terms of employment as thus established shall be considered the highest level of seniority. In instances where faculty members have the same beginning date of full-time professional service, seniority shall be determined in the following order:

(1) First date of the signature of a letter of intent to accept employment or first date of signature of an employment contract;

(2) First date of application for employment.

NEW SECTION

WAC 132E-129-050 IMPLEMENTATION OF REDUCTION IN FORCE. (1) If the number of academic employees is to be reduced, the district president shall decide which course offerings and/or support services are most necessary to maintain quality education in the district. The district president shall declare the duties associated with such course offerings or support services to be needed duties of an academic employee and thus subject to protected status in reduction in force decisions. The district president shall consider, but not be limited to, the following factors:

(a) The enrollment and the trends in enrollment for six consecutive quarters (excluding summer quarters), if applicable, and their effect upon each lay-off unit.

(b) The goals and objectives of Community College District V and the State Board for Community College Education.

(c) Information concerning vacancies occurring through retirement, resignation, sabbaticals or other leaves of absence.

(2) The district president shall then decide the number of academic employees to be laid off in each lay-off unit. Such decision shall observe the protected status of certain courses and support services.

(3) Within each affected lay-off unit, the district president shall observe the following order of lay-off:

First - Part-time academic employees,

Second - Temporary academic employees in order of least seniority,

Third - Full-time probationary employees in order of least seniority,

Fourth - Full-time tenured employees in order of least seniority.

The above order and/or application of seniority may be interrupted in the event that:

(a) Strict adherence to it would result in no qualified individual being available to fully perform all duties of a protected course or support service, or

(b) Strict adherence to it would cause a regression in the progress of the district toward its affirmative action goals.

Such matters shall be held in accordance with WAC 132E-128-080, excluding subsection (3)(a).

NEW SECTION

WAC 132E-129-060 RIGHTS OF LAID OFF ACADEMIC EMPLOYEES. Recall lists shall be created and maintained for each affected lay-off unit within District V. The names of those academic employees laid off shall be placed on the appropriate recall lists according to seniority. Recall shall be in order of reverse seniority; those qualified academic employees at the highest levels of seniority will be the first ones considered for recall. The right of recall shall extend three calendar years from the date of actual lay-off. No new hires shall be permitted to fill academic employee vacancies at the district unless there are no qualified academic employees on the recall lists to fill the vacancies. The name of any academic employee refusing a recall offer shall be removed from the recall list, and said academic employee will no longer be considered eligible for recall. It is the responsibility of those academic employees desiring recall to furnish the district with the appropriate addresses to which notices and other pertinent recall information can be sent. Upon recall, academic employees shall retain all benefits such as sick leave, tenure, and seniority which had accrued up to the date of lay-off.

NEW SECTION

WAC 132E-129-070 SPECIAL PROVISIONS. Upon the request of an academic employee laid off for reasons of this policy, the district president shall write a letter to other institutions of the Northwest stating:

(1) The reasons for said lay-off, (2) the qualifications of the affected academic employee, and (3) any other pertinent information which may be of assistance in securing another employment position.

WSR 79-02-019
ADOPTED RULES
COMMISSION FOR VOCATIONAL EDUCATION
[Order 79-1, Resolution 78-32-3—Filed January 16, 1979]

Be it resolved by the Washington State Commission for Vocational Education, acting at Lecture Hall, Highline Community College, Seattle, Washington, that it

does promulgate and adopt the annexed rules relating to Title 490 WAC.

Changes Have Been Made In The Following Chapters:

Chapter 490-04A Authority and Authorization
Amendatory
490-04A-010 Authority and Designation of State Board
490-04A-040 Designation of Executive Officer
New Sections
490-04A-060 Functions
490-04A-070 Administrative Structure
Repealed
490-04A-050 Administrative Structure

Chapter 490-08A Rules of Practice and Procedures
Amendatory
490-08A-010 Appeal Procedures
New Section
490-08A-001 Appeal Procedures

Chapter 490-12A Qualifications of Personnel
Repealed
Chapter 490-12A (Totally)

Chapter 490-15A Occupational Training of Rehab. Clients
Repealed
Chapter 490-15A (Totally)

Chapter 490-28A Minimum Qualifications of Personnel
Amendatory
490-28A-012 Minimum Qualifications of Local Administrative Personnel
490-28A-013 Minimum Standards for State Agency Personnel
New Sections
490-28A-001 Minimum Qualifications for Vocational Education Personnel
490-28A-002 Minimum Qualifications for Full-Time Teaching Personnel
490-28A-014 Safety and Occupational Health Practices Standards
Repealed
490-28A-010 Minimum Qualifications of Personnel
490-28A-011 Appeal Procedure
490-28A-030 Professional Improvement
490-28A-040 Review and Modification of Personnel Qualifications
490-28A-050 Program Evaluation
490-28A-060 Review and Evaluation of Personnel Preparation and Development

Chapter 490-32A Definitions—Vocational Education Activities
Amendatory
490-32A-010 Definitions for Terms
New Sections
490-32A-001 Definitions for Terms Commonly Used in Vocational Education Activities

Chapter 490-36A Local Education Agency Programs
Amendatory
490-36A-020 Local Advisory Councils
New Sections
490-36A-001 Advisory Councils and Committees
490-36A-030 Local Program/Craft Advisory Committees

Chapter 490-40A Program Development and Services
Amendatory
490-40A-010 Vocational Education Contracts and Agreements
490-40A-020 Agreements With Other Agencies
490-40A-040 Agreements Regarding Handicapped and Disadvantaged Persons
Repealed
490-40A-030 Programs, Services and Activities Undertaken by Local Educational Agencies
490-40A-050 Economically Depressed Areas or High Unemployment Areas
490-40A-060 Areas of High Youth Unemployment or School Dropout
490-40A-070 Agreements With Private Postsecondary Vocational Training Institutions
490-40A-080 Programs, Services and Activities Undertaken by the Commission
490-40A-090 Agreements With Other States
490-40A-110 Compliance With Federal Reporting Requirements

Chapter 490-44A Allocation of Funds
Repealed
490-44A (Totally)

Chapter 490-48A Vocational Youth Organizations
Amendatory
490-48A-010 Vocational Student Organizations

Chapter 490-52A Evaluation and Research
Repealed
490-52A (Totally)

Chapter 490-56A Exemplary Programs and Projects
Repealed
490-56A (Totally)

Chapter 490-60A Home and Family Life Education
Amendatory
490-60A-010 Consumer and Homemaking Education

Chapter 490-64A Cooperative Vocational Education Programs
Repealed
490-64A (Totally)

Chapter 490-68A Work Study Programs
Repealed
490-68A (Totally)

Chapter 490-72A Residential Vocational Education Schools
Repealed
490-72A (Totally)

Chapter 490-76A Fiscal Control and Fund Accounting Procedures
Amendatory
490-76A-010 Custody of Federal Funds
490-76A-020 Expenditure of Federal Funds

The Following New Chapter Have Been Added To 490 WAC:

490-02 Incorporation of Federal Regulations by Reference
490-03 Affirmative Action Policy
490-05 Full-Time Personnel and Functions to Eliminate Sex Discrimination and Sex Stereotyping
490-29 Vocational Education Personnel Training
490-31 Aprenticeship Programs
490-33 Co-op Education
490-34 Program Evaluation and Compliance Auditing
490-53 Program Improvement

This action is taken pursuant to Notice No. WSR 78-11-001 filed with the code reviser on 10/5/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Commission for Vocational Education as authorized in RCW 28C.04.060.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED November 16, 1978.
By Homer J. Halverson
Executive Director

Chapter 490-02 WAC
INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE

NEW SECTION

WAC 490-02-010 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The purpose of this section is to implement Public Law 94-482, the Federal Vocational Act of 1963, as amended, and

certain regulations promulgated thereunder, by the office of education of the Department of Health, Education and Welfare. To this end the Washington State Commission for Vocational Education hereby adopts by reference into the Washington Administrative Code the following federal regulations as contained in 45 CFR Sec. 104 (Federal Register, Vol. 42, No. 191—Monday, October 3, 1977) as now or hereafter amended:

SUBPART I–STATE ADMINISTRATION

Sec.

104.1 Scope.
104.2 Purpose.
104.3 Applicability of General Education Provisions Regulations.
104.4 Cross reference to definitions.
104.5 Requirements under Part B of the Education of the Handicapped Act.

State Board

104.31 Establishment of State board.
104.32 Responsibilities of the State board.
104.33 Delegation of functions.
104.34 State administration and leadership.

Full–Time Personnel and Functions to Eliminate Sex Discrimination and Sex Stereotyping.

104.71 Scope.
104.72 Selection of full–time personnel to eliminate sex discrimination and sex stereotyping.
104.73 Definitions.
104.74 Funds for full–time personnel and functions.
104.75 Functions of full–time personnel.
104.76 Studies to carry out functions.

State Advisory Council

104.91 Establishment and certification.
104.92 Membership.
104.93 Functions and responsibilities.
104.94 Meetings and rules.
104.95 Staff and services.
104.96 Fiscal control.
104.97 Annual evaluation report.

Local Advisory Councils

104.111 Establishment of local advisory councils.
104.112 Duties of local advisory councils.
104.116 Vocational education information data system.

National and State Occupational Information Coordinating Committees

104.121 Establishment of National Occupational Information Coordinating Committee.
104.122 Requirement to establish State occupational information coordinating committees.
104.123 Duties of the State occupational informational coordinating committee.

General Application

104.141 Requirement for filing a general application.

Development of Five–Year State Plan

104.161 Submission of five–year State plan.
104.162 Representation required in the development of the five–year State plan.
104.163 Meetings of participating representatives.
104.164 State board adoption of the five–year State plan.
104.165 Public hearings on the five–year State plan.
104.171 Certification of plans.
104.181 Content of five–year State plan.
104.182 Procedures to assure compliance with the general application.
104.183 Assessment of employment opportunities.
104.184 Goals to meet employment needs.
104.185 Funding to meet employment needs.
104.186 Funding to meet program (purpose) needs.
104.187 Policies for eradicating sex discrimination.
104.188 Coordination between manpower training programs and vocational education programs.

Development of Annual Program Plan and Accountability Report

104.202 Due date of annual program plan.
104.203 Due date of annual accountability report.
104.204 Representation required in the development of the annual accountability report.
104.205 Meetings of participating representatives.
104.206 State board adoption of the annual program plan and accountability report.
104.207 Public hearings on the annual program plan and accountability report.
104.221 Content of annual program plan for fiscal year 1978.
104.222 Content of annual program plans for the fiscal years following 1978.
104.241 Content of the accountability report.

Approval of Five–Year State Plan and Annual Program Plan and Accountability Report

104.261 Conditions for approval of five–year State plan.
104.262 Conditions for approval of annual program plan and accountability report.
104.263 Notice of approval or disapproval.

Authority: Secs. 101–195 of Title II of Pub. L. 94–482 as further amended by Pub. L. 95–40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

Source: 42 FR 53828, Oct. 3, 1977, unless otherwise noted.

Effective Date Note: The provisions of this Part become effective Nov. 10, 1977; sec. 431(d) of the General Education Provisions Act.

Chapter 490-03 WAC
AFFIRMATIVE ACTION POLICY

NEW SECTION

WAC 490-03-010 AFFIRMATIVE ACTION POLICY. No person shall be denied, on the basis of race, sex, creed, national origin, age, physical impairment or veteran status, any of the rights and privileges accorded citizens of the United States in the recruitment and registration as students in vocational preparation and supplementary programs or in the employment as vocational educators within the common school districts, community college districts, state agencies or other community based organizations who receive federal, state or local vocational education funds.

Special emphasis shall be given to the recruitment, registration and placement of persons who are disadvantaged, handicapped and/or members of minority groups, regardless of sex or occupational tradition.

All recipients and contractors delivering vocational education services under the Washington State Plan for Vocational Education shall implement by October 1, 1978 such a policy which shall be maintained in their records for compliance audit purposes.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-04A-010 AUTHORITY AND DESIGNATION OF STATE BOARD. (1) The Washington State Commission for Vocational Education shall be responsible for complying with federal regulations and directives to ensure the coordination of the development and maintenance of a state plan for vocational education((~~, but the initial planning shall be accomplished by the secondary and postsecondary education system~~)). Prior to the adoption of the state plan, the commission shall ((~~request comments from the Council on Postsecondary Education (1202 Commission)~~)) be advised by the state plan planning committee, the Council for Postsecondary Education, and the Advisory Council for Vocational Education. The commission is the sole agency for the receipt and allocation of federal funds in accordance with the state plan. The commission shall be the primary state liaison with the federal government for the state plan for vocational education. The commission is further authorized to take whatever action is necessary to ensure compliance with federal vocational education enactments and state legislative and administrative directives concerning vocational education. The supervision of the state plan shall be carried out by the commission; however, daily administration of the state plan shall be the responsibility of the Superintendent of Public Instruction and the State Board for Community College Education. In addition, the commission is responsible to administer or supervise the administration of the state plan in any other public or nonpublic agency within the state that is subject to the administrative authority of the state plan and the provisions of this chapter.

(2) Throughout this chapter, any reference to the commission for vocational education, hereinafter referred to as the commission specifically refers to the state board defined and designated in conformance with ((~~title 20, U.S.C. and Title 45, Chapter 1, Part 102 C.F.R. and P.L. 90-576, Sec. 108(8) and 123(a)(2) and C.F.R. 102.32(a) and (a)~~)) P.L. 94-482 and chapter 174, Laws of 1975((~~;~~)) 1st ex. sess.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-04A-040 DESIGNATION OF EXECUTIVE OFFICER. (1) The commission, in accordance with section 10, ((~~of~~)) chapter 174, Laws of 1975((~~;~~)) 1st ex. sess., shall employ a full-time executive director, who shall also be the full-time state director of vocational education, hereafter identified and referred to as the "state director", as mandated by 104.34 of the Rules and Regulations contained in the Federal Register, Vol. 42, No. 191, dated October 3, 1977, and/or "director", and such other personnel as may be necessary to carry out its purposes.

(2) The ((~~Executive~~)) state director shall be appointed by the commission and serve at its pleasure((~~, such appointment giving due regard to his fitness and background in vocational education and his knowledge of and recent practical experience in the field of vocational education administration~~)).

(3) The ((~~Executive~~)) state director shall devote ((~~his entire~~)) full time to the duties of ((~~his~~)) the office and shall not be actively engaged or employed in any other business or have any substantial duties outside of the vocational education program. ((~~He~~)) The director shall have no direct pecuniary interest in or any stocks, bonds, or other holdings in any business selling supplies in the educational field in the state or that is a proprietary vocational school as defined under state statute.

(4) The ((~~Executive~~)) state director, under the commission's supervision, shall be in charge of the offices of the commission and responsible for the commission's staff. ((~~He~~)) The director shall, subject to the commission's approval and consistent with chapter 41.06 RCW, the State's Civil Service Law, appoint such field and office personnel, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the commission.

(5) The ((~~Executive~~)) state director, or ((~~his~~)) a designee, shall attend all meetings of the commission and shall serve as secretary to the commission thereat, recording and maintaining on file the proceedings of all meetings and appropriate registers of the commission's resolutions and adopted orders. ((~~He~~)) The director shall serve as liaison officer between the commission and other federal, state, regional, and other governmental and educational agencies, the congress, state legislature, and the federal and state executive branches of government, in all matters pertaining to the commission's responsibilities.

(6) The commission may, by resolution, delegate to the ((~~Executive~~)) state director those functions it deems necessary to the operation of the commission. ((~~(P.L. 90-576, and C.F.R. 102.32(a)~~)) (P.L. 94-482 and chapter 174, Laws of 1975((~~;~~)) 1st ex. sess.((~~)~~)))

NEW SECTION

WAC 490-04A-060 FUNCTIONS. (1) The commission shall have the functions as specified in chapter 28C.04 RCW.

(2) Under the state plan the commission shall make periodic compliance audits at least once a biennium of the vocational education programs individually and jointly conducted by the common schools and community colleges to insure compliance with the state plan.

(3) The commission will be responsible for:

(a) Coordination of the development of policy with respect to programs under the act;

(b) Coordination of the development of the five-year state plan, the annual program plan, and the accountability report;

(c) The submission to the commissioner of the five-year state plan, the annual program plan, and the accountability report;

(d) Consultation with the state advisory council on vocational education and with other state agencies, councils, and individuals; and

(e) The submission to the administrator of the national center for education statistics of the information required for the national vocational education data reporting and accounting system pursuant to section 161(a) of the act.

NEW SECTION

WAC 490-04A-070 ADMINISTRATIVE STRUCTURE OF THE COMMISSION FOR VOCATIONAL EDUCATION. The commission shall provide administration as follows:

(1) State Level Vocational Education Administration:

(a) Direct staff and support services supervised by the commission through the state director, including but not limited to an Administrative Unit, a Planning and Auditing Unit, a Vocational Equity Unit and a Research Coordinating Unit.

(b) Purchased staff and support services provided respectively by the Superintendent of Public Instruction and the Director of the State Board for Community College Education.

(c) The responsibilities of these staff and support services shall be explicitly delineated in the five-year and annual program plans for vocational education for the state of Washington.

(d) The commission reserves for itself the responsibility to determine the level of staff and support services deemed necessary to perform state-level vocational education administration; and to reflect such decisions in the five-year and annual program plans, and in the Commission's Biennial Budget Request to the Governor and related annual allotment requests.

(2) Other Administration: Staff and support services supervised by the commission through the state director, including but not limited to a Fire Services Training Unit, a Northwest Curriculum Management Center, a Veterans Training and Course Approval Unit and a CETA Vocational Education Services Program Unit.

(a) Funding for these staff and support services will be provided by federal or state funds as is deemed appropriate to the requirements of the federal or state agencies which have ultimate funding authority for these services.

(b) The level of these staff and supportive services shall be reflected in the Commission's Biennial Budget Request to the Governor and its related annual allotments.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 490-04A-050 ADMINISTRATIVE STRUCTURE OF THE COMMISSION FOR VOCATIONAL EDUCATION.

Chapter 490-05 WAC
FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING

NEW SECTION

WAC 490-05-001 FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING. In addition to the rules and regulations relating to Full-Time Personnel and Functions to Eliminate Sex Discrimination and Sex Bias, contained in Sections 104.72 through 104.76, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-05-020 STUDIES TO CARRY OUT FUNCTIONS. Program improvement and supportive services funds may be used to support studies necessary to carry out the responsibilities of staff assigned to bring about the elimination of sex bias and sex stereotyping in vocational education.

NEW SECTION

WAC 490-05-030 SPECIAL CONSIDERATIONS AND INCENTIVES FOR THE REDUCTION OF SEX BIAS AND SEX STEREOTYPING IN VOCATIONAL EDUCATION. Eligible recipients shall, in developing plans, include processes that will assist and encourage actions which will reduce sex stereotyping and sex bias, and provide equal access to all vocational programs and activities for both sexes, and promote nontraditional enrollment for both sexes.

NEW SECTION

WAC 490-08A-001 APPEAL PROCEDURES. In addition to the rules and regulations relating to Appeal Procedures, contained in Section 104.293, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-08A-010 APPEAL PROCEDURES. (1) ((~~Any educational institution or educational authority~~)) An eligible recipient which is dissatisfied with the action of ((~~the Commission~~)) a state educational agency with respect to approval of an application ((~~by an educational agency for a grant and~~/))or funding pursuant to this title, ((~~the educational agency~~)), after exhausting the established appeal procedures of the parent agency, may appeal the decision ((~~of~~)) to the commission, in writing, within ((~~30~~)) thirty days from the date of the receipt of the notification of the final action ((~~was~~)) taken ((~~on the application by the Commission. The educational agency will be notified in writing as to time and place of the hearing~~)) by the agency.

(2) ((~~The appeal procedure provides for the adjudication of dissatisfactions wherever they occur and the adjudicating body as provided for all formal appeals shall be the Commission for Vocational Education. In the event a local educational center is dissatisfied with a decision made by either one of the two contracting agencies, then an appeal can be made to the Commission. Similarly, the contracting agency may appeal in the event of dissatisfaction with actions taken by a local education center. It shall be the responsibility of the Commission to resolve all disputes in vocational education that can not otherwise be resolved by the parties involved.~~)) Eligible recipients dissatisfied with a commission staff decision may appeal directly to the commission within thirty days of the decision notification. The commission must acknowledge the appeal notice within thirty days, schedule and conduct hearings within ninety days and inform the appellant of the commission's decision within thirty days after the hearing.

(3) ((~~Upon the receipt of the petition from an educational agency or authority, the Commission shall give due deliberation and notice as provided for in chapter 34.04 RCW and chapter 1-08A WAC, and hearing shall be provided as stipulated in the regulations. If there is a hearing, there will be a written record of that hearing.~~)) Other disputes related to vocational education in Washington state will be adjudicated according to chapter 490-37 WAC.

REPEALER

Chapter 490-12A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-12A-010 QUALIFICATIONS OF TEACHERS OF PRACTICAL NURSING.
(2) WAC 490-12A-020 QUALIFICATIONS OF TEACHERS IN TRADE AND INDUSTRIAL EXTENSION CLASSES—SHOP AND TRADE PRACTICE TEACHERS.
(3) WAC 490-12A-022 QUALIFICATIONS OF TEACHERS IN TRADE AND INDUSTRIAL EXTENSION CLASSES—RELATED TECHNICAL TEACHERS.
(4) WAC 490-12A-024 QUALIFICATIONS OF TEACHERS IN TRADE AND INDUSTRIAL EXTENSION CLASSES—TEACHERS OF GENERAL CONTINUATION CLASSES.
(5) WAC 490-12A-030 QUALIFICATIONS OF TEACHERS OF HOME ECONOMICS EDUCATION—HOME ECONOMICS TEACHERS.
(6) WAC 490-12A-032 QUALIFICATIONS OF TEACHERS OF HOME ECONOMICS EDUCATION—TEACHER FOR CHILD DEVELOPMENT LABORATORY IN THE HOME ECONOMICS PROGRAM.
(7) WAC 490-12A-034 QUALIFICATIONS OF TEACHERS OF HOME ECONOMICS EDUCATION—RELATED SUBJECTS TEACHER.
(8) WAC 490-12A-036 QUALIFICATIONS OF TEACHERS OF HOME ECONOMICS EDUCATION—QUALIFICATIONS OF TEACHERS FOR OUT-OF-SCHOOL GROUP.
(9) WAC 490-12A-040 DISTRIBUTIVE EDUCATION—QUALIFICATION OF TEACHERS AND COORDINATORS—EVENING EXTENSION CLASSES.
(10) WAC 490-12A-042 DISTRIBUTIVE EDUCATION—QUALIFICATION OF TEACHERS AND COORDINATORS—PART-TIME EXTENSION CLASSES.
(11) WAC 490-12A-044 DISTRIBUTIVE EDUCATION—QUALIFICATION OF TEACHERS AND COORDINATORS—PART-TIME COOPERATIVE CLASSES.
(12) WAC 490-12A-046 DISTRIBUTIVE EDUCATION—QUALIFICATION OF TEACHERS AND COORDINATORS—TEACHERS OF RELATED SUBJECTS.
(13) WAC 490-12A-050 QUALIFICATIONS OF TEACHERS OF AGRICULTURE—REGULAR TEACHER FOR ALL-DAY, DAY-UNIT, YOUNG FARMER, ADULT FARMER OR COMBINATIONS OF THE SAME.
(14) WAC 490-12A-052 QUALIFICATIONS OF TEACHERS OF AGRICULTURE—SPECIAL TEACHERS.

REPEALER

Chapter 490-15A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-15A-001 AUTHORIZATION.
(2) WAC 490-15A-004 CONDITIONS REQUIRED FOR APPROVAL.
(3) WAC 490-15A-008 STANDARDS REQUIRED FOR APPROVAL.
(4) WAC 490-15A-012 PROCEDURES FOR APPROVAL.
(5) WAC 490-15A-016 REFUND POLICY.
(6) WAC 490-15A-020 ADVERTISING—PUBLICIZING REGULATIONS.
(7) WAC 490-15A-024 DURATION OF APPROVAL—NON-TRANSFERABILITY.
(8) WAC 490-15A-028 REPORTS—VISITATION.

NEW SECTION

WAC 490-28A-001 MINIMUM QUALIFICATIONS OF VOCATIONAL EDUCATION PERSONNEL. (1) General policy. This section of the Washington Administrative Code contains the policies relating to minimum qualifications and selection standards for vocational personnel. These policies apply to all personnel in all agencies involved in vocational education under the Washington State Plan for Vocational Education. Provisions for exceptions to the codified standards shall be identified in the requirements and implementing procedures.

No person as a result of the policies and the requirements and implementing procedures will be exempt from any licensing requirements imposed on the particular area of responsibility.

(2) Requirements and implementing procedures. The Superintendent of Public Instruction and the State

Board for Community College Education each must adopt requirements and implementing procedures showing specifically how the state plan policies and standards will be implemented. The offices of the Superintendent of Public Instruction and the State Board for Community College Education shall provide annually to the commission evidence that their adopted personnel standards meet or exceed the minimum personnel standards set forth in this chapter.

NEW SECTION

WAC 490-28A-002 MINIMUM STANDARDS FOR FULL-TIME TEACHING PERSONNEL. (1) Work experience. Must have recent work experience beyond the learning period as a fully qualified worker in the occupation which will be taught. The requirements and implementing procedures shall indicate the minimum requirements which must be met and the measures which will be used. In no case will the minimum work experience in the occupation be less for teachers than the amount of time normally required for beginning students to learn the occupation, or one year, whichever is greater. The definition of "recent" shall be included in the requirements and implementing procedures.

Provisions for exceptions to the above may be made in the requirements and implementing procedures for new and emerging occupations in which sufficient persons with enough work experience are not available.

(2) Competencies for teaching. Must have demonstrated the competencies required for teaching. The requirements and implementing procedures shall indicate the minimum requirements which must be met and the measures which will be used to assure professional and technical teaching preparation. This may be fulfilled and measured in various ways, some of which are: Professional vocational teaching methods courses taken, teaching experience, appropriate supervisory experience, degrees received, teaching internships, or combinations of these. There will be evidence in the preparation program of all vocational teachers that the program contains a substantive amount of instruction in the effective utilization of advisory councils and program/craft advisory committees.

(3) Maintaining and improving occupational competencies. The requirements and implementing procedures shall indicate the acceptable procedures for maintaining and for improving occupational competence.

(4) Maintaining and improving teaching competencies. The requirements and implementing procedures shall indicate the acceptable procedures for maintaining and for improving teaching competence.

(5) Other teaching personnel. The requirements and implementing procedures may designate various other personnel assisting the teacher and the requirements for each.

(6) Vocational counselors shall meet the work experience requirement by documenting work experience in one or more occupations other than professional education, which is cumulative to at least two years.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-28A-012 MINIMUM STANDARDS FOR LOCAL VOCATIONAL ADMINISTRATIVE PERSONNEL. (1) Teaching requirements. Must meet the minimum requirements for teaching personnel as set forth in the particular requirements and implementing procedures relating to the policies under WAC 490-28A-010.

(a) Teaching experience. Must have taught vocational education for at least three years. The requirements and implementing procedures shall indicate the acceptable equivalent for teaching experience.

(b) Administrative or supervisory competencies. Must have demonstrated the competencies required for supervision and administration. The requirements and implementing procedures shall indicate the minimum requirements which must be met and the measures which will be used.

(2) ((~~Appeal Procedures. In extraordinary instances, when a hiring administrator has reason to feel that a potential vocational administrator has the necessary competencies even though he does not meet the specific requirements as developed under 490-28A-010 WAC, the following appeal procedure may be invoked. This procedure may result in a probationary exception leading to full authorization:~~)) If such exceptions are to be executed, the method(s) for doing so will be contained in the Requirements and Implementing Procedures of SBCCE and SPI.

(((~~(a) The hiring administrator shall submit the following to the appropriate state agency (Superintendent of Public Instruction or State Board for Community College Education):~~

~~(i) A written statement, with appropriate documentation, which clearly states why the school administrator feels a probationary exception should be made.~~

~~(ii) Letters from at least four persons who hold responsible positions in vocational education indicating reasons why a probationary exception should be made.~~

~~(iii) A complete resume' of the work experience, education, and other pertinent experiences and accomplishments of the applicant.~~

~~(iv) A written statement from the potential vocational administrator indicating reasons for requesting that a probationary exception be made.~~))

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-28A-013 MINIMUM STANDARDS OF STATE AGENCY PERSONNEL. (((~~(1)~~))) Minimum Standards for State Agency Administrators (state ((~~director of vocational education, state~~)) vocational education program administrators, ((~~and~~)) state vocational education program directors, vocational education program specialists and vocational education teacher educators). In accordance with federal (Public Law 88-352) and state (chapter 49.60 RCW) laws, Presidential Executive Orders, the Governor's Executive Orders, the rules and regulations of the Equal Employment Opportunity

compliance guidelines, and the rules of the State ((~~Department of~~)) Personnel Merit Systems, the agencies and the commission ((~~for Vocational Education~~)) shall employ ((~~its~~)) their staff ((~~personnel~~)) without discriminatory practices because of political or religious opinions or affiliations, or race, sex, or age.

((~~(a)~~)) (1) Teaching experience. Must have taught vocational education for at least three years. Those state agency vocational education program specialists who have direct supervision and/or responsibility for vocational curriculum matters shall have had three years of recent vocational teaching experience within the area of specialty.

((~~(b)~~)) (2) Administration or supervision experience. Must have had at least three years experience in supervision, direction or management of personnel in vocational education.

((~~(c)~~)) (3) Education. At least 300 clock hours or 30 quarter credit hours in courses related to the responsibilities or documented evidence of significant accomplishments in the area of responsibilities.

((~~(2) Minimum Standards for State Agency Vocational Education Program Specialists. In accordance with federal (Public Law 88-352) and state (chapter 49.60 RCW) laws, Presidential Executive Orders, the Governor's Executive Orders, the rules and regulations of the Equal Employment Opportunity compliance guidelines, and the rules of the State Department of Personnel Merit System, the Commission for Vocational Education shall employ its staff personnel without discriminatory practices because of political or religious opinions or affiliations, or race, sex, or age.~~

~~(a) Experience. At least three years recent (has worked within the area of specialty sometime during the past three years) experience in the area of responsibility.~~

~~(b) Education. At least 300 clock hours or 30 quarter credit hours in courses related to the responsibilities or documented evidence of significant accomplishments in the area of responsibilities.~~

~~(c) Teaching Experience. Those state agency vocational education program specialists who have direct supervision and/or responsibility for vocational curriculum matters shall have had three years of recent vocational teaching experience within the area of specialty.~~

~~(3) Vocational Education Teacher Educators. Must meet the minimum standards for state agency vocational education program specialist under section (a), (b), (c), and to assure acceptance of courses as Commission for Vocational Education approved vocational teacher education courses be agreed upon prior to assignment in vocational teacher education by the executive director of the Commission for Vocational Education upon recommendation by the director of leadership development with advice from vocational education professional staff.~~

~~In accordance with federal laws (Public Law 88-352), state laws (chapter 49.60 RCW), Presidential Executive Orders, the Governor's Executive Orders, the rules and regulations of the Equal Employment Opportunity compliance guidelines, and the rules of the State Department of Personnel Merit System, the Commission for Vocational Education shall employ its staff personnel without discriminatory practices because of political or religious opinions or affiliations, or race, sex, or age.~~))

NEW SECTION

WAC 490-28A-014 SAFETY AND OCCUPATIONAL HEALTH PRACTICES STANDARDS. The vocational instructor, upon completion of teacher training, will have been trained as a safe worker and will hold a valid first aid certificate which has been issued in compliance with standards for such certificates promulgated by Washington state department of labor and industries, or other appropriate regulatory agency.

(1) Definitions:

(a) "Vocational instructor", for the purposes of these standards, shall mean any individual who is vocationally certified under the state plan for vocational education and/or who is employed as an instructor in a vocational program approved under the state plan.

(b) "Vocational program", for the purposes of these regulations, shall meet the definition agreed upon in operating criteria of the commission for vocational education.

(2) Safety and occupational health standards. The preparation for vocational teaching for all persons shall include instruction in those safety and occupational health practices common to all occupations sufficient to insure those persons knowledge of an ability to instruct students in those practices at a level consistent with the safety and occupational health practices standards adopted by the commission for vocational education.

(a) No person who receives training for vocational teaching after September 1, 1973, shall be employed by a local educational agency in a program approved under the state plan for more than ninety calendar days unless that person has met the safety and occupational health practices standards adopted by the commission for vocational education.

(i) The general safety and occupational health standards apply to all vocational personnel who teach or supervise a vocational class or program in the common schools and community colleges in the state, and all vocational personnel in proprietary schools who are required to hold vocational certification under the state plan.

(ii) This standard can be satisfied by completing a fifteen hour course in safety and occupational health taught by an instructor accredited by the SPI or SBCCE or by passing an approved examination which covers the material contained in the fifteen hour course, or by satisfactorily completing a course in safety and occupational health that has been designated by the SPI or SBCCE as meeting this requirement.

(iii) Approved courses in safety and occupational health will include, but not be limited to history, causes of accidents, classes and types of accidents, motivating safety, accident prevention, occupational health and industrial insurance.

(iv) The meeting of personnel standards to teach in a vocational program will be accepted as evidence of the individual's ability to teach to vocational students the appropriate general safety and occupational health necessary for the occupational area being taught.

(b) The safety and occupational health information needed for specific occupations may be satisfied by one of the following:

(i) Completion of a course as part of preservice training that is designed to provide the potential vocational instructor with the specific skills and knowledge of safety and occupational health pertinent to the occupation he/she is training to teach.

(ii) Completion of an in-service course that is designed to provide the vocational instructor with the specific skills and knowledge of safety and occupational health pertinent to the occupation he/she is training to teach.

(iii) Certification by the local representative advisory committee for the occupation that the vocational instructor does possess the specific skills and knowledge of safety and occupational health pertinent to the occupation he/she is training to teach, together with visible evidence that this is an integral part of the instructional program.

(iv) Where the advisory committee determines that the vocational instructor has less than the necessary skills and knowledge, an advisory committee meeting or meetings devoted to such training as is needed will satisfy the requirement. Verification of training will be the advisory committee minutes which will include the name of the vocational instructor, the name(s) of the trainer(s), evidence of the qualifications of the trainer(s), and the content of the training.

(v) The meeting of personnel standards to teach in a vocational program will be accepted as evidence of the individual's ability to teach the appropriate specific safety and occupational health necessary for the occupational area being taught.

(3) First aid. The standards for safety and occupational health practices adopted by the commission for vocational education shall, where applicable, include the requirement that certain individuals, in addition to other criteria, hold valid first aid certificates issued by or equivalent to the standards of those issued by the Washington department of labor and industries.

(a) A valid first aid certificate is required for vocational instructors in preparatory vocational programs whose instructional environment brings students into physical proximity with machinery, electrical circuits, biologicals, radioactive substances, chemicals, flammables, intense heat, gases under pressure, excavations, scaffolding and ladders, and other hazards.

(b) The determination of hazard shall be made by the safety supervisor, designated under these regulations by the local educational agency, in cooperation with the appropriate local representative advisory committee.

(c) Responsibility for insuring that appropriate staff have first aid training will rest with the district employing the vocational instructor.

(d) The specific type of first aid program required of vocational instructors will be determined by the representative advisory committee organized for the occupation for which the vocational instructor is providing training; however, cardiopulmonary resuscitation instruction is required of all vocational instructors.

(4) Specifically excluded from conformance to this requirement are:

(a) Vocational counselors.

(b) Those instructors who teach related subjects to vocational students; i.e., mathematics, english or communications skills, etc., when these are taught in classrooms rather than shops and are part of a total vocational program that is under the supervision or direction of vocational instructor(s) possessing valid first aid certificates.

(c) Physicians, registered nurses, licensed practical nurses and others when their occupational competencies and training include first aid knowledge equal to or superior to that represented by the first aid certification being required under these regulations.

(d) Vocational instructors who teach ninety hours or less per school year and whose instruction is a part of a total vocational program that is under the supervision or direction of a vocational instructor(s) possessing valid first aid certificate(s).

(5) Safety supervision. A safety supervisor shall be designated by the local educational agency. The safety supervisor shall, among other things, possess an understanding of all safety and occupational health rules, regulations and requirements affecting the employing agency(ies) or its employees; further, said supervisor shall assure that each employee demonstrates competency in all safety and occupational health rules, regulations that pertain to him/her; and assure that all safety and occupational health rules and regulations that pertain to him/her are being met. The safety supervisor shall meet all of the provisions for safety and occupational health that are mandated for vocational instructions contained in this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 490-28A-010 MINIMUM QUALIFICATIONS OF PERSONNEL.
(2) WAC 490-28A-011 APPEAL PROCEDURES.
(3) WAC 490-28A-030 PROFESSIONAL IMPROVEMENT.
(4) WAC 490-28A-040 REVIEW AND MODIFICATION OF PERSONNEL QUALIFICATION STANDARDS.
(5) WAC 490-28A-050 PROGRAM EVALUATION.
(6) WAC 490-28A-060 REVIEW AND EVALUATION OF PERSONNEL PREPARATION AND DEVELOPMENT.

Chapter 490-29 WAC
VOCATIONAL EDUCATION PERSONNEL TRAINING

NEW SECTION

WAC 490-29-001 VOCATIONAL EDUCATION PERSONNEL TRAINING. In addition to the rules

and regulations relating to Vocational Education Personnel Training, contained in sections 104.771 through 104.776, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-29-002 RESPONSIBILITY FOR VOCATIONAL EDUCATION PERSONNEL TRAINING. (1) For purposes of articulation, interstate cooperation, and essential federal liaison, the RCU director will serve as the state vocational education personnel training contact person.

(2) The purpose of vocational education personnel training is to improve the state's vocational education programs and the services which support those programs by improving the qualifications of persons serving or preparing to serve in vocational education programs. The agencies accountable for the employment of qualified teaching and administrative vocational personnel, the state board for community college education and state superintendent of public instruction, will each assume responsibility for interagency and intraagency articulation of personnel training.

Chapter 490-31 WAC
APPRENTICESHIP PROGRAMS

NEW SECTION

WAC 490-31-001 APPRENTICESHIP PROGRAMS. In addition to the rules and regulations relating to Apprenticeship Programs, contained in Section 104.515, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-31-010 VOCATIONAL RELATED INSTRUCTION FOR APPRENTICES. Vocational related and supplemental instruction for apprentices shall mean both practical, theoretical and applied instruction. This instruction shall be organized to provide the apprentice with the necessary skills and knowledge of the trade as determined by the local joint apprentice and training committee (JATC) which has been registered with the Washington State Apprenticeship Council in accordance with chapter 49.04 RCW. When apprenticeship-related instruction is offered in any educational system, the JATC will provide the following assurances:

(1) Apprentice involved in apprenticeable occupation must be at least sixteen years of age, except where higher minimum age is otherwise specified in the Apprenticeship Standards.

(2) The apprentice and the program are both registered under the apprenticeship law of the state in which the apprentice is employed or resides. An exception to this will be where the program and the apprentice are registered with the Bureau of Apprenticeship and Training, United States Department of Labor, under nationally approved standards. (Reference Apprenticeship Act chapter 49.04 RCW.)

NEW SECTION

WAC 490-32A-001 DEFINITIONS FOR TERMS COMMONLY USED IN VOCATIONAL EDUCATION ACTIVITIES. In addition to the rules and regulations relating to definitions contained in Appendix A, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the definitions set forth in this chapter, as well as those contained in Title 28C RCW.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-32A-010 DEFINITIONS FOR TERMS ((~~COMMONLY USED IN VOCATIONAL EDUCATION ACTIVITIES~~)). The following definition((~~s apply~~)) applies to all vocational education activities carried out under the authority of the commission ((~~for Vocational Education~~)):

(((~~(1) Vocational Education shall mean a planned series of learning experiences, the specific objective of which is to prepare persons to enter, continue in or upgrade themselves in gainful employment in recognized occupations and homemaking, which are not designated as professional or requiring a baccalaureate or higher degree.~~

~~(2) The term "occupational exploration" shall include prevocational education. The term occupational exploration shall mean a series of educational experiences designed to (a) assist individuals in developing their understanding of, appreciation for, aptitudes for, and abilities in recognized occupations; (b) develop an attitude of respect toward work and pride in workmanship; and (c) provide knowledge and experience to assist in the choice of an occupational program.~~

~~(3) The terms "industrial arts" and "practical arts" shall mean general education centered around the industrial and technical aspects of current living, offering orientation in and appreciation for production, consumption, and recreation through actual experiences with materials and goods, and also providing exploratory experiences which are helpful in the choice of a vocation.~~

~~(4) The term "job" market area" shall mean the geographic area for recruitment and placement of job entrants, usually determined by each industry or by a collective bargaining agreement.~~

~~(5) The term "local educational agency" shall mean any legal entity capable of performing vocational services in accordance with the provisions of the State Plan for Vocational Education.~~))

"Local program/craft advisory committee" means a local advisory committee organized to advise about a local vocational program in an occupational area such as distributive education, home and family life education, agriculture education, etc., or a local advisory committee organized to advise on specific crafts or occupations such as food merchandising, child care, carpentry, ornamental horticulture, nurses aides, etc.

Chapter 490-33 WAC
CO-OP EDUCATION

NEW SECTION

WAC 490-33-001 COOPERATIVE EDUCATION. In addition to the rules and regulations relating to Cooperative Education, contained in Sections 104.531 through 104.533, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-33-010 ASSURANCES. (1) The program provides on-the-job training that:

(a) Employs and compensates student-learners in compliance with federal, state and local laws and regulations and in a manner that will not result in the exploitation of the student-learner for private gain; and

(b) Is conducted in accordance with written training agreements between local educational agencies and employers;

(2) Procedures are developed and published for use by local educational agencies for providing ancillary services and activities to assure that quality in cooperative vocational education programs is provided for and may include preservice and in-service training for teacher coordinators, supervision, curriculum materials, travel for students and coordinators necessary to the success of such programs and their evaluations;

(3) Policies and procedures will be adopted for accounting, for continuous evaluation of cooperative vocational education programs, and for follow-up of students who have completed or left these programs;

(4) Students enrolled in, and employed as partial fulfillment of requirements of cooperative vocational education programs, will not displace regular workers doing comparable work.

No funds will be used for reimbursement of added costs to employers for on-the-job training of students enrolled in cooperative programs;

(5) Provisions shall be provided for the coordinator to have sufficient time within his/her regular work schedule to provide on-the-job supervision of the student-learners, and employment/class coordination to assure that the in-class instruction/employment combination constitute a meaningful total instruction/employment combination.

Chapter 490-34 WAC
PROGRAM EVALUATION AND COMPLIANCE AUDITING

NEW SECTION

WAC 490-34-001 PROGRAM EVALUATION AND COMPLIANCE AUDITING. In addition to the rules and regulations relating to Program Evaluations, contained in sections 104.401 through 104.405, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-34-010 EVALUATION SCHEDULE. (1) During the five-year period of the state plan, the commission is accountable for the evaluation, in quantitative terms, of the effectiveness of each formally organized program or project supported by federal, state and local funds. During this same period agencies responsible for the operation of said programs and projects shall, each year of the five-year period, evaluate the formally organized vocational programs and projects conducted by eighteen percent to twenty-two percent of the eligible recipients.

(2) Monitoring will be carried on at the state level and at the local recipient level. The monitoring will be directed at thirty percent of the local eligible recipients operating programs and projects evaluated by the appropriate state agency.

NEW SECTION

WAC 490-34-020 COMPLIANCE AUDIT. (1) RCW 28C.04.040 states in part: "... Under the state plan the commission shall make compliance audits at least once a biennium of the vocational education programs individually and jointly conducted by the common schools and community colleges to insure compliance with the state plan."

(2) Compliance audits will be conducted by statistically valid sampling techniques.

(3) The compliance audit instrument will be developed by the commission staff and adopted by the commission. Recommendations and suggestions will be solicited from the state advisory council and the agencies responsible for program operation in the development of the instrument.

NEW SECTION

WAC 490-36A-001 ADVISORY COUNCILS AND COMMITTEES. In addition to the rules and regulations relating to advisory councils contained in Sections 104.111 and 104.112, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-36A-020 LOCAL ADVISORY ((~~COMMITTEES~~)) COUNCILS. (((~~(1) Local Advisory Committees (a) A condition of approval by the Commission for Vocational Education for a vocational program shall be documentation evidencing the endorsement of that instructional program by a local advisory committee consisting of equal representation of employers and employees engaged in the vocations involved or closely related thereto. PROVIDED, that when the trade, craft, or vocation involved specifically prepares students for apprenticable trades, crafts, or vocations, the applicable Joint Apprenticeship Committee shall be represented on the advisory committee by a~~

~~minimum of one employee and one employer representative. Where satisfactory evidence if furnished to indicate that the prescribed committee composition is not appropriate to a specific program, a committee may be empanelled composed of persons who are familiar with the occupational and geographic areas served by the particular program. PROVIDED FURTHER, that the responsibility for empanelling members of the local advisory committee shall be that of the local educational agency, subject to the approval processes of the Commission for Vocational Education.~~

~~(b) In addition to securing and submitting the endorsement of the local advisory committee required for program approval, the local educational agency shall insure that the local advisory committee empanelled is active and performing its functions.~~

~~(2) General Vocational Program Advisory Committees~~

~~(a) General vocational program advisory committees assist in developing and maintaining the entire vocational program of a school or local education agency. The committees' membership should be drawn from across the occupational spectrums represented by existing and proposed programs and often from other groups of interested and concerned citizens. These committees help to identify the needs of individuals and the community; help assess labor marked requirements; contribute to establishing and maintaining realistic and practical vocational programs; participate in developing community understanding and support; aid in building the prestige of and respect for the entire program of occupational education; and, are concerned with both immediate and long-range goals.~~

~~(b) In any instance where a local educational agency is being served by more than one local advisory committee, it is recommended that the local educational agency additionally empanel a general vocational education advisory committee comprised of representation from those local advisory committees and other knowledgeable persons representing employees, employers, and the public.~~

~~(c) While the functions of the general advisory committee do not relate to the program approval criteria for individual programs, the Commission for Vocational Education shall inquire into the establishment and satisfactory functioning of appropriate general advisory committees as part of the overall evaluations connected with monitoring programs being operated by local educational agencies.~~)) Each eligible recipient receiving assistance under this act to operate vocational education programs shall establish a local advisory council to provide such agency with advice on current job needs and on the relevancy of courses being offered by such agency in meeting such needs. Such local advisory council shall be composed of members of the general public, with appropriate representation of both sexes, racial and ethnic minorities found in the program area and locality, including, but not limited to representatives of business, industry and labor, and also should include representative spokespersons for the handicapped and disadvantaged. The responsibility for empanelling members of all local advisory councils shall be that of the local eligible recipient.

(1) Each eligible recipient shall assure the appropriate state agency, in its application for federal or state funds, evidence that documentation of the establishment of a local advisory council is on file.

(2) The local advisory council may be established for:

(a) Program areas;

(b) Schools;

(c) The community; or

(d) The region in which the eligible recipient is located.

(3) When feasible, council membership should be drawn from across the occupational spectrum represented by existing and proposed programs and from other groups of interested and concerned citizens.

(4) Representatives from several local program/craft committees, or representatives of several school councils within a local education agency, having the requisite representation identified in the opening paragraph, should join together to form a general local advisory council.

(5) The local advisory council may assist the local recipient by:

(a) Helping to identify the needs of individuals and the community;

(b) Helping assess labor market requirements;

(c) Contributing to the establishment and maintenance of realistic and practical vocational programs;

(d) Participating in the development of community understanding and support;

(e) Aiding in building the prestige of and respect for the entire program of occupational education;

(f) Supporting access to all vocational programs for both sexes, racial and ethnic minorities.

(6) The local advisory council shall assist the eligible recipient in developing its application to the commission or to the agency which has been delegated the responsibility for accepting applications by the commission.

(7) The commission shall inquire into the establishment and satisfactory functioning of appropriate local advisory councils as part of the overall evaluations connected with monitoring programs being operated by local educational agencies.

NEW SECTION

WAC 490-36A-030 LOCAL PROGRAM/CRAFT ADVISORY COMMITTEES. (1) Each eligible recipient shall provide documentation that a program or craft advisory committee has been empanelled for each craft or program area, including disadvantaged and handicapped, at the most specific occupational level appropriate to the identified skill level for which training is given, except that where evidence is presented with the application for approval that a general advisory committee is more appropriate, such a committee will be allowable. Each eligible recipient shall also provide evidence that a bona fide effort is being made to assure the effective functioning of each committee. Evidence of the empanelling could include:

(a) Written documentation of appointments;

(b) Written documentation of acceptance by the appointees;

(c) Other types of verification.

(2) Evidence of a bona fide effort being made could be reflected in meeting minutes, which indicate:

(a) That an adequate number of meetings were held to assure that the input provided a positive effect on the program;

(b) That adequate prior notification of meeting dates and times have been given;

(c) That meetings have been scheduled on dates and at times to assure maximum employer and employee attendance; and

(d) Other corroboration of intent.

(3) The local program/craft advisory committee will have equal representation of employers and employees engaged in the occupation for which training is given.

(4) For programs preparing students for entry into, or upgrading in, apprenticeable trades, the applicable Joint Apprenticeship Training Committee (JATC) shall be invited to be represented equally with one or more employer and employee members or designees. Where satisfactory evidence is furnished indicating that JATC members or designees are unavailable, a committee may be empanelled composed of persons who are familiar with the occupation and geographic area served by the particular program.

(5) The responsibility for empanelling members of the local advisory committees is exclusively that of the local eligible recipient.

(6) The general responsibility of a local program/craft advisory committee is to act in an advisory capacity without administrative or supervisory responsibility. Since a local program/craft advisory committee, to be effective, must provide advice in the planning, development and evaluation of vocational programs, the activities outlined below are not to be considered all inclusive of the activities said committee may perform to assist the vocational educator and/or local eligible recipient.

(7) Specific activities in which the program/craft advisory committee can be involved are:

(a) Advise on current job needs;

(b) Evaluate the relevance of programs being offered by the eligible recipient in meeting current job needs in the occupational area for which the advisory committee was organized;

(c) Recommend program startup, continuance, discontinuance and enrollment level, that generally conforms with statewide job opportunities forecasts, unless available data indicates a variance is called for due to changes in the economy. For example, the committee can assist the vocational educator to: Make community surveys; determine and verify need for training; review past accomplishments and forecast trends; counsel and guide students in relation to the world of work; provide accurate occupational information;

(d) Make recommendations that will assure the curriculum content is consistent with current skills and knowledge of the occupations. For example, the committee can assist the vocational educator: To evaluate the programs; to plan facilities and establish standards for shop and lab planning; to establish standards for selecting equipment and instructional materials; to recognize new technical developments which require changes in the curriculum; by offering guidance and support in technical matters; to select production work to be used as instructional vehicles for accomplishing course objectives; to determine criteria for evaluating student performance; and to develop cooperative work experience programs for students;

(e) Make recommendations to assure that the instructors are experienced and knowledgeable in the occupation. For example, the committee can assist the vocational educator to: Encourage teacher training of recruits from industry; determine criteria for selecting instructors; recommend and/or recruit qualified instructors;

(f) Assist the vocational educator: By providing tangible evidence that industry is supporting the program; by providing financial, legislative and moral support; by interpreting the program to the community, to unions, to employers; by securing donations of equipment and supplies; by finding placement opportunities for students; and by placing an emphasis on providing recruitment and placement opportunities to both sexes in programs considered nontraditional in nature.

(8) If a bona fide member of an advisory committee is in disagreement with the decision of the appointing eligible recipients to the startup, continuance or discontinuance of a program about which she/he has been appointed to give advice, said member may achieve recourse by taking the following action:

(a) Presenting her/his arguments and evidence to the local administration according to the procedures established by the local agency;

(b) If satisfactory resolution of the disagreement has not taken place within ten days of the receipt of the communication by the local administration, the complaintant may present his/her arguments to the state agency having jurisdiction over the operation of the program, according to procedures established by that agency, with copies to CVE and other affected agencies.

(c) If satisfactory resolution is again not achieved within twenty days of the receipt of the information by the parent agency, the complaintant may present her/his arguments and evidence, orally and in writing, to the commission.

(d) The commission will determine whether a hearing will be held before it, or whether a formal adjudication proceeding is required.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-40A-010 VOCATIONAL EDUCATION ((~~PROGRAM DEVELOPMENT~~)) CONTRACTS AND AGREEMENTS. (1) In the development of vocational education programs, services, and activities, the commission may enter into cooperative arrangements with:

(a) Other agencies, organizations, and institutions which are concerned with manpower needs and job opportunities, such as institutions of higher education, and model city, business, labor, and community action organizations.

(b) Other agencies, organizations, and institutions concerned with the disadvantaged and handicapped persons, such as state and local vocational rehabilitation and special education agencies, public health agencies, and private organizations concerned with such persons.

(2) Such agreements should include such items as identification of responsible personnel, and plans for implementation, review, and evaluation. Copies of any ensuing agreement between the commission and other agencies, organizations and institutions shall be submitted by the commission for filing with the state plan.

(3) ((~~It is anticipated in all situations in which vocational education services will be contracted for, that a written agreement will cover the services to be rendered and that this agreement will include all the necessary information that pertains to that precise service. Such contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in the regulations and the State Plan. Such a contract shall be entered into only upon satisfactory assurance that:~~)) Provision may be made for any portion of the program of instruction on an individual or group basis by private vocational training institutions or other existing institutions capable of carrying out vocational programs through a written contract with the commission or other state or local educational agency in compliance with the directives in 104-514 of the aforementioned federal rules and regulations. The contract shall describe the portion of instruction to be provided by the institution and incorporate the standards and requirements of vocational instruction set forth in the regulations in the subpart and the approved five-year state plan.

The contract for instruction shall be entered into only upon a determination by the commission or other state and local educational agencies that:

(a) The contract is in accordance with state or local law; ((~~and~~))

(b) The instruction to be provided under contract will be conducted as a part of the vocational education program of the state and will constitute a reasonable and prudent use of funds available under the approved state plan((~~:~~));

(c) ((~~Such contract shall be reviewed at least annually by the parties concerned.~~)) The commission and/or other state or local educational agency will review the contracts with the institutions at least once a year; and

(d) The contractee has assured that all applicable federal, state and local vocational education standards are met by the contractor.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-40A-020 AGREEMENTS WITH OTHER STATE AGENCIES. (1) The procedures to be followed by the commission ((~~for Vocational Education~~)) in the matter of coordination with other state agencies shall be consistent with ((~~Section 123(a)(6) of~~)) Public Law ((~~90-576 and regulation 102.40(c) and 102.52(c)(1)~~)) 94-482 and with state law Title 28C RCW. Cooperative arrangements between the various state agencies involved will be by written contracts:

(a) Approved by the commission ((~~for Vocational Education~~)).

(b) Approved by the state head of such other system or agency.

(c) Reviewed and approved by the State Office of ((~~Program Planning and Fiscal~~)) Financial Management when required by state law.

(d) Approved as to form by the office of the attorney general.

(e) Containing the following information:

(i) Nature and purpose of agreement and compliance with law.

(ii) Agreements.

(iii) Delineation of specific areas of cooperation.

(iv) Provides for liaison.

(v) Provides for any exchanges of information.

(vi) Outlines policies and procedures to be followed.

(vii) Effective date and provisions for termination of agreement.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-40A-040 AGREEMENTS REGARDING HANDICAPPED AND DISADVANTAGED PERSONS. (1) ((~~All~~)) State and federal agencies and major organizations and institutions with a responsibility for persons handicapped and disadvantaged will be invited to be involved in the statewide planning activities in the identification of needs for vocational education programs, activities and services; in the development of appropriate programs, activities and services; and in the evaluation of the results of programs, activities and services.

(2) Identification of Handicapped Persons. Handicapped persons are identified as((~~:~~)) defined in the Federal Register, Appendix A, Vol. 42, No. 191, Monday, October 3, 1977 according to the definition in WAC 490-32A-010.

((~~(a) Having a physical or mental disability as defined in Section 102.3 of the Federal Rules and Regulations.~~

~~(b) Having a substantial handicap to employment.~~

~~(c) Having a reasonable expectation that vocational education services may render the individual fit to engage in a gainful occupation.~~

~~(d) These definitions include, but are not limited to, the following definitions of specific handicaps:~~

~~(i) Hard of hearing. Persons who have impaired hearing severe enough to require special instructional methods, materials, supplies and equipment.~~

~~(ii) Deaf. Persons who have a hearing loss of 75 to 80 decibels (ISO standards) or greater across the speech range in the better ear, and who even with amplification are unable to develop adequate language and speech.~~

~~(iii) Partially seeing. Persons whose vision is limited to 20/70 or less in the better eye after correction. Included are persons who have other medically certified conditions of the eye which require special instructional materials, equipment and services.~~

~~(iv) Blind. Persons whose visual acuity is 20/200 or less in the better eye after correction. Included also are~~

~~persons who have been medically diagnosed with conditions of the eyes that will certify them as legally blind.~~

~~(v) Orthopedically handicapped. Persons who are handicapped through congenital or acquired motor defects or health problems requiring protective educational environment to such a degree that they must have special services, materials, supplies, and equipment.~~

~~(vi) Neurologically impaired. Persons who have central nervous system dysfunction, so serious that they cannot adjust to a regular or other special education classroom without additional special services. These persons demonstrate average or above average intelligence but exhibit impaired perceptual awareness and understanding of their learning environment.~~

~~(vii) Mentally retarded. Persons who, because of retarded intellectual and social development, are incapable of being educated entirely through regular classroom instruction but who may benefit from a special education setting designed to meet their needs. I.Q. criterion is not the primary consideration.~~

~~(viii) Emotionally and socially maladjusted. Persons whose emotional development results in incompatible learning behavior which cannot be adjusted or modified to regular classroom procedures without special services. This generally includes persons who show the extremes of acting out or withdrawal behaviors included in the classification of personality disorders.~~))

(3) Identification of Disadvantaged Persons. Disadvantaged persons are identified as defined in the Federal Register, Appendix A, Vol. 42, No. 191, Monday, October 3, 1977.

~~(((a) The criteria that shall pertain in the identification of disadvantaged persons shall be the criteria set forth in Section 102.3 of the regulations governing the vocational education program "(i) 'Disadvantaged persons' means persons who have academic, socioeconomic, cultural, or other handicaps that prevent them from succeeding in vocational education or consumer and homemaking programs designed for persons without such handicaps, and who for that reason require specially designed educational programs or related services. The term includes persons whose needs for such programs or services result from poverty, neglect, delinquency, or cultural or linguistic isolation, from the community at large, but does not include physically or mentally handicapped persons (as defined under this section) unless such persons also suffer from the handicaps described in this paragraph."~~

~~(b) The following are examples of disadvantaged persons:~~

~~(i) Students with low achievement scores and who are not classified as mentally retarded;~~

~~(ii) Students who have not found an interest in learning or in school work as a result of poor educational background and home environment;~~

~~(iii) Students who demonstrate a continued pattern of failing and seem discouraged in their school work;~~

~~(iv) Students who have poor speech, low-level reading ability, and limited formal vocabulary who are not mentally deficient;~~

~~(v) Students who have linguistic barriers;~~

~~(vi) Students who have poor attendance records and are not making normal academic progress in regular classes;~~

~~(vii) Students who have dropped out of high school and are unemployed or underemployed and need training;~~

~~(viii) Persons from hardcore poverty areas who live apart from the mainstream of the community;~~

~~(ix) Persons who display a negative attitude toward learning and who are plagued by a negative self-image;~~

~~(x) Persons who have high incidence of involvement with the police and are hostile toward law and order;~~

~~(xi) Persons who lack personal motivation and lack experience with successful "models" of their own ethnic group;~~

~~(xii) Persons from low-income families who have nutritional and other health needs and/or lack adequate finances to obtain essentials for going to school (transportation, school supplies, etc.);~~

~~(xiii) Persons whose parents are dependent upon public assistance;~~

~~(xiv) Persons who are economically illiterate.~~

~~(4) Continuous liaison with the Employment Security Department and the various public welfare agencies shall be maintained in order that there will be continually available an inventory of persons in the disadvantaged category who have need for vocational education services. Continuous assessment of the number and location of these individuals will identify special program needs from time to time. Information and assistance will be made available to the local level in order to implement these programs when identified.~~

~~(5) Areas of Allocation. Allocation of funds will be made for vocational education for the disadvantaged located in areas of the state having high concentrations of youth unemployment and school dropouts as determined in the State Plan. To the extent feasible, disadvantaged or handicapped persons will be placed in regular vocational education programs and provided with those supplementary special education services which are necessary to enable them to benefit. Funds available for vocational education for disadvantaged or handicapped persons may be used to pay only that part of the cost of supplementary special educational services as are reasonably attributable to providing vocational education to disadvantaged or handicapped persons.~~

~~(6) Participation of Disadvantaged Students in Private Non-profit Schools. The participation of students enrolled in private non-profit schools in vocational education programs or projects under Part B supported with funds allotted under Section 102(b) and under Parts D and G of the Act shall be in accordance with the following requirements:~~

~~(a) Each program and project carried out under Part B supported with funds allotted under Section 102(b) and under Parts D and G of the Act shall be designed to include, to the extent consistent with the number of students enrolled in private non-profit schools in the geographic area served by the program or project, vocational education services which will meet the vocational education needs of such students. Services may be provided through such arrangements as dual enrollment;~~

~~educational radio and television, or mobile equipment, and may include professional and sub-professional services.~~

~~(b) The vocational needs of the students enrolled in private non-profit schools located within the geographic areas served by the program or project, the number of such students who will participate in the program or project, and the types of vocational education services which will be provided for them shall be determined, after consultation with persons knowledgeable of the needs of those students on a basis comparable to that used in providing such vocational education services to students enrolled in public schools. Each application submitted by the local educational institution or educational authorities to the Commission shall indicate the number of students enrolled in private non-profit schools who are expected to participate in each program and project proposed by such agency and the degree and manner of their expected participation.~~

~~(c) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide vocational educational services required by the students for whose needs the services were designed, and only when the services are not normally provided at the private school. The Commission or local educational institution or educational authorities providing vocational education services to students in private non-profit schools shall maintain administrative control and direction over such services, and each application from a local educational institution or educational authority providing such services shall so provide. Vocational education services provided with federal funds shall not include the payment of salaries of teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the use of equipment, other than mobile or portable equipment, on private school premises or the construction of private school facilities. Mobile or portable equipment may be used on private school premises for such period of time within the life of the current program or project for which the equipment is intended to be used as is necessary for the successful participation in that program or project by students enrolled in private schools.~~

~~(d) Any program or project to be carried out in public facilities and involving joint participation by students enrolled in private non-profit schools and students enrolled in public schools shall include such provisions as are necessary to avoid forming classes that are separated by the school enrollment or religious affiliation of such children.~~

~~(7) Non-Commingling of Funds. Local and state educational institutions or educational authorities receiving payments for programs or projects for disadvantaged persons in non-profit private schools shall establish accounting procedures which assure that each expenditure of federal funds made available for cooperative programs can be separately identified.~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 490-40A-030 PROGRAMS, SERVICES AND ACTIVITIES UNDERTAKEN BY LOCAL EDUCATIONAL AGENCIES.

(2) WAC 490-40A-050 ECONOMICALLY DEPRESSED AREAS OR HIGH UNEMPLOYMENT AREAS.

(3) WAC 490-40A-060 AREAS OF HIGH YOUTH UNEMPLOYMENT OR SCHOOL DROPOUTS.

(4) WAC 490-40A-070 AGREEMENTS WITH PRIVATE POSTSECONDARY VOCATIONAL TRAINING INSTITUTIONS.

(5) WAC 490-40A-080 PROGRAMS, SERVICES AND ACTIVITIES UNDERTAKEN BY THE COMMISSION FOR VOCATIONAL EDUCATION.

(6) WAC 490-40A-090 AGREEMENTS WITH THE DEPARTMENT OF EMPLOYMENT SECURITY, STATE OF WASHINGTON.

(7) WAC 490-40A-100 AGREEMENTS WITH OTHER STATES.

(8) WAC 490-40A-110 COMPLIANCE WITH FEDERAL REPORTING REQUIREMENTS.

REPEALER

CHAPTER 490-44A OF THE WASHINGTON ADMINISTRATIVE CODE IS REPEALED IN ITS ENTIRETY AS FOLLOWS:

(1) WAC 490-44A-010 ALLOCATION OF FUNDS AMONG EDUCATIONAL AGENCIES.

(2) WAC 490-44A-020 ALLOCATION OF FUNDS TO LOCAL EDUCATIONAL AGENCIES FOR PROGRAMS, SERVICES AND ACTIVITIES—CONTENT OF LOCAL APPLICATIONS.

(3) WAC 490-44A-030 CONSTRUCTION REQUIREMENTS.

(4) WAC 490-44A-040 PROCEDURES FOR PROCESSING LOCAL APPLICATIONS FOR CONSTRUCTION.

(5) WAC 490-44A-050 MAINTENANCE OF EFFORT.

(6) WAC 490-44A-060 OVERALL STATE MATCHING.

(7) WAC 490-44A-070 REASONABLE TAX EFFORT.

(8) WAC 490-44A-080 CRITERIA FOR DETERMINING RELATIVE PRIORITY OF LOCAL APPLICATIONS.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-48A-010 VOCATIONAL STUDENT ORGANIZATIONS. Leadership development in ((~~preparatory~~)) vocational programs in secondary schools, vocational-technical institutes and community colleges will be made available to all students as an integral part of the instructional programs.

((~~The leadership for the vocational student organizations will be provided by qualified staff of the Commission for Vocational Education. Leadership services will be available to both secondary and post-secondary level~~

~~programs in the vocational student organizations identified as the Distributive Education Clubs of America, Future Business Leaders of America—Phi Beta Lambda, Future Farmers of America, Future Homemakers of America, and Vocational Industrial Clubs of America.~~))

REPEALER

Chapter 490-52A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-52A-010 STATE RESEARCH COORDINATING UNIT.
(2) WAC 490-52A-020 EFFECTIVE USE OF RESULTS OF PROGRAM AND EXPERIENCE.
(3) WAC 490-52A-030 RESEARCH GRANT APPLICATION PROCEDURES

Chapter 490-53 WAC
PROGRAM IMPROVEMENT

NEW SECTION

WAC 490-53-001 PROGRAM IMPROVEMENT. In addition to the rules and regulations relating to Program Improvement, contained in Sections 104.702 through 104.708, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

NEW SECTION

WAC 490-53-010 RESEARCH COORDINATING UNIT. In order to expend funds for program improvement, the commission's research coordinating unit will administer the research, exemplary and innovative projects, curriculum development and dissemination activities in the state. The research coordinating unit may contract for the performance of any of the above activities or services, or this unit may perform the activities directly using its own staff. The cost of the professional and support staff of the RCU is supportable with federal funds. The RCU is a component of the commission and will consist of sufficient staff to carry out the duties and responsibilities of the RCU, as determined by the state director. Day-to-day direction and operation of the research coordinating unit will be a responsibility of the RCU director, and the unit will be housed with the commission.

REPEALER

Chapter 490-56A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-56A-010 FEDERAL FUNDING OF STATE PLAN.
(2) WAC 490-56A-020 APPLICATION PROCEDURES.
(3) WAC 490-56A-030 PROGRAM OR PROJECT REQUIREMENTS.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-60A-010 CONSUMER AND HOMEMAKING EDUCATION. (1) In addition to the provisions in the state plan, and ((~~elsewhere under this title, the following special provisions apply~~)) the rules and regulations relating to consumer and homemaking education ((~~hereinafter~~)) also referred to as home and family life education((~~) supported with federal funds under Part F of the Act~~)) contained in Sections 104.901 through 104.906, Federal Register, Vol. 42, No. 191—Monday, October 3, 1977, the commission adopts the rules set forth in this chapter.

(2) The funds available will be used in accordance with the approved five-year state plan and annual program plan, solely for:

(a) Educational programs in consumer and homemaking; and

(b) Ancillary services.

(3) Application and review procedures shall be set forth in the state plan for the allocation of funds from subpart five of the act by each state agency to which program responsibility has been delegated.

REPEALER

Chapter 490-64A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-64A-010 COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.
(2) WAC 490-64A-020 PROCEDURES FOR APPROVAL OF COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.
(3) WAC 490-64A-030 ADDITIONAL COSTS.
(4) WAC 490-64A-040 PARTICIPATION OF STUDENTS IN NONPROFIT PRIVATE SCHOOLS.
(5) WAC 490-64A-050 NONCOMMINGLING OF FUNDS.
(6) WAC 490-64A-060 LOCAL EVALUATION AND FOLLOW-UP PROCEDURES.
(7) WAC 490-64A-070 ANCILLARY SERVICES AND ACTIVITIES.

REPEALER

Chapter 490-68A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-68A-010 WORK-STUDY PROGRAMS.
(2) WAC 490-68A-020 APPROVAL OF WORK-STUDY PROGRAMS.
(3) WAC 490-68A-030 REQUIREMENTS FOR WORK-STUDY PROGRAM.
(4) WAC 490-68A-040 USE OF FUNDS FOR STATE PLAN DEVELOPMENT AND ADMINISTRATION.

REPEALER

Chapter 490-72A of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 490-72A-010 RESIDENTIAL VOCATIONAL EDUCATION SCHOOLS.
(2) WAC 490-72A-020 PROCEDURES FOR ESTABLISHING RESIDENTIAL FACILITIES.
(3) WAC 490-72A-030 REQUIREMENTS FOR CONSTRUCTION AND OPERATION.
(4) WAC 490-72A-040 NOTIFICATION TO COMMISSIONER.

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-76A-010 CUSTODY OF FEDERAL FUNDS. The title and official address of the officer who has legal authority to receive and hold proper custody of federal funds under P.L. ((~~90-576~~)) 94-482, and in accordance with RCW 43.08.090,((~~[1]~~)) and RCW 43.08.100((~~[2]~~)) is: Washington State Treasurer, Legislative Building, Olympia, Washington 98504. (Reg. 102.37).

((~~[1]"43.08.090. FISCAL AGENT FOR STATE. The state treasurer shall be ex officio the fiscal agent of the state. (1965 c 8 § 43.08.090. Prior: 1891 c 138 § 1; RRS § 5484.)"~~

~~[2]"43.08.100. FISCAL AGENT FOR STATE—DUTIES OF FISCAL AGENT. The fiscal agent of the state shall receive all moneys due the state from any other state or from the federal government, take all necessary steps for the collection thereof, and apply the same to the funds to which they belong. He shall collect from time to time all moneys that may accrue to the state by virtue of section 13 of the enabling act, or from any other source not otherwise provided for by law. (1965 c 8 § 43.08.100. Prior: (i) 1891 c 138 § 2; RRS § 5485. (ii) 1891 c 138 § 4; RRS § 5487.)"~~))

AMENDATORY SECTION (Amending Order 75-3, filed 12/18/75)

WAC 490-76A-020 EXPENDITURE OF FEDERAL FUNDS. The official title of the officer who has authority to authorize expenditures under the state plan is the ((~~Executive~~)) state director ((~~of the Commission for Vocational Education~~)) (RCW 28A.09.070, 28A.09-.080 and 28C.04.200). The policies and procedures to be followed by the state in allocating federal funds allotted under P.L. 90-576 for programs, services and activities are determined in accordance with the educational needs for vocational training as detailed in the annual and long-range plans as prepared in consultation with the State Advisory Council and as approved by the commission. (P.L. ((~~90-576, Sec. 123(a), Reg. 102.31(a)~~)) 94-482.)

WSR 79-02-020
RULES OF COURT
STATE SUPREME COURT
[Order 25700-B-189]

In the Supreme Court
of the
State of Washington

IN THE MATTER OF THE ASSIGNMENT OF THE JUSTICES TO DEPARTMENTS FOR THE JANUARY, 1979 TERM	No. 25700-B-189 ORDER

Effective January 15th, 1979, the Justices of the Supreme Court are assigned to the following departments for the January, 1979 term:

DEPARTMENT I

Honorable Charles F. Stafford
Honorable Charles Horowitz
Honorable Floyd V. Hicks
Honorable William H. Williams

DEPARTMENT II

Honorable Hugh J. Rosellini
Honorable Charles T. Wright
Honorable Robert F. Brachtenbach
Honorable James M. Dolliver

DATED at Olympia, Washington this 15th day of January, 1979.

Robert F. Utter

CHIEF JUSTICE

WSR 79-02-021
RULES OF COURT
STATE SUPREME COURT
[Order 25700-A-269]

IN THE MATTER OF THE ADOPTION OF THE RULES OF EVIDENCE (ER) AND AMENDING GENERAL RULES (GR), SUPERIOR COURT CIVIL RULES (CR), SUPERIOR COURT CRIMINAL RULES (CrR), JUSTICE COURT CIVIL RULES (JCR), AND JUSTICE COURT CRIMINAL RULES (JCrR).	NO. 25700-A-269 ORDER

WHEREAS, in February, 1976, a Task Force was organized by the Washington Judicial Council to study the Federal Rules of Evidence and other codifications of evidence principles with a view to the adoption by the Supreme Court of rules of evidence for this state; and,

WHEREAS, in November, 1977, the Proposed Rules of Evidence were distributed to the members of the Washington Bench and Bar for comment; and,

WHEREAS on June 16, 1978, after receiving comments from the Washington Bench and Bar, the proposed rules were considered by the Washington Judicial Council in light of the comments received; and,

WHEREAS, on August 8, 1978, the Proposed Rules of Evidence as amended by the Washington Judicial

Council at its June 16, 1978, meeting were submitted to the Supreme Court for approval; and,

WHEREAS, the Court has determined that the proposed rules set forth in the attachment hereto provide a uniform procedure for the presentment of evidence which will aid in the prompt and orderly administration of justice; and,

WHEREAS, the Court has determined that the publication of the comments and references of the Task Force to the Rules will aid the Bench and Bar; Now, therefore, it is hereby

ORDERED:

(a) The Washington Rules of Evidence as set forth in the attachment hereto are adopted.

(b) The comments to the Rules are solely those of the Task Force on Rules of Evidence and are not adopted by the Court.

(c) General Rule 1, Superior Court Civil Rules 30 and 43, Superior Court Criminal Rule 6.12, Justice Court Civil Rule 43, and Justice Court Criminal Rule 4.09 are amended as shown in the attachment.

(d) The Rules and comments shall be published expeditiously in the Washington Reports and will become effective April 2nd 1979 A.D.

DATED at Olympia, Washington, this 19th day of December, 1978.

	Charles T. Wright
Hugh J. Rosellini	Robert F. Utter
Orris L. Hamilton	Charles Horowitz
Charles F. Stafford	James M. Dolliver
Robert F. Brachtenbach	Floyd V. Hicks

ADOPTION OF RULES OF EVIDENCE (ER)

TABLE OF RULES

ARTICLE I

GENERAL PROVISIONS

ARTICLE II

JUDICIAL NOTICE

ARTICLE III

PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

ARTICLE IV

RELEVANCY AND ITS LIMITS

ARTICLE V

PRIVILEGES

ARTICLE VI

WITNESSES

Introductory Comment

A comment prepared by the Judicial Council Task Force on Evidence appears after each rule. If the rule is identical to the corresponding rule in the Federal Rules of Evidence, no effort is made to reiterate the Advisory Committee's Note to the federal rule. That information is readily available in works such as Weinstein's Evidence (Matthew Bender, 1975), Wright & Graham,

Federal Practice and Procedure: Evidence (West, 1977), Moore's Federal Practice (Matthew Bender, 1976), and Louisell & Mueller, Federal Evidence (Bancroft-Whitney, 1978). The rules are also discussed in J. Powell & R. Burns, A Discussion of the New Federal Rules of Evidence, 8 Gonz. L. Rev. 1 (1972).

The comments here focus on the intent of the drafters with respect to prior Washington law and on the reasons for departures from the federal rules. In these comments, the word "drafters" refers only to the Washington Judicial Council and its Task Force on Evidence. It does not refer to Congress, the Washington State Supreme Court, or to any other judicial or legislative body.

The rules do not purport to codify constitutional law. The application of a rule may be subject to constitutional restrictions or limitations which are not defined in the rule. See, for example, the comments to Rules 104, 105, and 804.

ARTICLE I
GENERAL PROVISIONS
RULE 101
SCOPE

These rules govern proceedings in the courts of the state of Washington to the extent and with the exceptions stated in Rule 1101.

Comment 101

Rule 1101 specifies in more detail the courts, proceedings, questions, and stages of proceedings to which the rules apply.

RULE 102
PURPOSE AND CONSTRUCTION

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Comment 102

The rule is the same as Federal Rule 102. This generalized statement of purpose is comparable to CR 1, CrR 1.2, and RAP 1.2. The Rules of Evidence, like other court rules, give the judge the authority to interpret the rules in a way which avoids an unjust result. See Petrarca v. Halligan, 83 Wn.2d 773, 522 P.2d 827 (1974).

"Following the rules is not an end in itself. Rather, the rules are carefully designed to enable judges, lawyers, litigants, and juries to achieve sound results. . . . Rule 102 recognizes the responsibility judges bear by enumerating goals which cannot be achieved mechanically, and which will compete with another at times." 10 Moore's Federal Practice § 102.02 (1976). See also United States v. Jackson, 405 F. Supp. 938 (1975).

This approach implies a considerable grant of discretion to the trial judge in situations not explicitly covered by the rules which may require differentiated treatment in the light of special factors. 1 Weinstein's Evidence § 102[01] (1975). The rules place a burden on the lawyer to explain his position and the reasons for it at the trial level. It also places heavy burdens on the trial judge. Id.

"Judges should indicate which factors are significant and which goals paramount in a particular case and why, so that members of the Bar can adjust to changing nuances in the law in advising their clients and in conducting litigations. This process of accommodation to change will itself promote desirable change while preserving the sound fundamentals of the law of evidence." Id.

RULE 103
RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Errors Raised for the First Time on Review. [Reserved—See RAP 2.5(a).]

Comment 103

Section (a). This section is the same as Federal Rule 103(a), except that the words "is made" are substituted for "appears of record" in subsection (a)(1). This change is necessary because the rules are applicable to courts, such as District Courts, where testimony and argument are not recorded. Section (a) is consistent with prior Washington law. Harmless evidentiary errors are disregarded. Primm v. Wockner, 56 Wn.2d 215, 351 P.2d 933 (1960). A timely objection or motion to strike is ordinarily necessary to seek appellate review of the admission of evidence. State v. James, 63 Wn.2d 71, 385 P.2d 558 (1963). In order to obtain appellate review of the exclusion of evidence, an offer of proof must be made which fairly advises the trial court whether the evidence is admissible. Northern State Construction v. Robbins, 76 Wn.2d 357, 457 P.2d 187 (1969). The procedure for objecting is defined by CR 46 and CrR 8.7.

Section (b). This section is the same as Federal Rule 103(b) except that the word "It" in the second sentence is changed to "The court" to improve readability. As a

practical matter, the section is consistent with prior Washington law. The previous Washington rule, CR 43(c), provided that the court's statements about the character of the evidence had to be made in the absence of the jury. Although this mandatory provision is not found in Rule 103, section (c) encourages the statements to be made in the absence of the jury, and this procedure would ordinarily be required in order to conform to the state constitutional prohibition against a judge commenting on the evidence. Wash. Const. art. 4, § 16.

Section (c). This section is the same as Federal Rule 103(c) and differs slightly from prior Washington law. The previous rule, CR 43(c), distinguishes between offers of proof and statements by the court. Under that rule, the court could, in its discretion, direct that an offer of proof be made in the absence of the jury, but a statement by the court as to the character of the evidence had to be made in the absence of the jury. Under Rule 103(c), inadmissible evidence is to be kept from the jury "to the extent practicable."

The court's discretion under Rule 103(c) must be exercised cautiously in light of the state constitutional prohibition against a judge commenting on the evidence. Wash. Const. art. 4, § 16.

Section (d). Federal Rule 103(d), Plain error, is deleted. The Washington Supreme Court recently codified the extent to which an error may be asserted for the first time in an appellate court. See RAP 2.5(a). Rule 103(d) defers to the Rules of Appellate Procedure and the decisions construing them.

To be distinguished is the extent to which counsel may acquiesce in a trial court ruling and then move for a new trial on the ground that the ruling was in error. That determination is made by reference not to the appellate rules but to the rules of civil and criminal procedure and decisional law. See, e.g., CR 46; CrR 8.7; Sherman v. Mobbs, 55 Wn.2d 202, 347 P.2d 189 (1959).

RULE 104
PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Comment 104

Section (a). This section is the same as Federal Rule 104(a) and is consistent with prior Washington law. See RCW 4.44.080. The statute does not expressly say, as the rule does, that preliminary determinations are not subject to the rules of evidence, but this is the generally prevailing view. The civil and criminal rules for superior court, for example, authorize many preliminary determinations to be made on the basis of affidavits. See, e.g., CR 43(e) and CrR 2.3(c). The law with respect to privileged communications does apply to preliminary determinations. See also Rule 1101. Thus, a privilege may not be violated even in a preliminary hearing to determine whether the privilege exists.

The proceedings to which the rules of evidence do, and do not, apply are discussed in more detail in the comment to Rule 1101.

Section (b). This section is the same as Federal Rule 104(b) and defines a procedure for handling the situation in which a party wishes to prove Fact A, but Fact A is relevant only if Fact B is established. The order of proof under this rule, as generally, is determined by the judge. Rule 611. The court, in its discretion, may decide whether to hear evidence of Fact A or B first, taking into account the relative prejudice of having the jury hear one rather than the other if the proponent fails to offer evidence of one of them sufficient to warrant a finding of its truth. Because of this danger of prejudice, the rule should be used with caution, especially in criminal cases.

The rule is substantially in accord with previous Washington law. See State v. Whetstone, 30 Wn.2d 301, 191 P.2d 818 (1948); 5 R. Meisenholder, Wash. Prac. § 1 (1965 & Supp.).

Section (c). This section is the same as Federal Rule 104(c). In a criminal case, a hearing on the admissibility of a confession is constitutionally required to be conducted in the absence of the jury. Jackson v. Denno, 378 U.S. 368 (1964). The rule further provides that the accused, as a witness, is entitled on request to have any preliminary hearing conducted in the absence of the jury. In other situations, and in civil cases, the judge has discretion to decide whether the interests of justice require preliminary matters to be considered in the absence of the jury. Accord, Gilcher v. Seattle Elec. Co., 82 Wash. 414, 144 P. 530 (1914).

Section (d). This section is the same as Federal Rule 104(d) and is consistent with prior Washington law. It is designed to encourage participation by the accused in the determination of preliminary matter. Portions of the subject matter of Rule 104 are covered in superior court by CrR 3.5(b), a more detailed rule. CrR 3.5 is not superseded by Rule 104. The rules are not in conflict, and both apply in superior court. Neither rule prevents cross-examination of the accused as to credibility at a preliminary hearing. See Weinstein's Evidence § 104[10] (1975).

Rule 104 does not address itself to questions of the subsequent use of testimony given by an accused at a preliminary hearing. See Walder v. United States, 347 U.S. 62 (1954); Simmons v. United States, 390 U.S. 377 (1968); Harris v. New York, 401 U.S. 222 (1971). In superior court, CrR 3.5(b) restricts the use of preliminary testimony in some respects.

Section (e). This section is the same as Federal Rule 104(e) and is consistent with prior Washington law. See CrR 3.5, discussed above.

RULE 105

LIMITED ADMISSIBILITY

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Comment 105

This rule is the same as Federal Rule 105 and should be read together with Rule 403, which provides that evidence may be excluded, although relevant, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, or the like. These rules are consistent with prior Washington law. See State v. Stevenson, 16 Wn. App. 341, 555 P.2d 1004 (1976) and State v. Goebel, 36 Wn.2d 367, 218 P.2d 300 (1950).

The rules neither imply that limiting instructions are sufficient in all situations nor restrict the court's authority to order a severance in a multidefendant case. The availability and effectiveness of these practices must be taken into consideration in deciding whether to exclude evidence under Rule 403. In Bruton v. United States, 389 U.S. 818 (1968), the court ruled that a limiting instruction did not effectively protect the accused against the prejudicial effect of admitting in evidence the confession of a codefendant which implicated him.

RULE 106

REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the party at that time to introduce any other part, or any other writing or recorded statement, which ought in fairness to be considered contemporaneously with it.

Comment 106

This rule is substantially the same as Federal Rule 106. In the Washington rule, commas were added between the words "part" and "or" and between "statement" and "which". The added punctuation insures that the phrase "which ought in fairness" is read as modifying all of the nouns ("part . . . writing . . . statement") which precede it. The word "him" has been changed to "the party".

Existing Washington rules, CR 32(b) and 33(b), provide that the rules of evidence apply with respect to the admission of depositions and interrogatories. The drafters of Federal Rule 106 considered a number of suggestions to include language in the rule indicating that the other rules of evidence apply. The language was not included in the final draft, not because the other rules did not apply, but because the drafters thought such a provision would be surplusage. Weinstein's Evidence, § 106[01] (1975). Thus, the rules of evidence apply to the admission of any additional evidence under Rule 106, and irrelevant portions of documents remain inadmissible under this rule.

ARTICLE II

JUDICIAL NOTICE

RULE 201

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity To Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

Comment 201

The rule is the same as Federal Rule 201(a) through (f). Federal Rule 201(g), Instructing Jury, is deleted.

Prior Washington law has not offered a comprehensive theory of judicial notice. 5 R. Meisenholder, Wash. Prac. § 591 (1965 & Supp.) (hereinafter cited Meisenholder). Rule 201 establishes a coherent theoretical basis for the taking of judicial notice of adjudicative facts.

Section (a). The rule applies only to judicial notice of "adjudicative facts" as distinguished from "legislative facts". An adjudicative fact is the "what-happened", "who-did-what-and-when" kind of question that normally goes to a jury. It seems reasonable to require, as the rule does, that a judicially noticed adjudicative fact must be one not subject to reasonable dispute. Legislative facts are those a court takes into account in determining the constitutionality or interpretation of a statute or the extension or restriction of a common-law rule upon grounds of policy. They will often hinge on social, economic, or political facts not generally known by intelligent people or readily determinable by resort to

sources of unquestioned accuracy. See 2 K. Davis, Administrative Law Treatise 353 (1958). Section (a) excludes legislative facts from the operation of the rule.

The determination of foreign law is governed by CR 44.1 and RCW 5.24.

Section (b). This section requires that a judicially noticed fact must not be subject to reasonable dispute and that it must be either generally known in the area or readily found in noncontroversial references.

For purposes of judicial notice, no distinction between adjudicative and legislative facts has been recognized in prior Washington law. Washington opinions have stated that courts may take judicial notice of facts which are within the common knowledge of the community and facts which are capable of certain verification by reference to competent authoritative sources. Rogstad v. Rogstad, 74 Wn.2d 736, 446 P.2d 340 (1968). See Meisenholder § 592, 593. This is consistent with Rule 201(b) and adoption of the rule does little to change the kinds of adjudicative facts which may be judicially noticed in Washington. Judicial notice of legislative facts continues to be governed by previous Washington law.

Sections (c) and (d). Under section (c), the court has discretionary authority to take judicial notice, regardless of whether it is requested by a party. The taking of judicial notice is mandatory under section (d) only when a party requests it and the necessary information is supplied. No procedure is specified to determine what types of information may be considered, and from what sources; nor is the process of evaluation defined. These matters are, however, often defined by statute.

A number of statutes require the taking of judicial notice in specific instances. See, for example, RCW 4.36.090 (private statutes); RCW 4.36.110 (any ordinance of a city or town in Washington); RCW 5.24.010 (constitution, common law, and statutes of every state, territory, and other jurisdiction of the United States); RCW 10.37.070 (private statutes); RCW 28B.19.070 (rules for higher education); RCW 34.04.050(6) (rules of state agencies); RCW 35.03.050 (certain city charters); RCW 35.06.070 (existence of incorporated cities); RCW 35.22.110 (charters of first class cities); RCW 35A.08.120 (certain city charters); RCW 49.48.040 (seal of the Department of Labor and Industries of the State of Washington); RCW 49.60.050 (seal of state board against discrimination); RCW 50.12.010 (seal of the employment security commissioner); RCW 51.52-.010 (seal of the board of industrial insurance appeals); and RCW 61.12.060 (economic conditions—discretionary with court).

The statutes cited are not in conflict with Rule 201 and are not superseded. To the extent that a statute applies to legislative facts, the rule does not apply at all. To the extent that a statute applies to adjudicative facts, the statute states a more specific requirement than the more general process of broad applicability defined in the rule.

As a general rule, a court may take judicial notice of court records in the same case, but not records of a different case. This rule and certain exceptions are discussed in Meisenholder § 594.

Section (e). Basic considerations of procedural fairness require an opportunity to be heard on the propriety of taking judicial notice and the tenor of the matter noticed. The rule provides this opportunity on request. If a party has received no prior notification that judicial notice will be taken, a request to be heard may be made after judicial notice has been taken. No formal procedure for giving notice is defined.

There has been no prior Washington authority for the proposition stated in Rule 201(e), but an opportunity to be heard may often have been accorded as a matter of practice. Meisenholder § 597.

Section (f). Section (f) appears to be consistent with prior Washington law. There are no decisions authorizing any particular practices or procedures for raising questions of whether particular facts should be judicially noticed. However, it seems beyond dispute that judicial notice may, under appropriate circumstances, be taken by appellate courts. See Meisenholder § 596.

Federal Rule 201(g), Instructing jury, is deleted. That rule provides:

> (g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article IV, Section 16 of the Washington Constitution prohibits the court from charging the jury with respect to disputed matters of fact. See Hansen v. Wightman, 14 Wn. App. 78, 538 P.2d 1283 (1975) for a recent discussion of this provision. The drafters of the Washington rules felt that a literal application of the federal rule may be unconstitutional in some circumstances. The state of Nevada, in promulgating rules of evidence based on the federal rules, felt bound by a similar provision in its constitution to omit Federal Rule 201(g).

The drafters of the Washington rules felt that the court must be given more discretion, both with respect to whether to receive evidence contrary to a judicially noticed fact, and with respect to the manner of instructing the jury. Recognizing the difficulty of codifying a procedure which would be constitutional in every case, the drafters felt that the constitutional requirement would be better served by deleting the rule and permitting the courts to fashion a constitutional procedure on a case-by-case basis.

ARTICLE III

PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

RULE 301

PRESUMPTIONS IN GENERAL IN CIVIL ACTIONS AND PROCEEDINGS

[RESERVED]

Comment 301

An earlier draft proposed by the task force and tentatively approved by the Judicial Council included Rule 301, titled Presumptions in General in Civil Actions and Proceedings. The proposed rule was the same as Federal Rule 301 and read as follows:

> In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

On reconsideration, the Judicial Council decided to delete the proposed rule from its draft. This decision was based primarily on the fact that the federal courts have not yet developed a uniform practice under the rule, and that we would, in effect, be adopting a rule without knowing its intended application in practice. The Council was particularly concerned about the rule's effect upon "enhanced" presumptions which can be overcome only by clear, cogent, and convincing evidence. The commentators do not agree upon the intended effect of the federal rule in this regard. Some Judicial Council members also expressed the belief that presumptions were beyond the Supreme Court's rulemaking authority.

The Judicial Council recommends that this rule be reserved, and that it be the subject of further study.

RULE 302

APPLICABILITY OF STATE LAW IN CIVIL ACTIONS AND PROCEEDINGS

[RESERVED]

Comment 302

The drafters of the Washington rules deleted Federal Rule 302, Applicability of State Law in Civil Actions and Proceedings. That rule would not apply to proceedings in a state court. The converse of Federal Rule 302—the extent to which federal law applies in state court—is determined by reference to the law of preemption and would not appropriately be defined by a state court rule.

ARTICLE IV

RELEVANCY AND ITS LIMITS

RULE 401

DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Comment 401

Rule 401 is the same as Federal Rule 401. Although the terminology in some decisions differs from that of the rule, the Washington view of relevancy remains substantially unaltered by Rule 401. See 5 R. Meisenholder, Wash. Prac. § 1 (1965 & Supp.).

RULE 402

RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

Comment 402

The rule is substantially the same as Federal Rule 402 and is consistent with previous Washington law. See 5 R. Meisenholder, Wash. Prac. § 1 (1965). Federal Rule 402 defers to the United States Constitution and Acts of Congress. Washington Rule 402 defers generally to statutes, regulations, and rules which make relevant evidence inadmissible.

The rule's deference to other codified law making relevant evidence inadmissible applies generally throughout the rules in Article IV. For example, in rape cases, RCW 9.79.150 defines detailed restrictions upon disclosure of the victim's past sexual behavior. The statute prevails over conflicting provisions in Rule 404.

RULE 403

EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Comment 403

This rule is the same as Federal Rule 403 and is consistent with previous Washington law. See State v. Stevenson, 16 Wn. App. 341, 555 P.2d 1004 (1976).

It is recognized that certain circumstances call for the exclusion of evidence which is of unquestioned relevance The rule lists six safeguards by which the trial judg

may, in the exercise of discretion, exclude evidence even though it is relevant.

The rule does not specify surprise as a ground of exclusion, following Wigmore's view of the common law. 6 Wigmore § 1849. The Advisory Committee Note to Federal Rule 403 observes that claims of unfair surprise may still be justified in some cases despite procedural requirements of notice and the availability of discovery, but that the granting of a continuance is a more appropriate remedy than exclusion of the evidence.

In deciding whether to exclude evidence on grounds of unfair prejudice, consideration should be given to the probable effectiveness or lack of effectiveness of a limiting instruction. The availability of other means of proof may also be an appropriate factor. These procedural factors may favor admission or exclusion, depending on the circumstances.

RULE 404

CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

(a) Character Evidence Generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Comment 404

This rule is the same as Federal Rule 404 and conforms substantially to previous Washington law.

Section (a). Section (a) deals with the question whether character evidence should be admitted to prove that a person acted in conformity therewith on a particular occasion. This use of character evidence is often called "circumstantial". The basic premise is that circumstantial character evidence is inadmissible unless it falls within one of the three exceptions. Once the admissibility of character evidence in some form is established under this rule, reference must then be made to Rule 405 in order to determine the appropriate method of proof. If the character is that of a witness, Rules 608 and 609 provide methods of proof.

To be distinguished are cases in which a person's character is "in issue". The admissibility of character evidence as proof of a material element is governed by Rule 405, not Rule 404.

Rule 404 does not permit the admission of circumstantial character evidence in civil cases. Under Rules 404 and 405, evidence of character is admissible in a civil case only if the person's character is actually in issue. Previous Washington law is in accord. 5 R. Meisenholder, Wash. Prac. §§ 2, 3 (1965 & Supp.) [hereinafter cited Meisenholder].

Under Rule 404(a)(1), the accused in a criminal case may introduce evidence of his good character. Accord, State v. Arine, 182 Wash. 697, 48 P.2d 249 (1935). The evidence must be directed toward a trait of character which is pertinent to rebut the nature of the charge against the defendant. State v. Schuman, 89 Wash. 9, 153 P. 1084 (1915). A character witness for the accused is limited by Rule 405(a) to testimony as to the reputation of the accused. Neither Rules 404 and 405 nor previous Washington law permit the accused to demonstrate his good character by having a witness testify as to specific instances of good conduct by the accused. 2 Weinstein's Evidence § 405[04] at 405–39 (1976); Meisenholder § 4, at 21 n.7.

If the accused introduces evidence of good character under Rule 404(a)(1), the prosecution may rebut the evidence either by testimony from the prosecutor's own witnesses or by cross–examining the accused's witnesses. 2 Weinstein's Evidence § 404[04] at 404–25 (1976). Rebuttal testimony by the prosecution's witnesses is limited under Rule 405(a) to the reputation of the accused, but the prosecutor may inquire into specific instances of conduct on cross–examination of the witnesses for the accused. Id. at 405–20. Prior Washington law is in accord. Meisenholder § 4, at 22 n.15, and 23 n.20.

Rule 404(a)(2) admits evidence of the character of the victim in a criminal case under certain circumstances. Previous Washington law is substantially in accord with the rule. Where there is an issue of self–defense, the accused may show the victim was the first aggressor by character evidence of the victim's reputation for violent disposition or for using deadly weapons in quarrels or fights. Meisenholder § 4 at 24. Evidence of specific acts or conduct is inadmissible to show the character of the victim, but it may be admissible for the limited purpose of showing whether the accused had a reasonable apprehension of danger from the victim. State v. Walker, 13 Wn. App. 545, 536 P.2d 657 (1975). In rebuttal, the prosecution may show the victim's good character for the pertinent trait, but only after the defendant has attacked that good reputation. Meisenholder § 4 at 25.

In rape cases, RCW 9.79.150 defines detailed restrictions upon disclosure of the victim's past sexual behavior. By the terms of Rule 402, the statute prevails over conflicting provisions in Rule 404. See the comment to Rule 402.

Section (b). Evidence of other crimes, wrongs, or acts is not admissible to prove character as a basis for suggesting that conduct on a particular occasion was in

conformity with it. The evidence may, however, be offered for another purpose such as proof of motive or opportunity. The court must determine whether the danger of undue prejudice outweighs the probative value of the evidence, in view of the availability of other means of proof and other factors. Slough & Knightly, Other Vices, Other Crimes, 41 Iowa L. Rev. 325 (1956). Previous Washington law is in accord. See State v. Whalon, 1 Wn. App. 785, 464 P.2d 730 (1970).

The fact that section (b) uses the discretionary word "may" does not confer arbitrary discretion on the trial judge. Whether evidence is admissible under this section is determined by reference to the considerations set forth in Rule 403. Federal Rule 404, Report of the House Committee on the Judiciary. Although the words "crimes, wrongs, or acts" are deliberately imprecise, a number of recent decisions indicate that evidence of this sort should be admitted with extreme caution to avoid prejudice against the defendant, particularly when admitting acts which are not unlawful but which may tend to disparage the defendant. In State v. Draper, 10 Wn. App. 802, 521 P.2d 53 (1974), the court held that in a prosecution for delivery of a controlled substance, it was prejudicial error to admit evidence of a perhaps unusual amount of prescription drugs, lawfully in the defendant's possession. The error may be prejudicial even though the judge has instructed the jury to disregard the evidence of other conduct. State v. Miles, 73 Wn.2d 67, 436 P.2d 198 (1968). These and other decisions are collected and discussed in Meisenholder § 4 (1975 Supp.)

RULE 405

METHODS OF PROVING CHARACTER

(a) Reputation. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Comment 405

For a discussion of the relationship between this rule and Rule 404, see the comment to Rule 404.

Section (a). This section differs from Federal Rule 405 in that the Washington rule does not permit proof of character by testimony in the form of an opinion. Previous Washington law has not permitted the introduction of opinion testimony to prove a person's character. Thompson-Cadillac Co. v. Matthews, 173 Wash. 353, 23 P.2d 399 (1933); Johansen v. Pioneer Mining Co., 77 Wash. 421, 137 P. 1019 (1914); 5 R. Meisenholder, Wash. Prac. § 4 (1965 & Supp.). The drafters of the Washington rule felt that the policy established by decisional law was preferable to that of the federal rule.

On a practical level, the drafters were convinced that weaknesses in such opinion testimony cannot be exposed except with difficulty by cross-examination of the witness, and that challenges to the witness' answers on cross-examination by extrinsic evidence may not be completely realistic and that it may in effect disguise the opinion of the witness who testifies to reputation. However, again on a practical level, it seems preferable to opinion testimony, because it can much more easily and clearly be tested by cross-examination of the witness.

References to opinion testimony were similarly deleted from Rule 608.

Section (b). This section is the same as Federal Rule 405(b) and appears to be consistent with existing Washington law. See Johansen v. Pioneer Mining Co., 77 Wash. 421, 137 P. 1019 (1914); Meisenholder §§ 2, 4.

In rape cases RCW 9.79.150 defines in detail the extent to which the victim's past behavior is admissible and the procedure for seeking its admission. By the terms of Rule 402, the statute prevails over inconsistent provisions in Rule 405.

RULE 406

HABIT; ROUTINE PRACTICE

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Comment 406

This rule is the same as Federal Rule 406. The rule recognizes the relevancy of a person's habit or the routine practice of an organization in proving that conduct on a particular occasion was in conformity with the habit or routine practice. Rule 404 states the general rule that evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion. Why should habit be treated differently under Rule 406? The rationale is that habit describes one's regular response to a repeated specific situation so that doing the habitual act becomes semi-automatic. It is the notion of the invariable regularity that gives habit evidence its probative force. Although the rule does not define habit, the Advisory Committee Note to Federal Rule 406 contains a quote from McCormick describing habitual behavior as "consisting of semi-automatic, almost involuntary and invariable specific responses to fairly specific stimuli."

It is not clear to what extent the rule changes previous Washington law. There are cases contrary to the rule, particularly where the evidence bears on the issue of negligence. Rossier v. Payne, 125 Wash. 155, 215 P. 366 (1923); State v. Lewis, 37 Wn.2d 540, 255 P.2d 428 (1950). In a recent case arising out of an automobile accident, the defendant sought to introduce testimony to the effect that the plaintiff was always a fast driver and always drove recklessly. The Court of Appeals affirmed the trial judge's refusal to admit the testimony, saying that it was irrelevant to the issue of whether the recklessness or speed of the plaintiff was the cause of the particular accident in issue. Breimon v. General Motors Corp., 8 Wn. App. 747, 509 P.2d 398 (1973).

Rule 406, however, appears to clarify Washington law rather than to significantly change it. Despite the cases cited above, evidence of habit has been held properly admitted in a number of cases collected in 5 R. Meisenholder, Wash. Prac. § 6 (1965 & Supp.). Evidence offered under this rule could, of course, still be excluded if the court determined that the conduct sought to be shown did not reach the level of habit or routine practice.

RULE 407

SUBSEQUENT REMEDIAL MEASURES

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Comment 407

This rule is the same as Federal Rule 407 and is consistent with previous Washington law.

The rule of exclusion has been applied to evidence introduced on the question of liability. Cochran v. Harrison Memorial Hosp., 42 Wn.2d 264, 254 P.2d 752 (1953). Washington courts have justified the principle on the ground that such evidence is irrelevant, Alread v. Northern Pac. Ry. Co., 93 Wash. 209, 160 P. 429 (1916), and that it is contrary to the policy of encouraging safety measures to admit such evidence. Carter v. Seattle, 21 Wash. 585, 59 P. 500 (1899).

The rule bars evidence to prove "negligence or culpable conduct." It has been held that a virtually identical California statute is inapplicable to a products liability case in which the manufacturer is alleged to be strictly liable for placing a defective product on the market. Ault v. Int'l Harvester Co., 13 Cal. 3d 113, 117 Cal. Rptr. 812, 528 P.2d 1148 (1975). But see Smyth v. Upjohn Co., 529 F.2d 803 (2d Cir. 1975) to the contrary.

The Washington cases are consistent with the rule in admitting evidence of subsequent remedial measures for purposes other than proving liability. The rule cites as examples proving ownership, control, or feasibility of precautionary measures, or impeachment. In Washington, see Hatcher v. Globe Union Mfg. Co., 170 Wash. 494, 16 P.2d 824 (1932), Brown v. Quick Mix Co., 75 Wn.2d 833, 454 P.2d 205 (1969) on feasibility of precautionary measures; Peterson v. King County, 41 Wn.2d 907, 252 P.2d 797 (1953) on nature of conditions existing at time of incident; Cochran v. Harrison Memorial Hosp., supra, dictum on issue of control of an instrumentality.

Under Rule 407, the permissible "other purpose" must be controverted in order to avoid the introduction of evidence under false pretenses. The evidence must be relevant as proof upon the actual issues in the case. See R. Meisenholder, 5 Wash. Prac. § 10 (1965).

RULE 408

COMPROMISE AND OFFERS TO COMPROMISE

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment 408

This rule is the same as Federal Rule 408 and changes Washington case law only with respect to the admissibility of statements made in compromise negotiations.

The first sentence codifies the common law rule that evidence of an offer to compromise a claim is inadmissible to prove liability or lack thereof. It is consistent with previous Washington law. See Eagle Ins. Co. v. Albright, 3 Wn. App. 256, 474 P.2d 920 (1970). The foundation of the rule in Washington, as in the federal rules, is the policy favoring compromise and settlement of disputes. Berliner v. Greenberg, 37 Wn.2d 308, 223 P.2d 598 (1950).

The second sentence of the rule changed federal law by making evidence of conduct or statements made in compromise negotiations inadmissible. Compare Factor v. Commissioner, 281 F.2d 100 (9th Cir. 1960). Similarly in Washington, the conduct or statements have been allowed in evidence as admissions of a party opponent, Romano Eng'r Corp. v. State, 8 Wn.2d 670, 113 P.2d 670, 113 P.2d 649 (1941), unless the statement of fact is expressly made without prejudice. Wagner v. Peshastin Lumber Co., 149 Wash. 328, 270 P. 1032 (1928).

By contrast, Rule 408 makes the evidence inadmissible and is based on the policy of promoting complete freedom of communication in compromise negotiations. Parties are encouraged to make whatever admissions may lead to a successful compromise without sacrificing portions of their case in the event such efforts fail. The rule avoids the generation of controversy over whether a statement was within or without the area of compromise negotiations.

The rule also provides that the exclusionary rule applies only to claims disputed as to validity or amount. There has been no previous authority on this issue in Washington. R. Meisenholder, 5 Wash. Prac. § 9 (1965 & Supp.).

The third sentence, relating to evidence otherwise discoverable, was added by Congress to the Supreme Court draft of the federal rules. The sentence clarifies the dual objective of Rule 408 to encourage compromise and to prevent immunization of evidence merely because it is presented in the course of compromise negotiations. 10

Moore's Federal Practice § 408.06 (1976). A party may not use Rule 408 as a screen for curtailing the opposing party's rights to discovery. 2 Weinstein's Evidence § 408[01] (1976). The Senate Report on Rule 408 suggests, for example, that documents disclosed in compromise negotiations are not thereby insulated from discovery. The Conference Report makes it clear that this provision applies to factual evidence as well.

The fourth sentence is consistent with previous Washington law admitting evidence of compromise and offers of compromise when offered for some purpose other than liability. Meisenholder § 9. See Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952) (to prove lack of good faith where good faith in issue); Robinson v. Hill, 60 Wash. 615, 111 P. 871 (1910) (to prove employer–employee relationship). Settlement agreements may be introduced where breach is the issue, or to show bias or interest of witnesses. Meisenholder § 9. The word "negating" is substituted for "negativing," the word used in the federal rule. This is only an improvement in style. No substantive change is intended.

RULE 409

PAYMENT OF MEDICAL AND SIMILAR EXPENSES

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Comment 409

This rule is the same as Federal Rule 409 and is consistent with previous Washington law. See Libee v. Handy, 163 Wash. 410, 1 P.2d 312 (1931). RCW 5.64-.010 is consistent with the rule and is not superseded.

RULE 410

INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and in the presence of counsel. This rule does not govern the admissibility of evidence of a deferred sentence imposed under RCW 3.66.067 or RCW 9.95.200–.240.

Comment 410

This rule is substantially the same as Federal Rule 410 and changes previous Washington law in some respects. Prior to Rule 410, offers to compromise criminal actions have not been privileged against disclosure. State v. Bixby, 27 Wn.2d 144, 177 P.2d 689 (1947). Rule 410 makes withdrawn guilty pleas, pleas of nolo contendere, and statements made in connection with offers to compromise criminal actions inadmissible even for impeachment, in any proceeding against the person making the plea or statement. 8 Moore's Federal Practice § 11.08[2]. The only exception is that a statement may be used in a criminal proceeding for perjury or false statement, and then only if the statement was made by the defendant under oath and in the presence of counsel. A third requirement in the federal rule, that the statement be made on the record, is not included in the proposed Washington rule. This omission is necessary because the rules apply in courts, such as district court, where no formal record of the proceedings is kept.

"Perjury" and "false statement" are used generically in the rule to refer to crimes of that nature, regardless of their designations in the criminal code or other applicable statutes.

To admit a withdrawn guilty plea into evidence would frustrate the purpose of allowing the withdrawal and would place the accused in a dilemma inconsistent with the decision to award him a trial. Withdrawn pleas of guilty have long been inadmissible in federal prosecutions. Kercheval v. United States, 274 U.S. 220 (1927). Rule 410 conforms to this practice. The provisions making offers to compromise inadmissible are designed to encourage the disposition of criminal cases by compromise.

The rule similarly makes pleas of nolo contendere inadmissible. This plea is not recognized in Washington, and Rule 410 does not create the right to a plea of nolo contendere. See CrR 4.2(a). The rule would apply only to a plea in a jurisdiction which permits the plea, entered by a person later involved in proceedings in a Washington court.

The rule protects from disclosure only statements "made in connection with, and relevant to" the plea or offer. The rule should not be interpreted as barring admission of statements made to police officers during the early stages of investigation, before an indictment or information is filed. Weinstein's Evidence § 410[07] (1975). Nor are statements made as a result of a plea bargain necessarily inadmissible. In Hutto v. Ross, 429 U.S. 28, 97 S. Ct. 202, 50 L. Ed. 2d 194 (1976), the defendant had entered into a plea bargain. Two weeks later he confessed to the crime charged. He subsequently withdrew from the bargain and demanded a trial. The Court held the confession admissible, so long as it was voluntary and the defendant knew he could have enforced the bargain whether he confessed or not.

Similarly, the rule probably does not bar the admission of evidence derived as a result of a statement which is inadmissible under Rule 410. Suppose that the defendant accepts the prosecutor's offer to accept a guilty plea to a lesser offense if the defendant discloses the location of stolen property. The property is retrieved. The

defendant later withdraws the plea and demands a trial. Although no cases directly in point have been found, Rule 410 would not appear to bar the use of the property at trial as evidence of the defendant's guilt.

A final sentence was added to the federal rule to provide that the rule does not govern the admission or exclusion of evidence of a deferred sentence. That determination is made by reference to the statutes cited in the rule, the decisions construing them, and in some instances, constitutional principles. See also 5 R. Meisenholder, Wash. Prac.: Evidence §§ 9, 300, 421, and 423.

RULE 411

LIABILITY INSURANCE

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Comment 411

This rule is the same as Federal Rule 411 and is consistent with previous Washington law.

The rule is broadly drafted to include contributory and comparative negligence or other fault of the plaintiff as well as fault of a defendant. Like Rules 407 and 408, Rule 411 allows the evidence if offered for a purpose other than determining fault, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

"It is undoubtedly the general rule in this state, in personal injury cases, that the fact that the defendant carries liability insurance is entirely immaterial on the main issue of liability . . ." Williams v. Hofer, 30 Wn.2d 253, 191 P.2d 306 (1948).

Existing Washington law is consistent with the rule in admitting evidence of liability insurance for purposes other than a determination of liability. See Robinson v. Hill, 60 Wash. 615, 11 P. 871 (1910), on issue of agency; Jerdal v. Sinclair, 54 Wn.2d 565, 342 P.2d 585 (1959) on issue of ownership of automobile; Moy Quon v. M. Furaya Co., 81 Wash. 526, 143 P. 99 (1914), on issue of bias or prejudice of witness.

With respect to the plaintiff's insurance coverage, it seems probable that the fact that plaintiff is so covered is inadmissible. 5 R. Meisenholder, Wash. Prac. § 8 (1965 & Supp.), citing Rich v. Campbell, 164 Wash. 393, 2 P.2d 886 (1931). This is in accord with the rule, as is the prohibition against defendant's introduction of evidence that he does not have liability insurance. King v. Starr, 43 Wn.2d 115, 260 P.2d 351 (1953).

The rule does not affect the view that if the mention of insurance is inadvertent and it appears that neither the attorney nor the witness deliberately raised the subject, a mistrial will not be granted. See, e.g., Williams v. Hofer, 30 Wn.2d 253, 191 P.2d 306 (1948). The reference to insurance may, on motion, be stricken and the jury instructed to disregard it. Meisenholder § 8.

ARTICLE V

PRIVILEGES

RULE 501

GENERAL RULE

[RESERVED]

Comment 501

Rule 501, which in the federal rules relates to privileged communications, is deleted. The practical effect of Federal Rule 501 is that (1) the federal law of privilege applies in federal criminal cases; (2) the federal law of privilege applies to civil actions unless state law supplies the rule of decision for a claim or defense, or for an element of a claim or defense; and (3) the state law of privilege applies when state law also supplies the rule of decision (e.g., diversity cases). The rule is addressed to choice-of-law problems unique to the federal courts and has no utility at the state level.

Much of the law of privileged communications in Washington is statutory. Although the statutes lack the detail codified in certain other jurisdictions, many details can be determined by reference to decisional law. These statutes and decisions interpreting them remain the law under the Washington Rules of Evidence. The drafters of the Washington rules felt that privileges are established in order to protect a specific relationship or interest as a matter of public policy. Evidentiary privileges pertaining to confidential communications foster interests or relationships determined to be of sufficient social importance that nondisclosure of the communication is considered an acceptable cost even though consideration of the testimony would aid in the determination of the truth in the course of litigation. The legislature is equipped to make the policy determinations underlying the creation of evidentiary privileges. Thus, privileges are ordinarily more appropriately created by statute than by procedural rule.

As to the law of privileged communications in Washington, see 5 R. Meisenholder, Wash. Prac.: Evidence, ch. 9-13 (1965 & Supp.), and the following:

Attorney-client: RCW 5.60.060(2)
Governmental information: RCW 5.60.060(5), 43.43-.710, 46.52.030, 46.52.080, 46.52.120
Grand jury proceedings: RCW 10.27.090
Husband-wife: RCW 5.60.060(1), 26.20,071, 26.21.170
Identity of informer: CrR 4.7(f)(2)
Optometrist-patient: RCW 18.53.200
Physician-patient: RCW 5.60.060(4), 10.48.010, 26.44-.060, 69.50.403, 69.54.070, 71.05.250
Priest-penitent: RCW 5.60.060(3)
Psychologist-client: RCW 18.83.110

ARTICLE VI

WITNESSES

RULE 601

GENERAL RULE OF COMPETENCY

Every person is competent to be a witness except as otherwise provided by statute or by court rule.

Comment 601

This rule differs significantly from Federal Rule 601. The federal rule eliminates all grounds of incompetency not specifically recognized in the succeeding rules in Article VI. Included among the grounds abolished are religious belief, conviction of a crime, and interest in the litigation. No mental or moral qualifications are specified. The drafters of the Washington rules felt that the subjects covered in Article VI are, in many cases, adequately covered by existing statutes and rules which have become familiar to the members of the bench and bar. Accordingly, Rule 601 defers to other statutes and rules defining grounds for incompetence. The grounds for incompetence defined in Article VI supplement those found in existing statutes and rules.

Civil Cases. Washington statutory law is more restrictive than the federal rules. The basic statutory provision on competence is RCW 5.60.020: "Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action, or proceeding." This statute is supplemented by RCW 5.60.050 which specifies those who are incompetent to testify: "those who are of unsound mind, or intoxicated at the time of their production for examination and children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly."

The statutory provisions requiring that a witness be of sound mind have been interpreted as being a codification of the common-law rule as to mental capacity. A person will be held competent to testify if he understands the nature of an oath and is capable of giving a correct account of what he has seen and heard. State v. Morrison, 43 Wn.2d 23, 259 P.2d 1105 (1953).

The trial judge has wide discretion in determining the competency of a child as a witness. There is a presumption that a child over ten years of age is competent to testify. For children under ten years of age the test is fairly explicit. "Where it appears that a child has sufficient intelligence to receive just impressions concerning which he is to testify, has sufficient capacity to relate them correctly and has received sufficient instructions to appreciate the nature and obligations of his age." Stafford, The Child as a Witness, 37 Wash. L. Rev. 303 (1962). It is often appropriate to determine the competency of a child in the absence of the jury. This procedure is authorized by Rule 104(c).

The competency of a person who has been convicted of a crime is the subject of several codified rules. The original Washington statute, RCW 5.60.040, provided that, "any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon." A later statute, RCW 10.52.030, provided that, "every person convicted of a crime shall be a competent witness in any civil or criminal proceeding." This later statute contained no exception for those convicted of perjury. Mullin v. Builders Dev. & Fin. Serv., Inc., 62 Wn.2d 202, 318 P.2d 970 (1963) held that RCW 10.52.030 applied only to criminal cases, while RCW 5.60.040 applied only to civil cases. Thus, the Washington law appears to be that prior conviction of a crime does not make a witness incompetent to testify except, in a civil case, for a prior conviction of perjury.

Interest was abolished as a ground for disqualification by RCW 5.60.030, but that statute does contain an exception to that rule in the form of a dead man statute.

As to religious beliefs, see the comment to Rule 610.

Criminal Cases in Superior Court. Competency of witnesses in superior court criminal cases is governed by CrR 6.12. The language of the rule is quite broad. By its terms, interest is abolished as a basis for incompetency. As to age, the rule eliminates the ten-year-old standard and applies the test of competency to children generally.

By implication, the rule abolishes other bases of incompetency. Among those are conviction of crime and religious belief. The rule parallels the law in civil cases by retaining unsound mind and intoxication as grounds for a finding of incompetency.

The Supreme Court has not determined by written opinion whether the statutory grounds for incompetency apply in criminal cases after the adoption of CrR 6.12, and the issue appears to be debatable. See R. Meisenholder, 5 Wash. Prac. §§ 164, 165 (1975 Supp.). The drafters of the rules of evidence recommended that the law be clarified by incorporating the rules of evidence by reference into CrR 6.12(a). Because the rules of evidence incorporate the statutory grounds for incompetency, the statutes would also become clearly applicable to criminal cases.

RULE 602

LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Comment 602

This rule is the same as Federal Rule 602 and is consistent with previous Washington law. The required personal knowledge need not be absolute. Testimony has been held competent although qualified by the following expressions: "according to his best impression", "to the best of his judgment and belief", "to the best of your knowledge", that the witness "thought" thus and so, to "your best recollection", in the "best judgment" of the witness, and "it is my belief". These qualifications were expressed in the question or the answer and were apparently interpreted as qualifications upon memory, observation, perception, or the reliance of the witness upon his memory or observation. 5 R. Meisenholder, Wash. Prac. § 331 (1965 & Supp.).

RULE 603

OATH OR AFFIRMATION

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Comment 603

This rule is the same as Federal Rule 603 and is substantially in accord with previous Washington law. The statutes relating to oaths, RCW 5.28.010 through 5.28,060, provide that different forms of the oath may be used as required by the special circumstances of the witness. The statutes are consistent with the rule and are not superseded. The use of an affirmation may be substituted for an oath if the witness so desires. While the form of the oath or affirmation may be varied, it has been held that some form of swearing in the witnesses is required. In re Ross, 45 Wn.2d 654, 277 P.2d 335 (1954).

RULE 604

INTERPRETERS

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Comment 604

This rule is the same as Federal Rule 604. Statutory law provides for interpreters for persons of impaired speech or hearing involved in legal proceedings. RCW 2.42.010 through 2.42.050. It speaks of a "qualified interpreter" as "one who is able readily to translate spoken English to and for impaired persons and to translate statements of impaired persons into spoken English." RCW 2.42.020(2). The interpreter is required to take an oath that he will make a true interpretation to the person being examined of all the proceedings in a language which that person understands, and that he will repeat the statements of such person to the court or other agency conducting the proceedings, in the English language, to the best of his skill and judgment. RCW 2.42-.050. Although the statute is more detailed than the rule, it in no way conflicts with the rule and is not superseded.

RULE 605

COMPETENCY OF JUDGE AS WITNESS

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

Comment 605

This rule is the same as Federal Rule 605 and is consistent with previous Washington law. Maitland v. Zanga, 14 Wash. 92, 44 P. 117 (1896). The rule is absolute; there are no limitations or qualifications.

The rule provides for automatic objection. This saves counsel from the predicament of choosing between remaining silent and thereby waiving objection, or objecting, which is apt to be considered an offensive attack on the judge's integrity.

The rule does not prevent the judge from testifying in collateral proceedings as to what occurred in an earlier trial. A judge is barred from testifying only at a trial over which he is presiding.

RULE 606

COMPETENCY OF JUROR AS WITNESS

A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

Comment 606

This rule is the same as paragraph (a) of Federal Rule 606. Paragraph (b), Inquiry into validity of verdict or indictment, is omitted.

This rule is contrary to RCW 5.60.010, which provides that a juror who is otherwise competent may testify at trial. Although Rule 601 defers generally to statutes, it only defers to statutes which make a person incompetent to testify. It leaves open the possibility for subsequent court rules establishing other grounds for incompetency. Thus, Rule 606(a) prevails over, and supersedes, RCW 5.60.010.

Paragraph (b) of Federal Rule 606 concerns the extent to which testimony, affidavits, or statements of jurors may be received for the purpose of invalidating or supporting a verdict or indictment. Previous Washington law has defined the extent to which jurors' testimony and affidavits are admissible in terms of their being inadmissible if the evidence "inheres in the verdict." For a more complete discussion of this doctrine, see L. Orland, 2 Wash. Prac. § 294 (3d ed. 1972). Federal Rule 606(b) is omitted in deference to existing Washington law.

RULE 607

WHO MAY IMPEACH

The credibility of a witness may be attacked by any party, including the party calling him.

Comment 607

This rule is the same as Federal Rule 607 and reverses the traditional common-law rule against impeaching one's own witness. The common-law rule has been the subject of much criticism in that it is based on false premises. A party does not vouch for the credibility of witnesses because a party rarely has free choice in selecting them. Denial of the right to impeach would leave the party at the mercy of the witness as well as of the adversary. See Advisory Committee Note, Federal Rule 607.

There is precedent for permitting impeachment of one's own witness. Rule 32(a)(1) of the Federal Rules of Civil Procedure allows any party to impeach a witness

by means of a deposition, and Rule 43(b) has allowed the calling and impeachment of an adverse party or of a person identified with an adverse party. Similar provisions are found in the corresponding civil rules in Washington.

Prior Washington law has allowed a party to impeach the party's own witness but only if the party was "taken by surprise by reason of affirmative testimony prejudicial to the interests of the party calling the witness." State v. Thomas, 1 Wn.2d 298, 95 P.2d 1036 (1939). The two-part test required both the showing of surprise and testimony prejudicial to the party's interests. The requirement of prejudice was not met when the witness merely failed to testify as favorably as expected. Cole v. McGhie, 59 Wn.2d 436, 361 P.2d 938 (1961). Cf. State v. Calhoun, 13 Wn. App. 644, 536 P.2d 668 (1975).

RULE 608

EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS

(a) Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of reputation, but subject to the limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Comment 608

Section (a). This rule differs from Federal Rule 608 in that it does not authorize the introduction of evidence of character in the form of an opinion. The rule thus parallels the approach taken in Rule 405. The rule restricts the use of character evidence for impeachment to evidence of the witness' reputation for truthfulness, in accordance with existing Washington law. See State v. Swenson, 62 Wn.2d 259, 382 P.2d 614 (1963). The proper procedure for introducing evidence of character is described in 5 R. Meisenholder, Wash. Prac. § 301 (1965 & Supp.). The drafters of the Washington rule felt that impeachment by use of opinion is too prejudicial and on a practical level is not easily subject to testing by cross-examination or contradiction.

By statute, a rape victim's reputation concerning sexual matters is inadmissible in proceedings against the accused. RCW 9.79.150. The statute is consistent with the rule and is not superseded.

Section (b). This section is the same as Federal Rule 608(b) and gives the court discretion to allow inquiry on cross examination into specific instances of conduct bearing upon the credibility of the witness. The effect of Rule 608(b) upon existing Washington law is not entirely clear. Although there is not total consistency in the Washington case law, the general rule appears to be that acts of misconduct not the subject of a prior conviction have not been admissible for impeachment purposes. "[A] witness may not be impeached by showing specific acts of misconduct. This is true whether the impeachment is attempted by means of extrinsic evidence or cross-examination." State v. Emmanuel, 42 Wn.2d 1, 253 P.2d 761 (1950). There are some cases written in terms of a discretionary power in the judge to admit evidence of acts of misconduct, but these appear to be early cases and probably do not represent the current rule. Meisenholder § 301. Prior to the adoption of RCW 9.79.150, in prosecutions involving sexual matters, the judge had the discretionary power to permit the prosecuting witness to be questioned about acts of unchastity. State v. Linton, 36 Wn.2d 67, 216 P.2d 761 (1950). The statute removes the judge's discretion by making sexual conduct inadmissible on the issue of credibility. The drafters of the Washington rules felt that the rule, restricted as it is to matters probative of truthfulness or untruthfulness, clarified the law and reflected a sound policy.

A third, unlettered paragraph appears in Federal Rule 608. That paragraph provides:

> The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

This paragraph was omitted from the Washington rule, not because of any fundamental disagreement with the policy expressed, but because the drafters felt that the subject was more appropriately left to developing principles of constitutional law.

RULE 609

IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the

court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of 1 year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a finding of guilt in a juvenile offense proceeding of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Comment 609

This rule is substantially the same as Federal Rule 609 and is more restrictive than previous Washington law.

Two Washington statutes provide that the credibility of a witness may be attacked by evidence that the witness had been previously convicted of a crime. RCW 5.60.040; 10.52.030. The statutes, and some limitations developed by decisional law, are discussed in 5 R. Meisenholder, Wash. Prac. § 300 (1965 & Supp.). The Washington Supreme Court has recently expressed some concern about the constitutionality of the statutes, but it has not invalidated them. State v. Murray, 86 Wn.2d 165, 543 P.2d 332 (1975) (Rosellini, J., concurring); State v. Hultenschmidt, 87 Wn.2d 212, 550 P.2d 115 (1976). Justice Rosellini, concurring in State v. Murray, above, observed that, "These statutes, relating as they do to the judicial process, may be superseded by rule of court." 86 Wn.2d at 170. Rule 609 offers a balance between the right of the accused to testify freely in his own behalf and the desirability of allowing the State to attack the credibility of the accused who chooses to testify. The two statutes in point are superseded.

Section (a). This paragraph narrows the scope of convictions which may be used to impeach the accused in a criminal case. RCW 10.52.030, which is superseded by the rule, did not contain the restrictions expressed in section (a). This portion of the rule will not cause a different result in most civil cases because misdemeanor convictions were not ordinarily admissible for impeachment in civil cases under prior law, and they remain excluded by the 1-year limitation defined by the rule. See Willey v. Hilltop Associates, 13 Wn. App. 336, 535 P.2d 850 (1975); RCW 9A.04.040.

Section (b). This section narrows the scope of convictions which may be used for impeachment. No time limit was found in previous Washington law. See State v. Robinson, 75 Wn.2d 230, 450 P.2d 180 (1969).

Section (c). This section supersedes prior Washington law holding that a pardon has no effect upon the admissibility of a conviction for impeachment. See State v. Serfling, 131 Wash. 605, 230 P. 847 (1924); State v. Knott, 6 Wn. App. 436, 493 P.2d 1027 (1972).

Section (d). This section gives somewhat more discretion to the trial judge than prior Washington law holding juvenile adjudications inadmissible for impeachment. See State v. Temple, 5 Wn. App. 1, 485 P.2d 93 (1971). The federal term, "juvenile adjudication," is changed in the text of the rule to "finding of guilt in a juvenile offense proceeding." This change conforms to the Washington Juvenile Court Act and makes it clear that adjudications of dependency remain inadmissible.

Section (e). The first sentence of this section is consistent with prior Washington law. State v. Robbins, 37 Wn.2d 492, 224 P.2d 1076 (1950). There appears to be no prior law directly bearing upon the second sentence.

In some situations a party may wish to use evidence of a prior conviction as substantive evidence of a fact alleged in subsequent litigation. Rule 609 would not apply because it relates only to impeachment by evidence of a conviction. Criminal convictions as substantive evidence are governed by Rule 803(a)(22).

RULE 610

RELIGIOUS BELIEFS OR OPINIONS

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

Comment 610

Although the rule is the same as Federal Rule 610, it is not intended to reflect any departure from a similar provision in the Washington Constitution. Const. art. 1, § 11 (Amendment 34).

RULE 611

MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Comment 611

This rule is the same as Federal Rule 611. Although the rule is primarily one of discretion, it is not intended to broaden the discretion permitted under previous law. As to the scope of cross-examination, see State v. Robideau, 70 Wn.2d 994, 425 P.2d 880 (1967). As to leading questions, see State v. Scott, 20 Wn.2d 696, 149 P.2d 152 (1944).

RULE 612

WRITING USED TO REFRESH MEMORY

If a witness uses a writing to refresh his memory for the purpose of testifying, either:

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice,

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires.

Comment 612

This rule is substantially the same as Federal Rule 612. An introductory reference in the federal rule to the Jencks Act, 18 U.S.C. § 3500, is omitted from the Washington version because the statute would normally be inapplicable in state court. Also omitted from the Washington version is a clause at the end of the federal rule, providing: "except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial." Although this provision appears to be a restriction on the federal court's discretion, the Advisory Committee's note to Federal Rule 612 indicates that the provision is included only to parallel the Jencks Act, and that other alternatives such as contempt or dismissal remain available under the Federal Rules of Criminal Procedure. The drafters of the Washington rule felt that this approach was unduly confusing and that the clause could be eliminated without compromising the substance of the rule.

Under previous Washington law, there has been a distinction between memoranda used to refresh memory before trial and those used during the appearance of the witness in court. Under State v. Little, 57 Wn.2d 516, 358 P.2d 120 (1961), memoranda used in court are clearly subject to a right of inspection by opposing counsel, but there has been no similar right to inspect memoranda used to refresh memory before trial. State v. Paschall, 182 Wash. 304, 47 P.2d 15 (1935). The rule changes previous law to the extent that it gives the court discretion to permit inspection of memoranda used before trial.

RULE 613

PRIOR STATEMENTS OF WITNESSES

(a) Examining Witness Concerning Prior Statement. In the examination of a witness concerning a prior statement made by him, whether written or not, the court may require that the statement be shown or its contents disclosed to him at that time, and on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

Comment 613

This rule is a modification of Federal Rule 613 and conforms substantially to previous Washington law.

Paragraph (a) of the federal rule abolishes the old English requirement that a witness be shown a prior written statement before opposing counsel can cross-examine the witness about the statement. Similarly, the federal rule provides that the contents of a prior oral statement need not be disclosed to the witness before cross-examination.

In Washington, previous decisional law is not entirely clear but appears to be closer to the common-law view. With reference to the prior oral statements, counsel must ask foundation questions which substantially repeat the prior inconsistent statement and direct the attention of the witness to the circumstances under which he purportedly made the statement. With reference to prior written statements, similar foundation questions are required, but there appears to be no decisional law requiring the written statement to actually be shown to the witness before cross-examination. 5 R. Meisenholder, Wash. Prac.: Evidence § 296 (1965 & Supp.).

The Advisory Committee's note to Federal Rule 613 indicates that the federal drafters considered the common-law rule to be a "useless impediment to cross-examination." The drafters of the proposed Washington

rule agreed to the extent that the common-law requirement can be a useless impediment under some circumstances. The drafters felt, however, that the court should be given some measure of discretion to require that the prior statement be disclosed if it would be manifestly unfair to begin cross-examining the witness before disclosing the statement. Accordingly, section (a) of the rule provides that the court "may require" that the prior statement be shown or its contents disclosed to the witness before cross-examination.

Both the federal rule and the Washington rule also provide that the prior statement must, on request, be shown or disclosed to the lawyer who originally called the witness. This provision, which is consistent with previous law, protects against unwarranted insinuations that a statement was made when in fact it was not. It also serves to prepare counsel for an effort to rehabilitate the witness on redirect examination. Butcher v. Seattle, 142 Wash. 588, 253 P. 1082 (1927).

Section (b) is the same as Federal Rule 613(b) and provides that extrinsic evidence of a prior inconsistent statement is not admissible unless the witness is given an opportunity to explain or deny the statement. Previous Washington law is in accord. Meisenholder § 296. The rule affords a measure of discretion in "the interests of justice" to allow for unusual circumstances such as a witness becoming unavailable by the time a prior inconsistent statement is discovered.

There are prior Washington decisions to the effect that if the witness responds to foundation questions by admitting making the prior inconsistent statement, then extrinsic evidence of the statement is inadmissible. It is felt that the additional extrinsic evidence would usually be of little value and would be a waste of time. Meisenholder § 296. Although Rule 613 does not expressly bar the admission of extrinsic evidence under these circumstances, Rule 403 gives the court broad discretion to exclude evidence on the grounds that it would cause undue delay, be a waste of time, or that it is a needless presentation of cumulative evidence.

It should be remembered that Rule 613 relates to the admission of evidence for impeachment rather than as substantive evidence. Section (b) of Rule 613 expressly disclaims any application to admissions of a party-opponent as defined in Rule 801(d)(2). The admissibility of hearsay statements as substantive evidence is governed by the rules in Article VIII.

RULE 614

CALLING AND INTERROGATION OF WITNESSES BY COURT

(a) Calling by Court. The court may, on its own motion where necessary in the interests of justice or on motion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute a comment on the evidence.

(c) Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Comment 614

Sections (a) and (b) are modifications of Federal Rule 614. Section (c) is the same as Federal Rule 614(c). As modified, the rule is consistent with previous Washington law.

Section (a). There is dictum to the effect that a trial judge may call witnesses in Washington. Ramsey v. Mading, 36 Wn.2d 303, 217 P.2d 1041 (1950). The phrase "where necessary in the interests of justice" has been added to the language of the federal rule to insure against unlimited, unreviewable discretion. If the court intends to call a witness, the judge, in fairness, should confer with counsel before calling the witness, and the conference should be on the record.

The federal rule provides that the court may also call a witness "at the suggestion of a party." The Washington rule substitutes the phrase "on motion of a party." The drafters of the Washington rule felt that the word "suggestion" was ambiguous and that "motion" was more precise in terms of established practice under the civil and criminal rules.

Section (b). A trial judge in Washington may question a witness so long as the questions do not violate the constitutional prohibition against a judge commenting on the evidence. Const. art. 4, § 16; State v. Brown, 31 Wn.2d 475, 197 P.2d 590 (1948); 5 R. Meisenholder, Wash. Prac. § 269 (1965 & Supp.). A proviso to this effect has been added to Federal Rule 614.

Section (c). Counsel may object to the judge's questions on the basis of any of the rules of evidence. This section is designed to relieve counsel of the embarrassment of objecting to the judge's questions in front of the jury. The objection is not automatic, however, as it is under Rule 605.

RULE 615

EXCLUSION OF WITNESSES

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be reasonably necessary to the presentation of his cause.

Comment 615

This rule differs from Federal Rule 615 in that the word "may" has been substituted for "shall" in the first sentence, and the words "reasonably necessary" have been substituted for "essential" in the last sentence. The word "may" preserves the discretionary nature of the rule under previous Washington law. State v. Adams, 76 Wn.2d 650, 485 P.2d 558 (1969). The drafters of the Washington rule felt that the federal rule's use of the

word "essential" in subdivision (3) established an inordinately strict test which could force an unjustified reversal on appeal. The test of "reasonably necessary" offers more flexibility.

The rule modifies previous Washington law in that it delineates certain witnesses who may not be excluded. Under previous law, the judge was given more discretion in this regard. State v. Weaver, 60 Wn.2d 87, 371 P.2d 1006 (1962).

ARTICLE VII

OPINIONS AND EXPERT TESTIMONY

RULE 701

OPINION TESTIMONY BY LAY WITNESSES

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Comment 701

This rule is the same as Federal Rule 701. It is essentially a rule of discretion and differs from previous law more in form than substance. The rule requires the trial judge, on the basis of the posture of the particular case, to decide whether concreteness, abstraction or a combination of both will be most effective in enabling the jury to ascertain the truth and reach a just result. In applying the rule, it should be kept in mind that its purpose is to eliminate time-consuming quibbles over objections that would not affect the outcome regardless of how they were decided. The emphasis belongs on what the witness knows and not on how he is expressing himself. Weinstein's Evidence § 701[02] (1975).

In several recent cases the Washington Supreme Court has cited Section 401 of the Model Code of Evidence as controlling the admission of a lay opinion testimony in Washington. See Church v. West, 75 Wn.2d 502, 452 P.2d 265 (1969) and 5 R. Meisenholder, Wash. Prac. § 341 (1975 Supp.). Section 401 would usually yield the same result as decisional law predating it. Some examples of admissible opinion testimony are: the speed of a vehicle, the mental responsibility of another, whether another was "healthy", the value of one's own property, and the identification of a person. Meisenholder § 341 (1975 Supp.).

Differences between existing Washington law and Rule 701 are largely matters of form rather than substance. Although Model Code Section 401 assumes that the witness may generally testify in terms of inference and opinion, the court may require the testimony to be stated in nonabstract detail if it finds that the witness is capable of doing so satisfactorily and that the statement by the witness of his conclusory inferences might mislead the trier of fact. Rule 701 approaches the problem in reverse. It assumes that the witness will give his testimony by stating his observations in as raw a form as practicable, but permits him to resort to inferences and opinions when this form of testimony will be helpful. Both rules give the trial court a wide latitude of discretion. As a practical matter, the Rule 701 is unlikely to change Washington law. See Meisenholder § 343.

The subject matter of Rule 701 is analyzed in greater detail in J. Powell & R. Burns, A Discussion of the New Federal Rules of Evidence, 8 Gonz. L. Rev. 1, 14-16 (1972).

RULE 702

TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Comment 702

This rule is the same as Federal Rule 702 and is consistent with previous law giving the court broad discretion to determine whether a witness is qualified to express an expert opinion. See State v. Tatum, 58 Wn.2d 73, 360 P.2d 754 (1961).

The Washington Supreme Court has more recently cited Section 401 of the Model Code of Evidence as governing the admissibility of expert testimony. See Church v. West, 75 Wn.2d 502, 452 P.2d 265 (1969). However, the results and language of these opinions indicate that in effect the Court interprets Section 401 in line with the prior general Washington case law. 5 R. Meisenholder, Wash. Prac. § 351 (1975 Supp.)

RULE 703

BASES OF OPINION TESTIMONY BY EXPERTS

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Comment 703

This rule is the same as Federal Rule 703. The first sentence codifies the universally accepted principle that an expert may base an opinion on (1) first-hand information or (2) facts or data presented to him at trial and is consistent with previous Washington law. See 5 R. Meisenholder, Wash. Prac. §§ 354, 355 (1965 & Supp.). The second sentence allows an expert to base an opinion on data which could not be admitted in evidence provided it is of the type reasonably relied upon by experts in forming opinions upon the subject in their particular field of competence. Before an expert will be permitted to testify upon the basis of facts not admissible in evidence, the court will have to find pursuant to Rule 104(a) that the particular underlying data is of a kind that is reasonably relied upon by experts in the particular field in reaching conclusions. If there is a serious issue the trial judge will examine the expert outside the

presence of the jury to determine whether these conditions are met. Since Rule 703 is concerned with the trustworthiness of the resulting opinion, the judge should not allow the opinion if the expert can show only that he customarily relies upon such material or that it is relied upon only in preparing for litigation. The expert must establish that he as well as others would act upon the information for purposes other than testifying in a lawsuit. Weinstein's Evidence § 703[01] (1975).

The expert will ordinarily be in the best position to know what data can be reasonably relied upon, and the court will usually follow the expert's advice on the point. The court's decision will, to a large extent, be based on the degree of confidence it has in the professional calibre and ethics of the expert group involved. Physicians are likely to be given more leeway than accidentologists. Id.

Several older Washington cases suggest that the opinion of an expert based solely upon hearsay reports or other hearsay is inadmissible. Meisenholder § 357. One case, however, held that a doctor could state his opinion that the eyesight of a person was normal when the doctor's opinion was based upon his office record of visual field charts prepared by a technician during the course of examination by the technician. Engler v. Woodman, 54 Wn.2d 360, 340 P.2d 563 (1959). And in State v. Wineberg, 74 Wn.2d 372, 444 P.2d 787 (1968), the court held that an expert could, in the trial court's discretion, be permitted to give an opinion as to the value of property even though some of the factors (e.g., comparable sales prices) would be inadmissible as hearsay, so long as the opinion was the product of the expert's own independent judgment. Rule 703 reflects the approach taken in the more recent cases.

RULE 704

OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Comment 704

This rule is the same as Federal Rule 704 and is consistent with previous Washington law. In rejecting challenges that opinions should have been excluded because they were opinions on ultimate facts, the court has permitted opinions to be voiced upon various matters: that the physical condition of prosecuting witness could not have been the result of ordinary normal sexual intercourse, the point of impact between vehicles based upon skidmarks, the sanity or insanity of a criminal defendant, the possibility of gainful employment, how a disease would be communicated, and other matters. 5 R. Meisenholder, Wash. Prac. § 356 (1965 & Supp.).

Except for testimony concerning foreign law, experts are not to state opinions of law or mixed fact and law. On this basis, questions such as whether X was negligent can be excluded. Id.

The introduction of evidence under Rule 704 is subject to the restrictions of Rules 701 and 702, which require opinions to be helpful to the trier of fact, and Rule 403, which authorizes the exclusion of time-wasting evidence.

RULE 705

DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Comment 705

This rule is the same as Federal Rule 705. It clarifies Washington law by defining a procedure which cannot be determined by reference to decisional law. See 5 R. Meisenholder, Wash. Prac. § 354 (1965 & Supp.). The use of hypothetical questions, often criticized by the authorities, becomes an optional tactic rather than a requirement, unless otherwise ordered by the court.

Without preliminary disclosure at trial of underlying data, effective cross-examination is often impossible unless the information has been obtained through pretrial discovery. The court, therefore, should liberally grant permission for depositions and other discovery with respect to experts under CR 26(b)(4). D. Smith & S. Henley, Opinion Evidence: An Analysis of the New Federal Rules and Current Washington Law, 11 Gonz. L. Rev. 692, 697-98 (1976).

RULE 706

COURT APPOINTED EXPERTS

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

Comment 706

This rule is the same as Federal Rule 706, except that a provision in paragraph (b) for compensating experts from public funds was deleted. Rule 706 does not apply to the appointment of defense experts in indigent criminal cases. That practice is governed by a more specialized rule, CrR 3.1.

Legal writers and revisers have long favored reforming trial practice by implementing the trial judge's common-law power to call experts. Their imprecations against the "battle of experts" led to the drafting of the Uniform Expert Testimony Act in 1937, which later formed the basis for Rules 403-410 of the Model Code of Evidence, for Rules 59, 60, and 61 of the Uniform Rules of Evidence, and Federal Rule of Evidence 706. Weinstein's Evidence § 706[01] (1975).

There is dicta in the Washington cases suggesting that a judge may appoint an expert witness in nonjury cases. Ramsey v. Mading, 36 Wn.2d 303, 310-11, 217 P.2d 1041 (1950). (The dictum in Ramsey was inaccurately characterized as a holding in State v. Swenson, 62 Wn.2d 259, 277, 382 P.2d 614 (1963).) A relatively small number of rules and statutes relate to the appointment and compensation of experts in specific kinds of cases. Rule 706 codifies the common-law power of the court to call an expert and defines a procedure applicable to all cases.

Expert witness fees in state condemnation proceedings are payable from public funds, as anticipated by Federal Rule 706, but only pursuant to a statutory scheme which imposes certain conditions and restrictions not found in the federal rule. See RCW 8.25.070. The statute does not mention the possibility of the expert being appointed by the court, and the statute does not authorize the disbursement of public funds for an appointed expert. The drafters of the Washington rule eliminated the language in Federal Rule 706 authorizing disbursement of public funds in deference to applicable statutes.

There is an obvious danger that the jury will be more impressed by an expert appointed by the court than by one called by a party. It has been argued that to disclose to the jury the fact that an expert was appointed by the court would violate the state constitutional prohibition against a judge commenting on the evidence. 5 R. Meisenholder, Wash. Prac. § 363 (1965); Const. art. 4, § 16. The court's discretion to make such a disclosure under Rule 706(c) should be used with extreme caution to avoid the possibility of commenting on the evidence.

ARTICLE VIII

HEARSAY

RULE 801

DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if—

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (i) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving him; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (i) his own statement, in either his individual or a representative capacity or (ii) a statement of which he has manifested his adoption or belief in its truth, or (iii) a statement by a person authorized by him to make a statement concerning the subject, or (iv) a statement by his agent or servant acting within the scope of his authority to make the statement for the party, or (v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Comment 801

This rule is the same as Federal Rule 801, except that subsection (d)(2)(iv) has been modified with respect to the admissibility of statements by agents and servants.

Section (a). The definition of "statement" is consistent with previous Washington law. Oral assertions, written assertions, and assertive conduct all constitute statements, but acts of nonassertive conduct do not. 5 R. Meisenholder, Wash. Prac. § 387 (1965 & Supp.).

Section (b). Section (b) is self-explanatory.

Section (c). The definition of "hearsay" is substantially in accord with previous Washington law. See Moen v. Chestnut, 9 Wn.2d 93, 113 P.2d 1030 (1941).

Section (d). This section excludes from the definition of hearsay several types of statements which literally are within the definition. Statements excluded from the hearsay rule by Rule 801(d) are admissible as substantive evidence. The rule does not affect the use of prior inconsistent statements to impeach a witness. The use of these statements for impeachment is governed by Rule 613.

Subsection (d)(1) defines the extent to which prior out-of-court statements are admissible as substantive evidence if the declarant is presently available for cross-examination at trial. One Washington case is in accord with the theory expressed by the rule. State v. Simmons, 63 Wn.2d 17, 385 P.2d 389 (1963). Other cases, however, are to the contrary. Meisenholder § 381. The rule clarifies the law by detailing the circumstances under

which the statements are admissible and conforms state law to federal practice.

Subsection (d)(1)(i) provides that a witness' prior inconsistent statement is admissible as substantive evidence if it was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition. The rule does not require the statement to have been subject to cross-examination at the time it was made. See Conference Report, quoted in Weinstein's Evidence 801-24 (1975). The rule would not, however, necessarily admit statements made in pretrial affidavits. The rule applies only to statements given in a trial, hearing, proceeding, or deposition. Although the meaning of "proceeding" is not yet clear, it has been observed that the words of limitation were designed in part to prevent the admission of affidavits given by a coerced or misinformed witness. Weinstein's Evidence §§ 801(d)(1)[01], 801(d)(1)(A)[01] 1055 (9th Cir. 1976). The constitutionality of a California statute even less restrictive than Rule 801(d)(1)(i) was upheld in California v. Green, 399 U.S. 149 (1970).

Subsection (d)(1)(ii) makes statements admissible as substantive evidence which were previously admissible only to rehabilitate an impeached witness. See Meisenholder § 306.

Subsection (d)(1)(iii) is consistent with previous Washington law. See State v. Simmons, 63 Wn.2d 17, 385 P.2d 389 (1963).

Subsection (d)(2) differs from previous Washington law more in theory than in practice. Previous decisions have considered admissions by party-opponents to be hearsay but have admitted them as an exception to the hearsay rule. Meisenholder § 421. Rule 801 continues to admit the statements, not as an exception to the hearsay rule, but by excluding them from the definition of hearsay altogether.

Statements of others that are expressly adopted by a party have been held admissible as admissions. State v. McKenzie, 184 Wash. 32, 48 P.2d 1115 (1935). Statements by authorized persons have been similarly held to be admissions. State ex rel. Ledger Pub. Co. v. Gloyd, 14 Wash. 4, 44 P. 103 (1896).

Federal Rule 801 provides in relevant part: "A statement is not hearsay if . . . the statement is offered against a party and is . . . a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship. . . ." The Washington cases have not adopted the rule of broader admissibility expressed by the federal rule. The traditional rule, which was applied in early Washington decisions, was that, "the acts and declarations of the agent, when acting within the scope of his authority, having relations to, and connected with, and in the course of, the particular transaction in which he is engaged, are, in legal effect, the acts or declarations of his principal." Tacoma & Eastern Lumber Co. v. Field & Co., 100 Wash. 79, 86, 170 P. 360 (1918). This was known as the "res gestae" rule, and the admissibility of an agent's statement depended upon how closely the statement was related to the transaction in question. Meisenholder § 425(1).

Later decisions have phrased the rule not in terms of res gestae, but in terms of whether the agent was authorized to make the statement on behalf of the principal. Id. This has become known as the "speaking agent" approach and has continued to be applied in relatively recent decisions. See, e.g., Kadiak Fish Co. v. Murphy Diesel Co., 70 Wn.2d 153, 422 P.2d 946 (1967). Accord, Restatement (Second) of Agency §§ 286-88 (1958). The drafters of the Washington rule felt that existing Washington law, as exemplified by the later cases, reflected the better policy and deleted the language in the federal rule which would have broadened the admissibility of statements by agents.

The provision concerning statements by co-conspirators is consistent with previous Washington law. Meisenholder § 430.

RULE 802

HEARSAY RULE

Hearsay is not admissible except as provided by these rules, by other court rules, or by statute.

Comment 802

The language of Federal Rule 802 is modified to adapt the rule to state practice. The rule preserves other court rules such as CR 43(e), authorizing the admission of hearsay evidence under particular circumstances.

RULE 803

HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

(a) Specific Exceptions. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had

knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of Regularly Conducted Activity. [Reserved. See RCW 5.45.]

(7) Absence of Entry in Records Kept in Accordance With RCW 5.45. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records and Reports. [Reserved. See RCW 5.44.040.]

(9) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscription on family portraits, tattoos, engravings on urns, crypts, or tombstones, or the like.

(14) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. Statements in a document in existence 20 years or more whose authenticity is established.

(17) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross–examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History. Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to Character. Reputation of a person's character among his associates or in the community.

(22) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(b) Other Exceptions. [Reserved.]

Comment 803

This rule is the same as Federal Rule 803, except that one addition is made in subsection (a)(13), a minor editorial improvement is made in subsection (a)(22), and subsection (a)(24) is omitted.

Subsection (a)(1). This subsection is consistent with previous Washington law. Beck v. Dye, 200 Wash. 1, 92 P.2d 113 (1939).

Subsection (a)(2). This subsection is consistent with previous Washington law. Beck v. Dye, supra.

Subsection (a)(3). This subsection is a specialized application of the rule expressed in subsection (a)(1). Under previous law it was not clear whether statements to a physician of the declarant's present pain and suffering were admissible. See 5 R. Meisenholder, Wash. Prac. § 472 (1965 & Supp.). The statements are admissible under Rule 803.

Statements of the declarant's then existing state of mind have been admissible in Washington if there is need for their use and if there is circumstantial probability of their trustworthiness. Raborn v. Hayton, 34 Wn.2d 105, 208 P.2d 133 (1949). The rule is substantially in accord.

The provision relating to wills appears to change Washington law. Compare Carey v. Powell, 32 Wn.2d 761, 204 P.2d 193 (1949). This portion of Rule 803 is based on practical considerations of necessity and expediency and conforms Washington law to the practice followed in a majority of American jurisdictions. Weinstein's Evidence § 803(3)[05] (1975).

Subsection (a)(4). This subsection changes Washington law. Under previous cases, statements of past symptoms and statements relating to medical history, even though made to a treating physician, have been inadmissible as independent substantive evidence. Smith v. Ernst Hardware Co., 61 Wn.2d 75, 377 P.2d 258 (1962). Statements made to a treating or nontreating physician have been allowed into evidence, but only for the purpose of supporting the physician's medical conclusions. Kennedy v. Monroe, 15 Wn. App. 39, 547 P.2d 899 (1976). Rule 803 admits the statements for the purpose of proving the truth of the matter asserted. The justification for the rule, already followed in a number of states, is the patient's motivation to be truthful. Meisenholder § 472. Further, it is unrealistic to assume that a juror, instructed according to previous law, would be able to draw the distinction necessary to hear the statements in order to justify a medical conclusion but to disregard them as to the truth of the matter asserted.

The rule is subject to the restrictions imposed by the law of privileged communications.

Subsection (a)(5). This subsection codifies the familiar hearsay exception for past recollection recorded. Under previous Washington law, the exception only applied if the witness had no independent recollection of the facts. State v. Benson, 58 Wn.2d 490, 364 P.2d 220 (1961). Rule 803 is slightly broader in that it requires only that the witness must have insufficient recollection to testify fully and accurately.

Subsection (a)(6). Federal Rule 803(6) is deleted, not because of any fundamental disagreement with the rule, but because the drafters felt that the subject matter was adequately covered by statutes and decisions already familiar to the bench and bar. See Meisenholder, ch. 28.

Subsection (a)(7). Federal Rule 803(7) is modified to refer to RCW 5.45 rather than to subsection (a)(6). The rule resolves an issue which has not been addressed in this state's decisional law. Meisenholder § 516.

Subsection (a)(8). Federal Rule 803(8) is deleted, not because of any fundamental disagreement with the rule, but because the drafters felt that the subject matter was adequately covered by the statute and decisions already familiar to the bench and bar. See Meisenholder, ch. 29.

Subsection (a)(9). There do not appear to be any previous Washington cases or statutes directly bearing on the admissibility of vital statistics as a hearsay exception. RCW 5.44.040, preserved by subsection (a)(8), may be controlling in many instances.

Subsection (a)(10). A similar provision is found in CR 44(b). CR 44 is not superseded.

Subsection (a)(11). There do not appear to be any previous Washington cases or statutes directly in point, except to the extent that a religious organization may qualify as a "business" under RCW 5.45.010. Subsection (a)(11) clarifies the law by making specific records of religious organizations admissible as hearsay exceptions.

Subsection (a)(12). There do not appear to be any previous Washington cases or statutes directly in point, except to the extent that the statutes preserved by subsection (a)(6) and (8) may also cover the subject matter of subsection (a)(12).

Subsection (a)(13). This subsection conforms substantially to previous Washington law. Meisenholder § 542. Tattoos have been added to the items enumerated in the federal rule. The drafters felt that tattoos often reflect personal or family history and are apt to be as trustworthy as the other items listed in the rule.

Subsection (a)(14). The hearsay exception for records of documents affecting an interest in property has previously been recognized in Washington. Copies of all deeds which must be filed with the county auditor are admissible. RCW 5.44.070. Copies of city or town plats are admissible. RCW 58.10.020. "Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded . . . in pursuance of law, copies of record of such deed, [etc.] . . . shall be received in evidence to all intents and purposes as the originals themselves." RCW 5.44.060. The rule does not conflict with the statutes. It supplements the statutes but does not supersede them.

Subsection (a)(15). There is little prior authority on the admissibility of evidence of statements in documents affecting an interest in property, but what little there is supports an exception to the hearsay rule in accord with the rule. In Adams v. Mignon, 197 Wash. 293, 84 P.2d 1016 (1938), the court held that the trial court did not err when it admitted an abstract of title into evidence: "The abstract, while not conclusive as to facts shown by the record, was admissible for what it was worth."

Subsection (a)(16). The rule reduces the time limit from 30 to 20 years. Compare Spokane v. Catholic Bishop, 33 Wn.2d 496, 206 P.2d 277 (1949). Authentication is accomplished pursuant to Rule 901(b)(8).

Subsection (a)(17). This subsection is substantially in accord with previous Washington law. See Nordstrom v. White Metal, 75 Wn.2d 629, 453 P.2d 619 (1969) and

Meyer Bros. Drug Co. v. Callison, 120 Wash. 378, 207 P. 683 (1922).

Subsection (a)(18). This subsection makes statements contained in treatises, periodicals, and pamphlets admissible as substantive evidence, but only when the expert is on the stand and available to explain and assist in the application of the information. Prior cases holding that treatises are not admissible to prove the truth of the statements contained therein are no longer controlling. Compare Dabroe v. Rhodes Co., 64 Wn.2d 431, 392 P.2d 317 (1964). The traditional use of treatises on cross-examination is authorized by Rules 611, 703, and 705.

Subsection (a)(19). Previous Washington law has authorized admission of evidence of reputation within the family or among close associates on matters of family history. Meisenholder § 542. Rule 803(a)(19) clarifies the law by stating more specifically the scope of this hearsay exception. The rule does not require the declarant to be unavailable, nor does it require that the statements must be made prior to litigation with no motive to deceive. Compare Carfe v. Albright, 39 Wn.2d 697, 237 P.2d 795 (1951) and Armstrong v. Woodmen of America, 105 Wash. 356, 178 P. 1 (1919).

Subsection (a)(20). This subsection is substantially in accord with previous Washington law, except that the rule does not require the declarant to be unavailable before the hearsay exception applies. See Kay Corp. v. Anderson, 72 Wn.2d 879, 436 P.2d 459 (1967) and Alverson v. Hooper, 108 Wash. 510, 185 P. 808 (1919).

Subsection (a)(21). Under previous law, the scope of this exception could not be stated definitively. Meisenholder § 544. The rule clarifies the law by establishing reputation as a general exception to the hearsay rule. The methods of proving character are defined by Rule 405.

Subsection (a)(22). No similar exception to the hearsay rule is defined by previous Washington law. Meisenholder § 545. Admissibility is limited by the restrictions stated in the rule. The rule does not deal with the substantive effect of a judgment as res judicata, nor does it govern evidence of a conviction for impeachment. The latter is governed by Rule 609. Even though the rule permits certain convictions to be used as substantive evidence in later litigation, the rule does not preclude the defendant from offering an explanation of the conviction based on newly acquired evidence. 4 Weinstein's Evidence § 802(22)[01] (1975).

Subsection (a)(23). There do not appear to be any previous Washington statutes or cases directly in point. The leading case is Patterson v. Gaines, 47 U.S. (6 How.) 550 (1848).

Section (b). Federal Rule 803(24) is deleted. The drafters decided not to adopt any catch-all provision. Despite purported safeguards, there is a serious risk that trial judges would differ greatly in applying the elastic standard of equivalent trustworthiness. The result would be a lack of uniformity which would make preparation for trial difficult. Nor would it be likely that an appellate court could effectively apply corrective measures. There would be doubt whether an affirmance of an admission of evidence under the catch-all provision amounted to the creation of a new exception with the force of precedent or merely a refusal to rule that the trial court had abused its discretion.

Flexibility in construction of the rules so as to promote growth and development of the law of evidence is called for by Rule 102. Under this mandate there will be room to construe an existing hearsay exception broadly in the interest of ascertaining truth, as distinguished from creating an entirely new exception based upon the trial judge's determination of equivalent trustworthiness, a guideline which the most conscientious of judges would find extremely difficult to follow.

RULE 804

HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of his statement; or

(4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means.

(6) A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a trial for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the

statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History. (i) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (ii) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. [Reserved.]

Comment 804

This rule is the same as Federal Rule 804, except that a minor editorial change is made in subsection (b)(2), and subsection (b)(5) is omitted. The rule defines the hearsay exceptions which apply only if the declarant is unavailable.

Section (a). Previous Washington law has defined "unavailability" differently in various contexts. See State v. Orgego, 22 Wn.2d 552, 157 P.2d 320 (1945); State v. Solomon, 5 Wn. App. 412, 487 P.2d 643 (1971); Allen v. Dillard, 15 Wn.2d 35, 129 P.2d 813 (1943). Rule 804 clarifies the law by establishing a general definition applicable to all cases.

The admissibility of hearsay against a defendant in a criminal case is also subject to overriding constitutional considerations. In Barber v. Page, 390 U.S. 719 (1968), for example, the Supreme Court held that the confrontation clause of the Sixth Amendment requires the government to make stringent efforts to procure the attendance of a prosecution witness before the witness can be considered "unavailable". A lesser standard prevails in civil cases and in criminal cases where the statement is being offered on behalf of the accused. These and other constitutional restrictions on Rules 801 and 804 are discussed in Weinstein's Evidence § 804(a)[01] (1975).

Read literally, subsection (a)(3) seems to require only that the declarant assert a lack of memory to be considered unavailable. The rule does not appear to require that the court believe that the declarant is telling the truth. The Report of the House Committee on the Judiciary, however, indicates that "the Committee intends no change in the existing federal law under which the court may choose to disbelieve the declarant's testimony as to a lack of memory." Federal Rules of Evidence for the United States Courts and Magistrates 140 (West 1975). Accord, Weinstein's Evidence § 804(a)[01] (1975).

Since the witness must testify to the lack of memory and is, therefore, subject to cross-examination about his claim, the concern of some courts that the witness may make a perjured allegation of forgetfulness to avoid having to be cross-examined about his testimony is considerably lessened. Cross-examination about the making of the statement and his present recollection gives the trial judge an opportunity for assessing the witness' credibility. Id.

Subsection (b)(1). This portion of the rule is substantially in accord with previous Washington law in civil cases. 5 R. Meisenholder, Wash. Prac. §§ 401-08 (1965 & Supp.). See also CR 43(h) and (j). In criminal cases, previous Washington law has imposed greater restrictions on the use of former testimony. The use of testimony at a former trial has been limited to proceedings on the same charge. State v. Lunsford, 163 Wash. 199, 300 P. 529 (1931). Rule 804 is less restrictive but is, of course, subject to constitutional limitations. For example, it has been held that under the state constitution, the defendant in criminal cases against whom the former testimony is introduced must have been present at the former trial and must have had the opportunity to confront and cross-examine witnesses. State v. Ortego, 22 Wn.2d 552, 157 P.2d 320 (1945).

Subsection (b)(2). Previous Washington law has recognized a limited exception for dying declarations. It has applied only in criminal cases involving prosecution for homicide. Hobbs v. Great Northern Ry. Co., 80 Wash. 678, 142 P. 20 (1914). Death must have actually resulted from the injuries creating the belief in impending death. State v. Lewis, 80 Wash. 532, 141 P. 1025 (1914). Declarations containing conclusions or opinion have been inadmissible to that extent. State v. Schwartz, 108 Wash. 21, 182 P. 953 (1919). Rule 804 broadens the scope of this exception. The rule substitutes the word "trial" for "prosecution" to avoid the unwarranted implication that the defendant might not be allowed to introduce a dying declaration.

Subsection (b)(3). Under previous Washington law, this exception has applied only to declarations against the declarant's pecuniary or proprietary interest. Allen v. Dillard, 15 Wn.2d 35, 129 P.2d 813 (1943). There has been no apparent authority concerning statements of matters which could furnish the basis for tort liability or invalidate a claim, nor has there been authority concerning statements furnishing the basis for criminal liability. Meisenholder, § 441. Rule 804 expands and clarifies the scope of this exception.

Subsection (b)(4). Previous Washington law has recognized an exception for statements of personal or family history substantially in accord with Rule 804, although the rule is much more detailed. The rule does not require the statement to have been made prior to the litigation and with no motive to deceive, a restriction apparently imposed by previous law. Meisenholder § 542.

Subsection (b)(5). Federal Rule 804(b)(5) is deleted for the same reasons that Federal Rule 803(24) is deleted. See the comment to Rule 803(b).

RULE 805

HEARSAY WITHIN HEARSAY

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Comment 805

This rule is the same as Federal Rule 805. It accepts the trustworthiness of each hearsay statement once it has been deemed worthy of an exception. Thus, if a dying declaration incorporated a declaration against interest by another out–of–court declarant, both statements would be admissible as exceptions to the hearsay rule. The statement of the second declarant is not admissible, however, if it does not fall within an exception. See, for example, Johnson v. Lutz, 253 N.Y. 124, 170 N.E. 517 (1930), holding information from a bystander incorporated in an admissible police report to be inadmissible as hearsay.

RULE 806

ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(d)(2)(iii), (iv), or (v), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross–examination.

Comment 806

This rule is the same as Federal Rule 806. The declarant of a hearsay statement which is admitted in evidence is in effect a witness. His credibility is subject to impeachment and support just as if he had testified.

The use of an inconsistent statement to impeach a hearsay declarant is not subject to the usual requirement that the witness have been afforded an opportunity to deny or explain it. Compare Rule 613. The foundation requirement is relaxed here because, as a practical matter, the declarant seldom will have been confronted with inconsistent statements when making an out–of–court statement later admitted as an exception to the hearsay rule. See Weinstein's Evidence § 806[01] (1975).

ARTICLE IX

AUTHENTICATION AND IDENTIFICATION

RULE 901

REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Court or Expert Witness. Comparison by the court or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (i) in the case of a person, circumstances, including self–identification, show the person answering to be the one called, or (ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. [Reserved. See RCW 5.44 and CR 44.]

(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 20 years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by statute or court rule.

Comment 901

Federal Rule 901 has been modified to restrict the application of subparagraph (b)(3), to delete subparagraph (b)(7), and to adapt subparagraph (b)(10) to state practice.

Section (a). The rule treats preliminary questions of authentication and identification as matters of conditional relevance under Rule 104(b). The court should admit the evidence if sufficient proof is introduced to permit a reasonable juror to find in favor of its authenticity or identification. Weinstein's Evidence § 901(a)[01] (1975). There is no apparent conflict between section (a) and previous Washington law. See 5 R. Meisenholder, Wash. Prac. §§ 38, 61 (1965 & Supp.). The rule is concerned only with proving authenticity. It does not govern admissibility. An authentic document may still be inadmissible under another rule.

Example 1. This portion of the rule is consistent with previous Washington law. Allen v. Porter, 19 Wn.2d 503, 143 P.2d 328 (1943); State v. Cottrell, 56 Wash. 543, 106 P. 179 (1910). The rule does not require that the witness' testimony, alone, be sufficient for authentication. This is true for the other examples as well. Any combination of methods illustrated by Rule 901(b)(1) through (10) will suffice so long as Rule 901(a) is satisfied. Weinstein's Evidence § 901(b)(1)[01] (1975).

Example 2. This portion of the rule is consistent with previous Washington law. State v. Simmons, 52 Wash. 132, 100 P. 269 (1909); Meisenholder § 61.

Example 3. Federal Rule 901(b)(3) permits the comparison to be made by the "trier of fact." The Washington rule substitutes the word "court" to avoid any suggestion that the jury initially determines whether the requirement of authentication has been satisfied. It is the judge who determines whether the proponent of the evidence has made a prima facie demonstration that it is genuine. Once this demonstration is made, the document is sufficiently authenticated for admissibility. Meisenholder § 61. After the document is admitted, however, evidence challenging its authenticity is pertinent and authenticity ultimately becomes a factual issue for the jury. See, e.g., State v. Bogart, 21 Wn.2d 765, 153 P.2d 507 (1944); Mitchell v. Mitchell, 24 Wn.2d 701, 166 P.2d 938 (1946); State v. Haislip, 77 Wn.2d 838, 467 P.2d 284 (1970).

In a jury case, the initial comparison by the judge should probably be made in the absence of the jury. This procedure is authorized by Rule 104(c).

Example 4. This portion of the rule reflects, for example, the reply letter technique. A letter is sufficiently authenticated by showing that a letter was sent to a person and that the letter to be introduced is in reply to the first letter. Connor v. Zanuzoski, 36 Wn.2d 458, 218 P.2d 879 (1950). Other examples of circumstantial proof are cited in Meisenholder § 63.

Example 5. This portion of the rule is substantially in accord with previous Washington law. State v. Williams, 49 Wn.2d 354, 301 P.2d 769 (1956). Proper identification and authentication do not assure admissibility. RCW 9.73.050, for example, makes sound recordings inadmissible under certain circumstances.

Example 6. This portion of the rule is substantially in accord with previous law in Washington and elsewhere. Meisenholder § 66. One Washington decision appears to hold that self-identification by the answering party is insufficient for authentication. State v. Manos, 149 Wash. 60, 270 P. 132 (1929). Self-identification is sufficient under Rule 901 so long as the call was made to the telephone number assigned to that particular person.

Example 7. Federal Rule 901(b)(7) is deleted, not because of any fundamental disagreement with its content, but because the subject matter is covered by existing statutes and rules which have become familiar to the bench and bar. CR 44 does not supersede the cited statute. Either procedure may be used. State v. Hodge, 11 Wn. App. 323, 523 P.2d 953 (1974). A common-law procedure for authenticating original government documents is described in State v. Bolen, 142 Wash. 653, 254 P. 445 (1927).

Example 8. The rule reduces the time limit from 30 to 20 years. Compare Spokane v. Catholic Bishop, 33 Wn.2d 496, 206 P.2d 277 (1949).

Example 9. This portion of the rule would apply, for example, to the authentication of photographs and x-rays. Meisenholder § 32. Authorities discussing computer printouts are cited in the Advisory Committee Note to Federal Rule 902. See also Seattle v. Heath, 10 Wn. App. 949, 520 P.2d 1392 (1974).

Example 10. Statutes and other court rules defining methods of authentication are not superseded by Rule 901.

RULE 902

SELF-AUTHENTICATION

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in section (a), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (1) of the executing or attesting person, or (2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data

compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with section (a), (b), or (c) of this rule or complying with any law of the United States or of this state.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the house of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumptions Created by Law. Any signature, document, or other matter declared by any law of the United States or of this state to be presumptively or prima facie genuine or authentic.

Comment 902

This rule is the same as Federal Rule 902, except that sections (d) and (j) have been modified to adapt the rule to state practice. Unlike the ten subsections in Rule 901, the ten sections in Rule 902 are not set forth as examples. They comprise instead the scope of the rule. This rule does not preclude the opposite party from disputing the authenticity of a document listed in the rule. It should also be emphasized that the rule is concerned only with the authenticity of certain documents. It is not concerned with their admissibility. A document deemed authentic may still be inadmissible under another rule.

By the terms of Rules 901(b)(10) and 902(j), statutory methods of authentication are preserved as alternative procedures. See, e.g., RCW 5.44. CR 44, Proof of Official Record, relates to some of the matters governed by Rule 902. CR 44 is not superseded and remains as an alternative procedure. R. Meisenholder, 3 West's Federal Forms § 3926 (1976 Supp.).

Section (a). This section simplifies the procedure for determining the authenticity of a domestic public document bearing a seal. Forgeries are unlikely, and detection is relatively easy and certain.

Section (b). A document purporting to bear an official signature is more easily forged in the absence of a seal. The rule thus requires the additional safeguard of authentication by an officer who does have a seal.

Section (c). This section is substantially the same as CR 44(a)(2).

Section (d). This section reflects the familiar practice of recognizing certified copies of public records. The rule defers to statutes such as RCW 5.44 which address the procedure for certification in more detail.

Section (e). By statute, certain official publications are considered authentic. See, e.g., RCW 5.44.070, 5.44.080. The rule accepts all official publications as authentic. The rule does not confer authenticity upon statutes, rules, and court decisions reprinted by nongovernmental publishers. Weinstein's Evidence § 902(5)[01] (1975).

Section (f). Newspapers and periodicals are considered authentic because the risk of forgery is minimal. The rule could not be determined with certainty under previous Washington law. R. Meisenholder, 5 Wash. Prac. § 65 (1965 & Supp.).

Section (g). The laws protecting trade inscriptions minimize the risk of forgery. The rule generalizes upon a policy which has been previously implemented on a piece-meal basis. See, e.g., RCW 16.57.010 (brands as evidence of title to livestock); Kneeland Inv. Co. v. Berendes, 81 Wash. 372, 142 P. 869 (1914) (seal of corporation on stock certificate held sufficient authentication).

Section (h). The rule is consistent with RCW 64.08-.050. The persons authorized to take acknowledgements are defined by RCW 68.08.010.

Section (i). The rule incorporates the provisions of the Uniform Commercial Code relating to authenticity. See RCW 62A.1-202 (certain documents deemed to be prima facie evidence of their own authenticity and genuineness); RCW 62A.3-307 (signatures presumed to be genuine); RCW 62A.3-510 (certain documents are admissible in evidence and create presumption of dishonor).

Section (j). Federal Rule 902(10) has been modified to refer to state law as well as to federal statutes. Statutory procedures such as those defined in RCW 5.44 are preserved. As to self-authenticating wills, see RCW 11-.20.020. Some statutes provide that a document is presumptively authentic, but only after it has been certified or otherwise verified in a specified manner. See, e.g., RCW 77.12.040 (rules and regulations of state game commission). Section (j) does not eliminate these restrictions. Certified copies are governed by section (d). Other documents not falling within sections (a) through (i) but made presumptively authentic by statute are subject to any statutory conditions or restrictions on authenticity.

RULE 903

SUBSCRIBING WITNESS' TESTIMONY UNNECESSARY

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Comment 903

This rule is the same as Federal Rule 903. It eliminates the traditional common-law requirement of live testimony from a subscribing witness and reflects the prevailing modern view. McCormick on Evidence § 220 (2d ed. 1972). The rule preserves statutes which require live testimony under particular circumstances.

ARTICLE X

CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

RULE 1001

DEFINITIONS

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, x-ray films, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

Comment 1001

This rule is the same as Federal Rule 1001 except that "sounds" have been added to section (a). This addition is also found in Uniform Rule 1001. The rule establishes definitions which apply throughout Article X. "Original" includes a counterpart intended to have the effect of an original. Thus, for example, an original and a photocopy of a contract, both bearing the original signatures of the parties and intended as originals, would both be originals under the rule. Previous Washington law is in accord. 5 R. Meisenholder, Wash. Prac. § 94 (1965 & Supp.). To qualify as a "duplicate", a copy must be produced by a method which virtually eliminates the possibility of error. Copies produced manually, whether handwritten or typed, are not within the definition.

The rules in Article X do not govern the authenticity of an "original". That determination is made by reference to the rules in Article IX. The authenticity of any piece of evidence, even documents which are self-authenticating under Rule 902, may be disputed by the opposing party. Advisory Committee Note, Federal Rule 902. Thus, for example, an opposing party may challenge the integrity of an electronic recording even though it qualifies as an "original" under Article X. See also Comments 901 and 902. Similarly, the rules do not prevent a party from challenging the accuracy of data fed into a computer or the integrity of the computer's storage system, even though a printout qualifies as the "original".

RULE 1002

REQUIREMENT OF ORIGINAL

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by rules adopted by the Supreme Court of this state or by statute.

Comment 1002

Federal Rule 1002 has been modified to refer to state rules and statutes instead of to federal statutes. Taken together, Rules 1001 and 1002 extend the traditional best evidence rule from writings to photographs and recordings as well. Previous Washington law has applied the best evidence rule only to writings. 5 R. Meisenholder, Wash. Prac. § 99 (1965 & Supp.). Although the rule now requires original photographs, Rule 1001(3) defines an original photograph broadly as the negative or any print therefrom. The rule defers to statutory exceptions to the normal rule of requiring the original. These statutes are cited and discussed in Meisenholder § 98.

RULE 1003

ADMISSIBILITY OF DUPLICATES

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Comment 1003

This rule is the same as Federal Rule 1003 and relaxes the best evidence rule with respect to duplicates. Under Rule 1003, the admission of duplicates is not limited to situations where the original is unavailable. Compare 5 R. Meisenholder, Wash. Prac. § 95 (1965 & Supp.). The rule applies only to duplicates as defined in Rule 1001 and thus assures the admission of accurate reproductions. The rule changes the law more in theory than in practice. As a practical matter, photocopies are reliable reproductions and are widely used both in commercial transactions and in litigation. The rule reflects this reality and at the same time affords ample opportunity to challenge the authenticity of a duplicate.

RULE 1004

ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Original Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a

subject of proof at the hearing, and he does not produce the original at the hearing; or

(d) Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

Comment 1004

This rule is the same as Federal Rule 1004 and rejects any suggestion of a "second best" evidence rule. It is substantially in accord with previous Washington law. Although there is no case directly in point, the decisions appear to assume that there are no degrees of secondary evidence. R. Meisenholder, 5 Wash. Prac. §§ 95, 96 (1965 & Supp.).

Proof of a lost or destroyed will is governed by RCW 11.20.070. The statute defines "lost" and "destroyed" for purposes of probate and establishes the procedure to be followed. The statute is not in conflict with the rule and is not superseded.

Section (d), relating to collateral matters, reflects existing law in Washington and elsewhere. Meisenholder § 93.

The definition of "collateral" is elusive in the absence of specific facts. "In the final analysis the question of whether a document's terms are collateral depends upon the importance of the terms to the issues in the case. Insistence upon proof by introduction of an original document to prove its terms is a waste of time when the terms are relatively unimportant and not the subject of an important factual issue." Meisenholder § 93. See also McCormick on Evidence § 236 (2d ed. 1972).

Thus, for example, in State ex rel. Walton v. Superior Court, 18 Wn.2d 810, 140 P.2d 554 (1943), the principal issue was whether an easement over the land to be condemned was necessary in order to reach certain timber. The court held that oral testimony concerning ownership of the land to be benefited by the easement was admissible because ownership was a collateral question. In another case, oral testimony concerning a contract was held admissible to show the relationship between the plaintiffs and their right to sue jointly. Hull v. Seattle, R. & S. Ry., 60 Wash. 162, 110 P. 804 (1910).

RULE 1005

PUBLIC RECORDS

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

Comment 1005

This rule is the same as Federal Rule 1005. It exempts public records from the requirement of producing the original under Rule 1002 because their removal from public custody is often not feasible. Unlike Rule 1002, which makes no distinction among degrees of secondary evidence, this rule expresses a preference for certified or compared copies over other forms of secondary evidence.

Various statutes authorize the use of certified copies. RCW 5.44.040 (certified copies of public records); RCW 5.44.060 (certified copies of recorded instruments); RCW 5.44.070 (certified copies of transcripts of county commissioners' proceedings); RCW 5.44.090 (certified copies of instruments restoring civil rights). The rule authorizes proof by certified copy of any public record.

The rule changes Washington law in the sense that no previous authority has been found which equates compared copies with certified copies.

The last sentence of the rule authorizes proof by other forms of secondary evidence if neither a certified nor a compared copy can be obtained with reasonable diligence. Although this approach has been authorized in a number of factual situations, no previous authority has been found which applies the rule generally to public records. See 5 R. Meisenholder, Wash. Prac. §§ 95, 96 (1965 & Supp.).

RULE 1006

SUMMARIES

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Comment 1006

This rule is the same as Federal Rule 1006 and is substantially in accord with previous Washington law. See Kenn v. O'Rourke, 48 Wn.2d 1, 290 P.2d 976 (1955). The rule does not require that the summary be prepared by a person with special expertise, but as a practical matter, the summary would ordinarily be prepared by a qualified person in order to avoid a challenge to its accuracy under Rule 1008. See Weinstein's Evidence § 1006[01] (1975).

RULE 1007

TESTIMONY OR WRITTEN ADMISSION OF PARTY

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Comment 1007

This rule is the same as Federal Rule 1007 and conforms to the view expressed in McCormick on Evidence § 242 (2d ed. 1972). An adverse party's oral testimony, deposition, and writings are within the scope of the rule; oral admissions made out of court are not. Written responses to interrogatories and requests for admission are admissible under this rule. Weinstein's Evidence § 1007[05] (1975). There appears to be no previous Washington law on this point. 5 R. Meisenholder, Wash. Prac. § 97 (1965 & Supp.).

RULE 1008

FUNCTIONS OF COURT AND JURY

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition as been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised (1) whether the asserted writing ever existed, or (2) whether another writing, recording, or photograph produced at the trial is the original, or (3) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Comment 1008

This rule is the same as Federal Rule 1008 and defines a specialized approach to determining questions under Rule 104 for matters within the scope of Article X. RCW 4.44.080 and 4.44.090 allocate questions of law and fact to the court and jury, respectively. The rule is more specific than the statutes but does not conflict with them. The statutes are not superseded.

ARTICLE XI

MISCELLANEOUS RULES

RULE 1101

APPLICABILITY OF RULES

(a) Courts Generally. Except as otherwise provided in section (c), these rules apply to all actions and proceedings in the courts of the state of Washington. The terms "judge" and "court" in these rules refer to any judge of any court to which these rules apply or any other officer who is authorized by law to hold any hearing to which these rules apply.

(b) Law With Respect to Privilege. The law with respect to privileges applies at all stages of all actions, cases, and proceedings.

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges) need not be applied in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand Jury. Proceedings before grand juries and special inquiry judges.

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; preliminary determinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims courts; supplemental proceedings under RCW 6.23; coroners' inquests; disposition hearings in juvenile court; dispositional determinations under the Uniform Alcoholism and Intoxication Treatment Act, RCW 70.96A; and dispositional determinations under the civil commitment act, RCW 71.05.

Comment 1101

Federal Rule 1101 has been modified by deleting references to matters heard only in federal court and by adding references to certain proceedings heard in the state courts. The rule conforms substantially to previous Washington practice.

Section (a). The rules of evidence apply generally to civil and criminal proceedings, including mental commitment proceedings, reference hearings, and juvenile court fact-finding and adjudicatory hearings. See RCW 71.05.250, RCW 71.05.310, MPR 3.4, RAP 16.12, JuCR 3.7, and JuCR 7.11. Juvenile court hearings on whether to decline jurisdiction are not excused from the operation of the rules. These hearings have a substantial impact upon the case and deserve the formality of evidentiary rules. Cf. In re Harbert, 85 Wn.2d 719, 538 P.2d 1212 (1975).

The words "judge" and "court" are used interchangeably throughout the rules and refer to a judge, judge pro tempore, commissioner, or any other person authorized to hold a hearing to which the rules apply.

Section (b). The law concerning privileged communications applies to all proceedings, including those listed in section (c).

Subsection (c)(1). This portion of the rule is a restatement of a similar provision in Rule 104. The rules need not be applied, for example, at a hearing on a motion to suppress evidence. United States v. Matlock, 415 U.S. 164 (1974); Am. Jur. 2d, Federal Rules of Evidence (New Topic Service 1975). The rule, like all of the other rules, does not attempt to specify the situations in which due process would require a full evidentiary hearing. That determination is made by reference to constitutional law.

In the absence of a constitutional requirement, the rule still does not prevent the court from requiring a certain measure of reliability with respect to the admission of evidence in the proceedings specified in section (c). The court should have the discretion to require an appropriate level of formality.

Subsection (c)(2). The statutes contain special evidentiary provisions for grand juries and inquiry judges. See RCW 10.27.120, .130, .140, and .170. Although there are no Washington cases directly in point, the majority view is that the validity of a grand jury indictment may not be challenged on the basis of insufficient or incompetent evidence unless none of the witnesses was competent. Annot., 37 A.L.R.3d 612 (1971); Annot., 39 A.L.R.3d 1064 (1971).

Subsection (c)(3). Proceedings with respect to extradition, rendition, and detainers are essentially administrative matters, and the rules of evidence have traditionally not applied. Gibson v. Beall, 249 F.2d 489 (D.C. Cir. 1957); United States v. Flood, 374 F.2d 554 (2d Cir. 1967).

The view that the rules of evidence do not apply to preliminary determinations in criminal cases is consistent with the Superior Court Criminal Rules. See, e.g., CrR 3.2(i), relating to hearings on pretrial release. The

rule refers to "determinations" rather than to "examinations," the federal rule's terminology. This change was made to clarify the intent to relax the rules of evidence with respect to all preliminary matters, not just at hearings in which the accused gives testimony.

The normal rules of evidence do not apply to hearings with respect to sentencing or probation. State v. Short, 12 Wn. App. 125, 528 P.2d 480 (1974); State v. Shannon, 60 Wn.2d 883, 376 P.2d 646 (1962); State v. Kuhn, 80 Wn.2d 648, 503 P.2d 1061 (1972). As to sentencing proceedings in cases involving the death penalty, see also RCW 10.94.020. As to search warrants, see CrR 2.3(c). The rules do not apply to hearings with respect to pretrial release. CrR 3.2(i).

The provision regarding contempt applies to contempt committed in the presence of the court as defined by RCW 7.20.030.

The rule clarifies the law with respect to habeas corpus hearings. A statute, RCW 7.36.120, directs the court to hear and determine the matter "in a summary way." The Supreme Court has held that the trial court may thus determine factual matters by reference to affidavits. Little v. Rhay, 68 Wn.2d 353, 413 P.2d 15 (1966). Later, a division of the Court of Appeals held that such affidavits should be considered only to assist in formulating the issues of fact and not in themselves to determine disputed questions of material fact. Little v. Rhay, 8 Wn. App. 725, 509 P.2d 92 (1973). A dissenting opinion argued that the majority opinion nullified the statute and disregarded earlier decisions of the Supreme Court. Rule 1101 adopts the approach taken by the earlier Supreme Court decisions. This is contrary to Federal Rule 1101, which makes the rules of evidence applicable to federal habeas corpus proceedings, but the underlying federal statute requires testimony to be taken. Walker v. Johnson, 312 U.S. 275 (1941).

The rules do not apply to small claims courts, supplemental proceedings, or to coroners' inquests, primarily because the purposes of these proceedings would be frustrated by strictly imposing rules of evidence. As a practical matter, the rules have not been applied to these proceedings in the past.

Fact-finding and adjudicatory hearings in juvenile court are conducted in accordance with the rules of evidence. JuCR 3.7 and JuCR 7.11. Once the facts have been determined, however, the appropriate form of disposition is determined with less formality. The situation is analogous to the distinction between a criminal trial and sentencing. Rule 1101 thus authorizes a relaxation of the rules of evidence for disposition hearings in juvenile court. A corresponding relaxation of the rules is authorized for dispositional determinations under the Uniform Alcoholism and Intoxication Treatment Act, RCW 70.96A, and the civil commitment act, RCW 71.05.

RULE 1102

AMENDMENTS

[RESERVED]

RULE 1103

TITLE

These rules may be known and cited as the Washington Rules of Evidence. ER is the official abbreviation.

AMENDMENT OF
GENERAL RULE 1

PART I

RULES OF GENERAL APPLICATION

Title of Rules	Abbreviation
General Rules	GR
Code of Judicial Conduct	CJC
Code of Professional Responsibility	CPR
Admission to Practice Rules	APR
Discipline Rules for Attorneys	DRA
Judicial Information System Committee Rules	JISCR
Rules of Evidence	ER

AMENDMENT OF
SUPERIOR COURT CIVIL RULES

CR 30(c)

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted as the trial under the provisions of ~~Rule 43(b)~~ the Washington Rules of Evidence (ER). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

RULE 43

TAKING OF TESTIMONY

CR 43(b) and (c)

(b) and (c) [Reserved. See ER 103 and 611.]

CR 43(i)

(i) [Reserved. See ER 804.]

AMENDMENT OF
SUPERIOR COURT CRIMINAL RULE 6.12(a)

CrR 6.12(a)

(a) Who May Testify. Any person may be a witness in any action or proceeding under these rules except as hereinafter provided or as provided in the Rules of Evidence.

AMENDMENT OF
JUSTICE COURT CIVIL RULE 43

RULE 43

TAKING OF TESTIMONY

JCR 43(b)

(b) [Reserved. See ER 607 and 611.]

AMENDMENT OF
JUSTICE COURT CRIMINAL RULE 4.09(a)

JCrR 4.09(a)

(a) Rules of Evidence. The Rules of Evidence (ER) are applicable to criminal prosecutions.

WSR 79-02-022
RULES OF COURT
STATE SUPREME COURT
[Order 25700-A-268]

IN THE MATTER OF THE ADOPTION OF SUPREME COURT ADMINISTRATIVE RULE 15 (SAR 15) — NO. 25700-A-268 ORDER

The Court having considered the adoption of Supreme Court Administrative Rule 15 (SAR 15) and having concluded that the adoption of said rule is necessary for the prompt and orderly administration of justice; Now, therefore, it is hereby

ORDERED:

(a) Supreme Court Administrative Rule 15 (SAR 15) as set forth in the attachment hereto is hereby adopted.

(b) This rule shall be published expeditiously in the Washington Reports and shall become effective January 1, 1979.

DATED at Olympia, Washington, this 19th day of December, 1978.

	Charles T. Wright
Rosellini, J.	Robert F. Brachtenbach
Orris L. Hamilton	Horowitz, J.
Charles F. Stafford	James M. Dolliver
Utter, J.	Hicks, J.

ADOPTION OF
SUPREME COURT ADMINISTRATIVE RULE 15

RULE 15

COMMISSIONER OF THE SUPREME COURT

(a) Appointment. To promote the effective administration of justice, the Justices of the Supreme Court will appoint a commissioner of the court. The salary of the commissioner will be fixed by the court. The commissioner may be removed at the pleasure of the Supreme Court.

(b) Deciding Motions. The commissioner will hear and decide those motions authorized by the rules of appellate procedure and any additional motions that may be assigned to the commissioner by the court.

(c) Screening for the Court. The commissioner will screen petitions for review and direct appeals to the Supreme Court and recommend whether Supreme Court review should be granted. Except for motions to modify a ruling of the commissioner, the commissioner will also screen motions which are to be decided by the Justices and recommend to the court an appropriate disposition for each motion. When necessary, screening memoranda will contain an evaluation sufficiently comprehensive to assist each Justice in independently deciding the matter being screened.

(d) Assisting Chief Justice. The commissioner will assist the Chief Justice in determining whether cases certified by the Court of Appeals to the Supreme Court should be accepted for review. The commissioner will also assist the Chief Justice with motions to file amicus curiae briefs.

(e) Judicial Law Clerks. The commissioner will assist the Justices of the Supreme Court with the selection of judicial law clerks, as desired by each Justice. The commissioner will present an annual orientation for the new law clerks. The commissioner will prepare and periodically revise a manual for use by the judicial law clerks.

(f) Improving Administration of Justice. The commissioner will make recommendations to the court regarding procedures. The commissioner will serve on court committees when appointed thereto by the Chief Justice.

(g) Central Staff. The commissioner will employ and train staff attorneys and other personnel to assist the

commissioner in carrying out the duties of the commissioner's office. These employees shall serve at the pleasure of the commissioner. To the extent appropriations permit, the court will authorize the commissioner to employ sufficient staff to assist the court in expeditiously fulfilling its duties to promptly fulfill the duties of the office.

(h) Duties To Benefit Full Court. All duties performed by the commissioner are for the benefit of the court as a whole. The court may alter or add to the duties of the commissioner. In the performance of these duties the commissioner is responsible to the Chief Justice as executive officer of the court under SAR 8.

(i) Qualifications. The commissioner must be a graduate of an accredited law school and a member in good standing of the Washington State Bar Association and, prior to appointment, have at least 5 years of experience in the practice of law or in a judicially related field.

(j) Oath of Office. Before entering upon the duties of the office, the commissioner will take and file an oath of office in the form prescribed by order of the Supreme Court. The oath will include a requirement that the commissioner adhere to the Code of Judicial Conduct.

(k) Prohibition From Practice of Law. The commissioner is prohibited, during term of office, from acting as an attorney or having a partner who acts as an attorney.

WSR 79-02-023
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed January 16, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Patrol intends to adopt, amend, or repeal rules concerning public disclosure of public documents, campaign financing, lobbying records, chapter 446-10 WAC;

that such agency will at 10:00 a.m., Wednesday, March 14, 1979, in the Office of the Chief, Washington State Patrol, General Administration Building, Olympia, Washington 98504 conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Wednesday, March 14, 1979, in the Office of the Chief, Washington State Patrol, General Administration Building, Olympia, Washington 98504.

The authority under which these rules are proposed is RCW 42.17.250.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 14, 1979, and/or orally at 10:00 a.m., Wednesday, March 14, 1979, Office of the Chief, Washington State Patrol, General Administration Building, Olympia, Washington 98504.

Dated: January 16, 1979
By: SGT. R. L. Riepe
Public Records Officer

Chapter 446-10 WAC
PUBLIC RECORDS

NEW SECTION

WAC 446-10-010 PURPOSE. The purpose of this chapter shall be to ensure compliance by the Washington State Patrol with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure-Campaign-Finances-Lobbying-Records; and in particular with subsections 25-32 of that act, dealing with public records.

NEW SECTION

WAC 446-10-020 DEFINITIONS. (1) Public record - includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

(3) Washington State Patrol - is the department created by the legislature pursuant to RCW 43.43. The Washington State Patrol shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the Washington State Patrol.

NEW SECTION

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
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
District V -605 East Evergreen Boulevard, Vancouver 98661
District VI -1517 North Wenatchee Avenue, Wenatchee 98801
District VII -20th and Chestnut, Everett 98201
District VIII - 4846 Auto Center Way, Bremerton 98310

NEW SECTION

WAC 446-10-040 OPERATIONS AND PROCEDURES. The department has and exercises throughout the state such police powers and duties as are vested in sheriffs and peace officers generally, and such other powers and duties as are prescribed by RCW 43.43 and other applicable RCW chapters. The members of the department enforce, throughout the state, laws having statewide application. The individual officer assumes his law enforcement role after a period of rigorous training, and is vested with certain discretion in his contact with alleged law violators in the same degree as are sheriffs and other peace officers. His role also encompasses providing non-law enforcement assistance to members of the public within his competence and training, including first aid, traffic direction, aid to stranded motorists, etc.

NEW SECTION

WAC 446-10-050 PUBLIC RECORDS AVAILABLE. All public records of the department, as defined in WAC 446-10-020(1), are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, and WAC 446-10-100.

NEW SECTION

WAC 446-10-060 PUBLIC RECORDS OFFICER. The department's public records shall be in custody of the public records officer

designated by the department. The person so designated shall be located in the administrative office of the department. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.

NEW SECTION

WAC 446-10-070 OFFICE HOURS. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 9 a.m. to noon, and from 1 p.m. to 4 p.m. Monday through Friday, excluding legal holidays.

NEW SECTION

WAC 446-10-080 REQUESTS FOR PUBLIC RECORDS. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, a request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record;

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

(c) The nature of the request;

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

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

NEW SECTION

WAC 446-10-090 COPYING. No fee shall be charged for the inspection of public records. The department shall charge a fee of ten cents per page of copy for providing copies of public records and for use of the department copy equipment. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying.

NEW SECTION

WAC 446-10-100 EXEMPTIONS. (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 446-10-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

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

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION

WAC 446-10-110 REVIEW OF DENIALS OF PUBLIC RECORDS REQUESTS. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief of the department. The chief shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the department as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.

NEW SECTION

WAC 446-10-120 PROTECTION OF PUBLIC RECORDS. Requests for public records shall be made to the Washington State Patrol, General Administration Building AX-12, Olympia, Washington 98504. Public records and a facility for their inspection and/or copying will be provided by the public records officer of the department. Such records or documents shall not be removed from the place designated for their inspection and all records will be reviewed under the supervision of the public records officer or his designee.

NEW SECTION

WAC 446-10-130 RECORDS INDEX. The Washington State Patrol has nine locations in the State of Washington (see WAC 446-10-030) where the general public will have access to the departmental filing index. The indexes made available will be the total filing structure which is identical in all locations. The index can be read at the central filing division in Olympia or at the various district patrol offices including Spokane, Wenatchee, Yakima, Everett, Bellevue, Tacoma, Bremerton, and Vancouver.

NEW SECTION

WAC 446-10-140 REQUEST FOR INFORMATION. All communications with the department, including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973, and these rules, requests for copies of the department's decisions, and other matters, shall be addressed as follows: Washington State Patrol, c/o Public Records Officer, General Administration Building AX-12, Olympia, Washington 98504.

NEW SECTION

WAC 446-10-150 ADOPTION OF FORM. The department hereby adopts for use by all persons requesting inspection and/or copying, or copies of its records, the following form entitled, "Request for Public Record":

REQUEST FOR PUBLIC RECORD

Date ..... Time .....

Name .....

Address .....

Nature or Description of Record (see index):

.....

.....

.....

.....

I certify that the information obtained through this request for public record will not be used for commercial purposes.

.....

Signature

WSR 79-02-024
EMERGENCY RULES
WASHINGTON STATE PATROL
[Order 79-1—Filed January 16, 1979]

Be it resolved by the Washington State Patrol, acting at General Administration Building, Olympia, Washington 98504, that it does promulgate and adopt the annexed rules relating to public disclosure of public documents, campaign financing and lobbying records, chapter 446-10 WAC.

I, Colonel R. W. Landon, Chief of the Washington State Patrol, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is regulations of each agency implementing chapter 42.17 RCW, are required by that statute and such present agency regulations being ineffective, new conforming regulations must be promulgated immediately so that the agency may carry out its functions pursuant to chapter 42.17 RCW.

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

This rule is promulgated pursuant to RCW 42.17.250 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 16, 1979.

By Col. R. W. Landon
Chief

Chapter 446-10 WAC
PUBLIC RECORDS

NEW SECTION

WAC 446-10-010 PURPOSE. The purpose of this chapter shall be to ensure compliance by the Washington State Patrol with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure-Campaign-Finances-Lobbying-Records; and in particular with subsections 25-32 of that act, dealing with public records.

NEW SECTION

WAC 446-10-020 DEFINITIONS. (1) Public record - includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

(3) Washington State Patrol - is the department created by the legislature pursuant to RCW 43.43. The Washington State Patrol shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the Washington State Patrol.

NEW SECTION

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
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
District V - 605 East Evergreen Boulevard, Vancouver 98661
District VI - 1517 North Wenatchee Avenue, Wenatchee 98801
District VII - 20th and Chestnut, Everett 98201
District VIII - 4846 Auto Center Way, Bremerton 98310

NEW SECTION

WAC 446-10-040 OPERATIONS AND PROCEDURES. The department has and exercises throughout the state such police powers and duties as are vested in sheriffs and peace officers generally, and such other powers and duties as are prescribed by RCW 43.43 and other applicable RCW chapters. The members of the department enforce, throughout the state, laws having statewide application. The individual officer assumes his law enforcement role after a period of rigorous training, and is vested with certain discretion in his contact with alleged law violators in the same degree as are sheriffs and other peace officers. His role also encompasses providing non-law enforcement assistance to members of the public within his competence and training, including first aid, traffic direction, aid to stranded motorists, etc.

NEW SECTION

WAC 446-10-050 PUBLIC RECORDS AVAILABLE. All public records of the department, as defined in WAC 446-10-020(1), are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, and WAC 446-10-100.

NEW SECTION

WAC 446-10-060 PUBLIC RECORDS OFFICER. The department's public records shall be in custody of the public records officer designated by the department. The person so designated shall be located in the administrative office of the department. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.

NEW SECTION

WAC 446-10-070 OFFICE HOURS. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 9 a.m. to noon, and from 1 p.m. to 4 p.m. Monday through Friday, excluding legal holidays.

NEW SECTION

WAC 446-10-080 REQUESTS FOR PUBLIC RECORDS. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

(1) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, a request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record;

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

(c) The nature of the request;

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

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

NEW SECTION

WAC 446-10-090 COPYING. No fee shall be charged for the inspection of public records. The department shall charge a fee of ten cents per page of copy for providing copies of public records and for use of the department copy equipment. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying.

NEW SECTION

WAC 446-10-100 EXEMPTIONS. (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 446-10-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

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

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION

WAC 446-10-110 REVIEW OF DENIALS OF PUBLIC RECORDS REQUESTS. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief of the department. The chief shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the department as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.

NEW SECTION

WAC 446-10-120 PROTECTION OF PUBLIC RECORDS. Requests for public records shall be made to the Washington State Patrol, General Administration Building AX-12, Olympia, Washington 98504. Public

records and a facility for their inspection and/or copying will be provided by the public records officer of the department. Such records or documents shall not be removed from the place designated for their inspection and all records will be reviewed under the supervision of the public records officer or his designee.

NEW SECTION

WAC 446-10-130 RECORDS INDEX. The Washington State Patrol has nine locations in the State of Washington (see WAC 446-10-030) where the general public will have access to the departmental filing index. The indexes made available will be the total filing structure which is identical in all locations. The index can be read at the central filing division in Olympia or at the various district patrol offices including Spokane, Wenatchee, Yakima, Everett, Bellevue, Tacoma, Bremerton, and Vancouver.

NEW SECTION

WAC 446-10-140 REQUEST FOR INFORMATION. All communications with the department, including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973, and these rules, requests for copies of the department's decisions, and other matters, shall be addressed as follows: Washington State Patrol, c/o Public Records Officer, General Administration Building AX-12, Olympia, Washington 98504.

NEW SECTION

WAC 446-10-150 ADOPTION OF FORM. The department hereby adopts for use by all persons requesting inspection and/or copying, or copies of its records, the following form entitled, "Request for Public Record":

REQUEST FOR PUBLIC RECORD

Date ..... *Time* .....

Name .....

Address .....

Nature or Description of Record (see index):

.....

.....

.....

.....

I certify that the information obtained through this request for public record will not be used for commercial purposes.

.....

Signature

WSR 79-02-025
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Order 1367—Filed January 17, 1979—Eff. March 1, 1979]

I, Michael Stewart, Exec. Assist., of the Department of Social and Health Services do promulgate and adopt at Olympia, Washington the annexed rules relating to Indochinese refugee assistance, amending WAC 388-55-010.

This action is taken pursuant to Notice No. WSR 78-12-085 filed with the code reviser on 12/6/78. Such rules shall take effect at a later date, such date being March 1, 1979.

This rule is promulgated under the general rule-making authority of the secretary of Department of Social and Health Services as authorized in RCW 43.20A.550.

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

APPROVED AND ADOPTED January 17, 1979.

By Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1283, filed 3/20/78)

WAC 388-55-010 INDOCHINESE REFUGEE ASSISTANCE. (1) Assistance shall be granted to Vietnamese, Cambodian and Laotian refugees within the provisions of Public Law 95-145, the Indochinese Refugee Assistance Program.

(2) For the purpose of the refugee assistance program a refugee is defined as a Cambodian, Vietnamese or Laotian national who has fled from and cannot return to his country due to persecution or fear of persecution because of race, religion, or political opinion. Under this definition, the following individuals shall be eligible to apply for assistance and/or services under the refugee assistance program:

(a) An individual who has parole status as indicated by an INS (Immigration and Naturalization Service) Form I-94.

(b) An individual who has voluntary departure status as indicated by Form I-94.

(c) An individual who has conditional entry status as indicated by Form I-94.

(d) An individual who was admitted to the United States with permanent resident status on or after April 8, 1975 (the date on which the president designated Vietnamese and Cambodians to be refugees under the Migration and Refugee Assistance Act), as indicated by Form I-151 or I-551.

(e) An individual who has permanent resident status as a result of adjustment of status under P.L. 95-145 as indicated by Form I-151 or I-551.

(3) Indochinese refugee assistance cases eligible for the AFDC and/or Medicaid programs shall be transferred to such programs retroactively effective as of October 1, 1977, or as of such date as the case qualified for refugee assistance, whichever is later.

(a) Refugees must meet AFDC or Medicaid eligibility criteria to be transferred.

(b) A refugee cash assistance case being transferred to AFDC shall be regarded as a recipient rather than a new applicant so that income shall be disregarded accordingly.

(4) Applications from refugees not currently receiving refugee cash and or medical assistance shall be determined for AFDC or Medicaid eligibility before determining eligibility for the refugee assistance program.

(a) If the applicant is determined not eligible for AFDC, eligibility shall then be determined under the refugee assistance program.

(b) If the applicant is determined not eligible for Medicaid, eligibility shall then be determined under the refugee assistance program.

(5) Requirements of categorical relatedness of federal assistance programs are waived for refugees under the refugee assistance program.

(6) Refugees terminated from the AFDC program because of refusal to comply with requirements, shall not be eligible for IRAP assistance.

(7) Assistance to all types of refugee cases, regardless of family composition, shall be provided at the AFDC monthly payment standards; income and resources will be treated according to AFDC standards. No resources which are not available, including property remaining in Vietnam, Laos or Cambodia, shall be considered in determining eligibility for financial assistance.

((~~(7)~~)) (8) The refugee family unit which includes United States citizen children, by virtue of their being born in this country, shall be treated as a single assistance unit under the refugee assistance program.

((~~(8)~~)) (9) (a) All applicants for and recipients of a financial grant under the refugee assistance program and each member of the family group of which they are a part are required to register for employment with the state employment service unless the individual is:

(i) An individual who is under ((~~16~~)) sixteen, or who is under age ((~~21~~)) twenty-one and is attending school or training full time, or who is age ((~~21~~)) twenty-one or over and is attending school or training as approved by the department;

(ii) A person who is ill, incapacitated, or over ((~~65~~)) sixty-five;

(iii) A person whose presence in the home is required because of illness or incapacity of another member of the household;

(iv) A mother or other caretaker of a child under the age of six who is caring for the child;

(v) A mother or other caretaker of a child, when the nonexempt father or other nonexempt adult relative in the home is registered and has not refused to accept employment without good cause.

(b) The nonexempt refugee applicant or recipient must accept employment when available as specified in WAC 388-57-025(4) through (7).

(c) Inability to communicate in English does not justify exemption from registration or acceptance of employment.

((~~(9) Refusal of an employable adult recipient to register with the Employment Service or to accept or continue employment or training opportunity without good cause, as determined by the ESSO, will result in the following actions:~~))

(10) Refusal of an employable adult refugee to register with the employment service without good cause shall result in the following actions. In addition, refusal to accept, continue or participate in a training or employment opportunity or referral, from any source, which is determined appropriate for that refugee by the CSO shall also result in the following actions:

(a) The ESSO will provide counseling within ((~~7~~)) seven days of recipients refusal to participate. This counseling is intended to provide the refugee with an understanding of the implications of his refusal to accept employment or training, and to encourage the refugee's acceptance of such opportunity. Only one such counseling session is required but additional counseling may be provided at the discretion of the ESSO.

(b) If the employable refugee recipient continues to refuse an offer of employment or training, assistance will be terminated ((~~30~~)) thirty days after the date of his original refusal. The refugee shall be given at least ((~~10~~)) ten days written notice of the termination of assistance and the reason therefore. This sanction shall be applied in the following manner:

(i) If the assistance unit includes other individuals, then the grant shall be reduced by the amount included on behalf of that refugee. If the employable refugee is a caretaker relative, assistance in the form of protective or vendor payments will be provided to the remaining members of the assistance unit.

(ii) If such individual is the only individual in the assistance unit, the grant shall be terminated.

(iii) The recipient's voluntary agency (VOLAG) shall be notified if either action (i) or (ii) takes place, provided that the provisions for safeguarding information in chapter 388-48 WAC are met.

(iv) A decision by the refugee to accept employment or training, made at any time within the ((~~30-day~~)) thirty-day period after the date of the original refusal, shall result in the continuation of assistance without interruption if the refugee continues to meet the eligibility requirements for continued assistance.

(v) An employable refugee shall be ineligible for a period of ((~~30~~)) thirty days after the termination of assistance because of refusal to accept or continue employment or training.

((~~(10)~~)) (11) A refugee of any age who is otherwise eligible shall not be denied cash assistance while enrolled and participating in a training program which is part of an employability plan approved by the ESSO, that is, training intended to have a definite short-term (less than one year) employment objective.

((~~(11)~~)) (12) (a) Adult refugee recipients shall be eligible for earned income exemptions as specified in WAC 388-28-570, regardless of assistance unit composition.

(b) The income of a refugee dependent child shall be treated as specified in WAC 388-28-535.

((~~(12)~~)) (13) All refugee recipients who are ((~~65~~)) sixty-five years of age or older, or who are blind or disabled will be referred immediately to the social security administration for SSI benefits. The SSI applicant will be included in the assistance grant at the AFDC standard until payments are received.

((~~(13)~~)) (14) (a) The refugee recipient receiving a continuing assistance grant is eligible for medical assistance as specified in WAC 388-82-010(1).

(b) Eligibility for medical care for the nonrecipient refugee shall be determined as specified in chapter 388-83 WAC. Eligibility is based on medical and financial need only; requirements of categorical relatedness are waived. Subdivision (11)(a) is applicable in determining the amount of participation in medical costs for refugee recipients.

(c) The refugee recipient who becomes ineligible because of increased income from employment shall remain eligible for medical assistance for four calendar months beginning with the month of ineligibility provided that:

(i) In the case of a single individual assistance unit:

(A) The individual received assistance in at least three of the six months immediately preceding the month of ineligibility; and

(B) He/she continues to be employed.

(ii) In the case of a multiple individual assistance unit:

(A) The family received assistance in at least three of the six months immediately preceding the month of ineligibility; and

(B) A member of the family continues to be employed.

(d) Medical need shall not be an eligibility factor.

((~~(14)~~)) (15) Refugee recipients shall have their continuing eligibility for financial and medical assistance redetermined at least once in every three months of continuous receipt of assistance.

((~~(15) In accordance with federal regulations, this section is effective October 1, 1977.~~))

WSR 79-02-026
PROPOSED RULES
APPLE ADVERTISING COMMISSION
[Filed January 17, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Apple Advertising Commission intends to adopt, amend, or repeal rules concerning increasing the state apple advertising assessment from 14 cents cwt. gross billing weight to 16 cents cwt. gross billing weight, effective with the 1979 and subsequent crops of apples;

that such agency will at 9:00 a.m., Wednesday, March 21, 1979, in the Towne Plaza Motor Inn, 607 East Yakima Avenue, Yakima, WA 98901 conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 21, 1979, in the Towne Plaza Motor Inn, 607 East Yakima Avenue, Yakima, WA 98901.

The authority under which these rules are proposed is RCW 15.24.070(1).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to 9:00 a.m., Wednesday, March 21, 1979, and/or orally at 9:00 a.m., Wednesday, March 21, 1979, Towne Plaza Motor Inn, 607 East Yakima Avenue, Yakima, WA 98901.

Dated: January 15, 1979
By: Joe Brownlow
Secretary-Manager

AMENDATORY SECTION (Amending Order 7, filed 6/16/78)

WAC 24-12-011 AMOUNT OF ASSESSMENTS. ((~~Assessments shall be that amount on each one hundred pounds (100 lbs.) gross billing weights of apples established from time to time pursuant to the provisions of RCW 15.24.090 and~~)) There is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, an assessment of 14 cents on each one hundred pounds (100 lbs.) gross billing weight applicable to the 1978 and prior crops of apples, and an assessment of 16 cents on each one hundred pounds (100 lbs.) gross billing weight applicable to the 1979 and subsequent crops of apples. Assessments shall be payable when shipped, whether in bulk or loose in boxes or any other container, or packed in any style package. The gross billing weights for the following containers shall apply for the purpose of computing said assessment:

Description of Container	Gross Billing Weights
1/3 Bushel Box (packed or loose)	15 lbs.
1/2 Bushel Box (loose)	23 lbs.
Bulk Bushel Container (loose)	Net weight plus 3 lbs. tare
9/4 and 12/3 Bag Containers	41 lbs.
13/3 Bag Container	44 lbs.
10/4 and 8/5 Bag Containers	45 lbs.
12/4 Bag Container	53 lbs.
Standard Tray Pack Container	46 lbs.
Pocket Cell Tray Pack Container	46 lbs.
Cell Pack Containers, all counts	46 lbs.
2-Layer Tray Pack Container	23 lbs.
Single-Layer Tray Pack Container	12 lbs.

((~~The effective date of the foregoing amendments shall be September 1, 1978.~~))

WSR 79-02-027
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY.
[Memorandum, Secretary—January 15, 1979]

Shown below is the correct 1979 Board of Trustees meeting schedule for Eastern Washington University. The trustees made some changes in the schedule prior to passing it at the December 14, 1978, meeting. However, the original proposed schedule was inadvertently submitted to you. Will you please replace the original schedule with the corrected copy that is enclosed.

1979 BOARD OF TRUSTEES MEETING SCHEDULE

Date	Time	Location
Thursday, January 25	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus
Thursday, February 22	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus
Thursday, March 29	6:00 p.m.	Bon Marche Building EWU Library, 7th Floor, Spokane
Thursday, April 26	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus
Thursday, May 24	6:00 p.m.	Senior Hall Lounge EWU Campus
Thursday, June 28	6:00 p.m.	Bon Marche Building EWU Library, 7th Floor, Spokane
Thursday, July 26	6:00 p.m.	Red Reese Room EWU Pavilion
Thursday, August 23	6:00 p.m.	Washington Mutual Building Spokane
Thursday, September 27	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus
Thursday, October 25	6:00 p.m.	Bon Marche Building EWU Library, 7th Floor, Spokane
Thursday, November 29	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus
Thursday, December 13	6:00 p.m.	Pence Union Building Council Chambers, EWU Campus

WSR 79-02-028
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
[Memorandum, Clerk—January 12, 1979]

Please publish notice that the 1979 meeting schedule of the Washington State Human Rights Commission, WSR 78-12-008, is amended by changing the place of the May meeting from Bremerton to Yakima. In all other respects the schedule remains the same.

WSR 79-02-029
NOTICE OF PUBLIC MEETINGS
WHATCOM COMMUNITY COLLEGE
[Memorandum—January 16, 1979]

Notification is hereby given that the January 25, 1979, meeting of the Board of Trustees of Whatcom Community College, District Number Twenty-One, has been cancelled.

WSR 79-02-030
ADOPTED RULES
BOARD OF PILOTAGE COMMISSIONERS
[Order 79-1, Resolution 79-1—Filed January 19, 1979]

Be it resolved by the Board of Pilotage Commissioners acting at Seattle, Washington, that it does promulgate and adopt the annexed rules relating to Grays Harbor pilotage rates, amending WAC 296-116-351.

This action is taken pursuant to Notice No. WSR 78-12-082 filed with the Code Reviser on 12/5/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to chapter 88.16 RCW as amended by chapter 337, § 4, Laws of 1977 ex. sess. and is intended to administratively implement that statute.

This rule is promulgated pursuant to chapter 88.16 RCW as amended by chapter 337, § 1, Laws of 1977 ex. sess. which directs that the Board of Pilotage Commissioners has authority to implement the provisions of chapter 88.16 RCW as amended by chapter 337, Laws of 1977 ex. sess.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 11, 1979.

By Richard A. Berg
Chairman

AMENDATORY SECTION (Amending Order 78-1, filed 1/6/78)

WAC 296-116-351 PILOTAGE RATES FOR GRAYS HARBOR AND WILLAPA BAY PILOTAGE DISTRICT. These rates are effective February ((~~10, 1978~~)) 20, 1979 through December 31, ((~~1978~~)) 1979 and thereafter until changed by the Board.

CLASSIFICATION OF PILOTAGE SERVICE	RATE
Piloting of vessels in the inland waters((,)),	((~~$20.00~~)) Per Meter $21.40
tributaries of Grays Harbor & Willapa Bay((,)), Per Meter or Per Foot of Draft	or ((~~6.10~~)) Per Foot 6.53
and Per Net Registered Ton	((~~.0525~~)) Per N.R.T. .0562
Minimum Charge for Net Registered Tonnage	((~~200.00~~)) 214.00
Extra Vessel (in case of tow)	((~~125.00~~)) 133.75
Boarding Fee: Per each boarding/deboarding from a boat. Note: The boarding fee is to finance the purchase of the pilot boat Chehalis. When the boat is fully amortized, the boarding fee will be terminated.	25.00

CLASSIFICATION OF PILOTAGE SERVICE	RATE
The Following Travel Allowance Shall be Charged:	
Boarding a vessel off Grays Harbor or Willapa Harbor entrance	((~~15.00~~)) 30.00
Disembarking a vessel off Grays Harbor or Willapa Harbor entrance	((~~15.00~~)) 30.00
Returning to Grays Harbor from piloting a vessel to Raymond	((~~15.00~~)) 30.00
Traveling to Raymond to pilot a vessel to sea	((~~15.00~~)) 30.00
Harbor Shifts (Including Travel Allowance):	
Grays Harbor:	
One dock to another dock	((~~100.00~~)) 107.00
Anchorage to dock or dock to Anchorage (Upper Bay)	((~~100.00~~)) 107.00
Dock to Anchorage (Lower Bay)	((~~125.00~~)) 133.75
Anchorage in Lower Bay to berth Upper Bay	((~~125.00~~)) 133.75
Cancellation Charge at dock	((~~50.00~~)) 53.50
Cancellation Charge if boat operation involved	((~~200.00~~)) 214.00
Delays Per Hour	((~~30.00~~)) 32.10
((~~f~~))Willapa Bay: Same as Grays Harbor((~~f~~))	
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid one hundred and seven dollars (((~~$100.00~~)) $107.00) for each day or fraction thereof and the following travel expense allowances:	
From Aberdeen to:	
Seattle	((~~50.00~~)) 65.00
Tacoma	((~~40.00~~)) 55.00
Olympia	((~~30.00~~)) 45.00
Port Angeles	((~~50.00~~)) 65.00
Longview	((~~45.00~~)) 60.00
Portland	((~~55.00~~)) 70.00
Astoria	((~~50.00~~)) 65.00
((~~All Other Washington Ports North of Seattle: Add to transportation allowance for Puget Sound Pilots the sum of~~ ~~50.00~~)) ((~~f~~))Transportation and living expenses for other ports as incurred.((~~f~~))	
Bridge Transit:	
Charge if vessel transits one or more bridges	70.00
Late Payment Charge:	
The balance of amounts due for pilotage rates not paid within 60 days of invoice will be assessed a 1% per month late charge.	

WSR 79-02-031
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed January 19, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Board of Health intends to adopt, amend, or repeal rules relating to mobile homes and mobile home parks, repealing chapter 248-76 WAC;

that such agency will at 9:00 a.m., Wednesday, February 14, 1979, in the Auditorium, Cascade Natural Gas Company, 1520 South Second, Mt. Vernon, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, February 14, 1979, in the Auditorium, Cascade Natural Gas Company, 1520 South Second, Mt. Vernon, WA.

The authority under which these rules are proposed is RCW 43.20.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to February 14, 1979, and/or orally at 9:00 a.m., Wednesday, February 14, 1979, Auditorium, Cascade Natural Gas Company, 1520 South Second, Mt. Vernon, WA.

This notice is connected to and continues the matter noticed in Notice No. WSR 78-12-092 filed with the code reviser's office on December 6, 1978.

Dated: January 10, 1979
By: John A. Beare, M.D.
Secretary

WSR 79-02-032
ADOPTED RULES
PARKS AND RECREATION COMMISSION
[Order 41—Filed January 23, 1979—Eff. May 1, 1979]

Be it resolved by the Washington State Parks and Recreation Commission, acting at Olympia, Washington, that it does promulgate and adopt the annexed rules relating to the fees of Environmental Learning Centers, WAC 352-32-250.

This action is taken pursuant to Notice No. WSR 78-12-060 filed with the code reviser on 12/1/78. Such rules shall take effect at a later date, such date being May 1, 1979.

This rule is promulgated pursuant to RCW 43.51.040(2) and 43.51.060(6) and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 15, 1979.
By Charles H. Odegaard
Director

AMENDATORY SECTION (Amending Administrative Order No. 39, filed 5/1/78)

WAC 352-32-250 STANDARD FEES CHARGED. The following fees shall be charged in all parks operated by the Washington State Parks and Recreation Commission:

(1) Overnight camping – basic camp: $3.50 per night;

(2) Overnight camping – camp site (two or more hookups): $4.50 per night;

(3) Group camping area – certain parks: $.25 per camper per night; maximum of $10.00 per night;

(4) Environmental Learning Center: (ELC) overnight camping ((~~$1.10~~)) $1.60 per camper per night;

(5) Hot showers: $.10 for four minutes shower time;

(6) Electric stoves: $.10 for thirty minutes cooking time;

(7) Senior Citizens Passport: $10.00 per season (from October 1 through April 30);

(8) Camp Wooten and Cornet Bay Environmental Learning Centers during the season the swimming pools are operational: ((~~$1.50~~)) $2.00 per camper per ((~~day~~;)) night;

(9) Environmental Learning Center day use only: 75¢ multiplied by the minimum capacity established for each ELC or 75¢ for each member of the group – whichever is higher.

((~~(9)~~)) (10) Washington senior citizens and disabled or handicapped persons found eligible under chapter 330, Laws of 1977, First Extraordinary Session shall be entitled to the issuance of an annual free pass entitl((~~ed~~)) ing the card holder and his "camping unit" to free admission to any state park administered facility and fifty percent discount on any camping fees levied by the Commission.

(a) A camping unit includes the passport holder and guest or guests in one car or one camper, or one such vehicle with trailer per camp or trailer site. A greater number may be authorized in specific areas when constructed facilities so warrant.

(b) Persons traveling by bicycle or motor bikes, or mode of transportation other than those referenced above, and who are utilizing regular camp or trailer sites, shall be limited to six persons per site.

(c) These guidelines will also apply to group camping and emergency areas.

These fees do not apply in those circumstances set forth in WAC 352-32-280 and WAC 352-32-285 as now or hereafter amended.

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

WSR 79-02-033
ADOPTED RULES
DEPARTMENT OF ECOLOGY
[Order DE 78-10—Filed January 23, 1979]

I, Elmer C. Vogel, deputy director of the Department of Ecology, do promulgate and adopt at the Department of Ecology, Lacey, Washington, the annexed rules relating to the submission of plans and reports for the construction of wastewater facilities; adopting chapter 173-240 WAC—Submission of Plans and Reports for Construction of Wastewater Facilities; and repealing chapter 372-20 WAC—Public Sewage and Industrial Waste Works.

This action is taken pursuant to Notice Nos. WSR 78-10-121 and 78-12-009 filed with the code reviser on 10/4/78 and 11/8/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 90.48.110 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 9, 1979.

By Elmer C. Vogel
Deputy Director

Chapter 173-240 WAC
SUBMISSION OF PLANS AND REPORTS FOR CONSTRUCTION OF WASTEWATER FACILITIES

WAC

NEW SECTION

WAC 173-240-010 PURPOSE AND SCOPE. The purpose of this chapter is to implement RCW 90.48.110. The department interprets "plans and specifications" as mentioned in RCW 90.48.110 as including "engineering reports," "final plans," "plans and specifications," and "general sewer plans," all as defined in WAC 173-240-020. This chapter also includes provisions for review of proposed methods of operation and maintenance, which for certain facilities means that an operation and maintenance manual must be prepared and approved.

NEW SECTION

WAC 173-240-020 DEFINITIONS. (1) "Approval" means written approval.

(2) "Department" means the Washington State Department of Ecology.

(3) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration, surface waters or industrial waste as may be present.

(4) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater. In the case of subsurface sewage disposal, the term is restricted to mean:

(a) A septic tank system with either an ultimate design capacity exceeding fourteen thousand five hundred gallons per day, or designed to ultimately serve fifty or more living units; or

(b) A mechanical treatment system or lagoon with subsurface disposal and with either an ultimate design capacity exceeding three thousand five hundred gallons per day, or designed to ultimately serve ten or more living units.

Where the proposed system utilizing subsurface disposal has received a federal construction grant under the Federal Water Pollution Control Act as amended, such system is a "domestic wastewater facility" regardless of size.

(5) "Engineering report" means a document describing the results of a thorough engineering study of a particular domestic or industrial wastewater facility project. The report presents preliminary design alternatives and recommends one of them. It sets forth preliminary layouts, treatment techniques, costs, and operating considerations. It establishes the design and water quality criteria to be used in preparation of the plans and specifications. In the case of a domestic wastewater facility project, it describes the recommended financing method.

The facility plan described in federal regulation 40 CFR 35 is an "engineering report." This federal regulation describes the Environmental Protection Agency's municipal wastewater construction grants program.

The preliminary engineering report required for some industrial wastewater facilities is an "engineering report."

(6) "Final plans" means the final conceptual drawings and information submitted to the department for approval prior to construction or modification of industrial wastewater facilities. Final plans are preceded by an approved engineering report.

(7) "General sewer plan" means the:

(a) Sewerage general plan adopted by counties under chapter 36.94 RCW; or

(b) Comprehensive plan for a system of sewers adopted by sewer districts under chapter 56.08 RCW; or

(c) Plan for a system of sewerage adopted by cities under chapter 35.67 RCW; or

(d) Comprehensive plan for a system of sewers adopted by water districts under chapter 57.08 RCW; or

(e) Plan for sewer systems adopted by public utility districts under chapter RCW 54.16 and port districts under chapter 53.08 RCW.

(f) The "general sewer plan" is a comprehensive plan for a system of sewers adopted by a local government entity. The plan includes the items specified in each respective statute. It includes the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, local service areas and a general description of the collection system to serve those areas. The plan also includes preliminary engineering in adequate detail to assure technical feasibility, provides for the method of distributing the cost and expense of the sewer system, and indicates the financial feasibility of plan implementation.

(8) "Industrial wastewater" means the water or liquid carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated stormwater and also leachate from a sanitary landfill.

(9) "Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of industrial wastewater and from which discharge is to the waters of the state.

(10) "Owner" means the state, county, city, town, federal agency, corporation, firm, company, institution, person or persons, or any other entity owning a domestic or industrial wastewater facility.

(11) "Plans and specifications" means the detailed drawings and specifications used in the construction or modification of domestic wastewater facilities. Plans and specifications are preceded by an approved engineering report.

(12) "Sewer system" means a system of sewers and appurtenances for the collection, transportation, pumping, treatment and disposal of domestic wastewater. By definition a sewer system is a "domestic wastewater facility."

(13) "Subsurface sewage disposal" means the physical, chemical, or bacteriological treatment of domestic wastewater within the soil profile.

(14) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground waters, salt

waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

DOMESTIC WASTEWATER FACILITIES

NEW SECTION

WAC 173-240-030 SUBMISSION OF PLANS AND REPORTS. (1) Prior to the construction or modification of domestic wastewater facilities, engineering reports and plans and specifications for the project shall be submitted to and approved by the department, except as noted in WAC 173-240-030(4) and (5) below.

(2) All reports and plans and specifications shall be submitted by the owner or his authorized representative consistent with a compliance schedule issued by the department or at least thirty days prior to the time approval is desired. The department will generally review and either approve (or conditionally approve), comment on, or disapprove such plans and reports within the thirty-day period unless circumstances prevent, in which case the owner will be notified and informed of the reason for the delay.

(3) Construction or modification of domestic wastewater facilities shall conform to the following schedule of tasks unless otherwise modified by these regulations:

(a) Submission and approval of engineering report;

(b) Submission and approval of plans and specifications;

(c) Submission and approval of operation and maintenance manual; and

(d) Certification of completion of construction by the project engineer.

(4) If the local government entity has received department approval of a general sewer plan and standard design criteria, engineering reports and plans and specifications for sewer line extensions, including pump stations, need not be submitted for approval. In this case the entity need only provide a description of the project and written assurance that the extension is in conformance with the general sewer plan. However in the following situations specific department approval is necessary for sewer line extensions prior to construction:

(a) The proposed sewers, or pump stations involve installation of overflows or bypasses; or

(b) The proposed sewers, pump or lift stations discharge to an overloaded treatment, collection, or disposal facility.

(5) Concerning domestic wastewater facilities utilizing subsurface disposal; upon request of the owner, the department may waive the requirement for submission of both an engineering report and plans and specifications. Where the department grants such a waiver, the plans and specifications shall include the appropriate (as determined by the department) information required in an engineering report.

NEW SECTION

WAC 173-240-040 REVIEW STANDARDS. (1) The department will review general sewer plans, engineering reports, and plans and specifications for domestic wastewater facilities to ensure that the documents and proposed facilities are consistent with these regulations and the appropriate sections of the state of Washington, "Criteria for Sewage Works Design." Additional references may include, but are not limited to, the following:

(a) Manuals of Practice, Water Pollution Control Federation.

(b) Manuals of Engineering Practice, American Society of Civil Engineering.

(c) Standard Specifications for Municipal Public Works Construction, American Public Works Association.

(d) Considerations for Preparation of Operation and Maintenance Manuals, United States Environmental Protection Agency.

(e) Process Design Manuals, United States Environmental Protection Agency.

(f) Design Criteria for Mechanical, Electric, and Fluid System and Component Reliability, United States Environmental Protection Agency.

(g) Manual of Septic Tank Practice, United States Department of Health, Education, and Welfare.

(h) Guidelines for Larger On-Site Sewage Disposal Systems, Washington State Department of Social and Health Services, now in draft form, or as later adopted.

(i) Guidelines for the Formation and Operation of On-site Waste Management Systems, Washington State Department of Social and Health Services, now in draft form, or as later adopted.

(j) Soil Evaluation Guidelines, Washington State Department of Social and Health Services, now in draft form, or as later adopted.

(2) In addition to the above, the discharge from any domestic wastewater facility subject to a departmental waste discharge permit shall meet the applicable effluent limitations. Domestic wastewater facilities, not subject to a waste discharge permit, shall (a) provide all known, available, and reasonable methods of treatment, and (b) not alter the groundwater to the extent that this is harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses or potential uses.

NEW SECTION

WAC 173-240-050 GENERAL SEWER PLAN. (1) All general sewer plans required of any governmental agency prior to providing sewer service are "plans" within the requirements of RCW 90.48.110. Three copies of the proposed general sewer plan and each amendment to it shall be submitted to and approved by the department prior to its implementation.

(2) The general sewer plan shall be sufficiently complete so that engineering reports can be developed from it without substantial alterations of concept and basic considerations.

(3) The general sewer plan shall include the following information together with any other relevant data as requested by the department. To satisfy the statutes of the local government jurisdiction, additional information may be necessary.

(a) The purpose and need for the proposed plan.

(b) A discussion of who will own, operate, and maintain the system(s).

(c) The existing and proposed service boundaries.

(d) Layout map including the following:

(i) Boundaries. The boundary lines of the municipality or special district to be sewered, including a vicinity map;

(ii) Existing sewers. The location, size, slope, capacity, direction of flow of all existing trunk sewers, and the boundaries of the areas served by each;

(iii) Proposed sewers. The location, size, slope, capacity, direction of flow of all proposed trunk sewers, and the boundaries of the areas to be served by each;

(iv) Existing and proposed pump stations and force mains. The location of all existing and proposed pumping stations and force mains, designated to distinguish between those existing and proposed;

(v) Topography and elevations. Topography showing pertinent ground elevations and surface drainage shall be shown, as well as proposed and existing streets;

(vi) Streams, lakes, and other bodies of water. The location and direction of flow of major streams, the high and low elevations of water surfaces at sewer outlets, and controlled overflows, if any. All existing and potential discharge locations should be noted; and

(vii) Water systems. The location of wells or other sources of water supply, water storage reservoirs and treatment plants, and water transmission facilities.

(e) The population trend as indicated by available records, and the estimated future population for the stated design period. Briefly describe the method used to determine future population trends and the concurrence of any applicable local or regional planning agencies.

(f) Any existing domestic and/or industrial wastewater facilities within twenty miles of the general plan area and within the same topographical drainage basin containing the general plan area.

(g) A discussion of any infiltration and inflow problems. Also a discussion of actions which will alleviate these problems in the future.

(h) A statement regarding provisions for treatment and discussion of the adequacy of such treatment.

(i) List of all establishments producing industrial wastewater, the quantity of wastewater and periods of production, and the character of such industrial wastewater insofar as it may affect the sewer system or treatment plant. Consideration shall be given to future industrial expansion.

(j) Discussion of the location of all existing private and public wells, or other sources of water supply, and distribution structures as they are related to both existing and proposed domestic wastewater treatment facilities.

(k) Discussion of the various alternatives evaluated, and a determination of the alternative chosen, if applicable.

(l) A discussion, including a table, which shows the cost per service in terms of both debt service and operation and maintenance costs, of all facilities (existing and proposed) during the planning period.

(m) A statement regarding compliance with any adopted water quality management plan pursuant to the Federal Water Pollution Control Act as amended.

(n) A statement regarding compliance with the State Environmental Policy Act of 1971 (SEPA) and the National Environmental Policy Act (NEPA), if applicable.

NEW SECTION

WAC 173-240-060 ENGINEERING REPORT. (1) The engineering report for a domestic wastewater facility shall include each appropriate (as determined by the department) item required in WAC 173-240-050 for general sewer plans unless an up-to-date general sewer plan is on file with the department. Normally, an engineering report is not required for sewer line extensions or pump stations. See WAC 173-240-030(4). The facility plan described in federal regulation 40 CFR 35 is an "engineering report."

(2) The engineering report should be sufficiently complete so that plans and specifications can be developed from it without substantial changes. Three copies of the report shall be submitted to the department for approval, excepting as waived under WAC 173-240-030(4) or (5).

(3) The engineering report shall include the following information together with any other relevant data as requested by the department:

(a) A statement regarding the present and expected future quantity and quality of wastewater, including any industrial wastes which may be present or expected in the sewer system.

(b) The degree of treatment required based upon applicable permits and regulations, the receiving body of water, the amount and strength of wastewater to be treated, and other influencing factors.

(c) The type of treatment process proposed, based upon the character of the wastewater to be handled, the method of disposal, the degree of treatment required, and a discussion of the alternatives evaluated and the reasons they are unacceptable.

(d) The basic design data and sizing calculations of each unit of the treatment works. Expected efficiencies of each unit and also of the entire plant, and character of effluent anticipated.

(e) Discussion of the various sites available and the advantages and disadvantages of the site(s) recommended. The proximity of residences or developed areas to any treatment works. The relationship of the twenty-five-year and one hundred-year flood to the treatment plant site and the various plant units.

(f) A flow diagram showing general layout of the various units, including the location of the effluent discharge.

(g) Detailed outfall analysis or other disposal method selected.

(h) A discussion of the method of final sludge disposal and any alternatives considered.

(i) Provision for future needs.

(j) Staffing and testing requirements for the facilities.

(k) An estimate of the costs and expenses of the proposed facilities and the method of assessing costs and expenses. The total amount shall include both capital

costs and also operation and maintenance costs for the life of the project, and shall be presented in terms of total annual cost and present worth.

(l) A statement regarding compliance with any applicable state or local water quality management plan or any such plan adopted pursuant to the Federal Water Pollution Control Act as amended.

(m) A statement regarding compliance with the State Environmental Policy Act of 1971 (SEPA) and the National Environmental Policy Act (NEPA), if applicable.

(4) The engineering report for projects utilizing subsurface disposal shall include information on the following together with appropriate parts of subsection (3) of this section, as determined by the department:

(a) Soils and their permeability;

(b) Percolation rate during different times of the year;

(c) Depth to groundwater during different times of the year;

(d) Groundwater movement;

(e) Overall effects of the proposed facility upon the groundwater in conjunction with any other subsurface disposal facilities that may be present;

(f) Availability of public sewers;

(g) Reserve areas for additional subsurface disposal.

(5) The engineering report for projects funded by the Environmental Protection Agency shall, in addition to the requirements of subsection (3) or (4) of this section, follow EPA facility plan guidelines contained in the EPA publication, "Guidance for Preparing a Facility Plan" (MCD-46), and shall indicate how the special requirements contained in 40 CFR 35.719-1 will be met.

NEW SECTION

WAC 173-240-070 PLANS AND SPECIFICATIONS. (1) The plans and specifications for a domestic wastewater facility are the detailed construction documents by which the owner or his contractor bid and construct the facility. The content and format of the plans and specifications shall be as stated in the state of Washington, "Criteria for Sewage Works Design."

(2) Two copies of the plans and specifications shall be submitted to the department for approval prior to start of construction, excepting as waived under WAC 173-240-030(4).

NEW SECTION

WAC 173-240-080 OPERATION AND MAINTENANCE MANUAL. (1) The proposed method of operation and maintenance of the domestic wastewater facility shall be stated in the engineering report or plans and specifications and approved by the department. The statement shall be a discussion of who will own, operate, and maintain the facility and what the staffing and testing requirements are. The owner shall follow the approved method of operation after the facility is constructed, unless changes have been approved by the department.

(2) In those cases where the facility includes mechanical components, a detailed operation and maintenance manual shall be prepared prior to completion of construction. The purpose of the manual is to present technical guidance and regulatory requirements to the operator to enhance operation under both normal and emergency conditions. Two copies of the manual shall be submitted to the department for approval prior to completion of construction.

(3) The operation and maintenance manual shall include the following list of topics. For those projects funded by the Environmental Protection Agency the manual shall also follow the requirements of the EPA publication, "Considerations for Preparation of Operation and Maintenance Manuals."

(a) The assignment of managerial and operational responsibilities to include plant classification and classification of required operators.

(b) A description of plant type, flow pattern, operation, and efficiency expected.

(c) The principal design criteria.

(d) A process description of each plant unit, including function, relationship to other plant units, and schematic diagrams.

(e) A discussion of the detailed operation of each unit and description of various controls, recommended settings, fail-safe features, etc.

(f) A section on laboratory procedures including sampling techniques, monitoring requirements, and sample analysis.

(g) Recordkeeping procedures and sample forms to be used.

(h) A maintenance schedule incorporating manufacturer's recommendations, preventative maintenance and housekeeping schedules, and special tools and equipment usage.

(i) A section on safety.

(j) A section stating the spare parts inventory, address of local suppliers, equipment warranties, and appropriate equipment catalogues.

(k) Emergency plans and procedures.

(4) In those cases where the facility does not include mechanical components, an operation and maintenance manual, less detailed than that described in subsection (3) of this section, shall be submitted to the department for approval prior to completion of construction. The manual shall fully describe the treatment and disposal system and outline routine maintenance procedures needed for proper operation of the system.

NEW SECTION

WAC 173-240-090 CERTIFICATION OF CONSTRUCTION COMPLETION. Within thirty days following acceptance by the owner of the construction or modification of a domestic wastewater facility, the professional engineer in responsible charge of inspection of the project shall submit to the department a certificate stating the facilities were constructed without significant change from the department approved plans and specifications. The certificate will be furnished by the department and will be substantially the same form as WAC 173-240-105, Certificate of Construction of Water Pollution Control Facilities. The submission of the certificate is not necessary for sewer line extensions where the

local government entity has received approval of a general sewer plan and standard design criteria.

NEW SECTION

WAC 173-240-100 REQUIREMENT FOR CERTIFIED OPERATOR. Each owner of a domestic wastewater treatment facility is required by chapter 70.95B RCW to have an operator, certified by the state, in responsible charge of the day to day operation. This requirement does not apply to a septic tank utilizing subsurface disposal. The certification procedures are set forth in chapter 173-230 WAC.

NEW SECTION

WAC 173-240-105 FORM—CERTIFICATE OF CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES.

CERTIFICATE OF CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

Instructions:

A. Upon completion, and prior to the use of any project or portions thereof, a professional engineer shall complete and sign this form, certifying that the project was constructed in accordance with the plans and specifications, and major change orders, approved by the Department of Ecology.

B. If a project is being completed in phased construction, a map shall be attached showing that portion of the project being certified on the date given below. Each phase of a project must be certified as it is completed. Additional certification forms are available upon request from the Department of Ecology offices listed below.

NAME AND BRIEF DESCRIPTION OF PROJECT: .....

.....

.....

NAME OF OWNER .....DOE PROJECT NO. .....

ADDRESS .....DATE PROJECT OR PHASE COMPLETED .....

CITY .....STATE .....ZIP .....

DOE PLAN AND SPECIFICATION APPROVAL DATE .....

I hereby certify that I am the project engineer of the above identified project; that said project was inspected by me or my authorized agent and that it was constructed and completed in accordance with the plans and specifications, and major change orders, approved by the Department of Ecology and as shown on the owner's "as-built" plans.

..... SEAL
Signature or Professional Engineer

OF

DATE .....

ENGINEER

Please return completed form to the Department of Ecology office checked below.

☐ SV. Regional Office
Department of Ecology
Mail stop LU-11
7272 Cleanwater Lane
Olympia, WA 98504

☐ Central Regional Office
Department of Ecology
2802 Main Street
Union Gap, WA 98903

☐ NW Regional Office
Department of Ecology
4350 150th Ave. NE
Redmond, WA 98052

☐ Eastern Regional Office
Department of Ecology
East 103 Indiana Ave.
Spokane, WA 99207

INDUSTRIAL WASTEWATER FACILITIES

NEW SECTION

WAC 173-240-110 SUBMISSION OF PLANS AND REPORTS. (1) Prior to the construction or modification of industrial wastewater facilities, engineering reports and final plans for the project shall be submitted to and approved by the department.

(2) All engineering reports and final plans should be submitted by the owner consistent with a compliance schedule issued by the department or at least thirty days prior to the time approval is desired. The department will generally review and either approve (or conditionally approve), comment on, or disapprove such plans and reports within the thirty-day period unless circumstances prevent, in which case the owner will be notified and informed of the reason for the delay.

(3) Construction or modification of industrial wastewater facilities shall conform to the following schedule of tasks unless waived in accordance with subsection (4).

(a) Submission and approval of an engineering report;

(b) Submission and approval of final plans.

(4) Upon request by the owner, the department may waive the requirement for a two step submission of documents for minor dischargers. In such a case the department will require instead final plans which also include the appropriate (as determined by the department) information of the engineering report.

NEW SECTION

WAC 173-240-120 REVIEW STANDARDS. (1) The department will review engineering reports and final plans for industrial wastewater facilities to ensure that the documents and proposed facilities are consistent with good engineering practice.

(2) In addition, the discharge from any industrial wastewater facility subject to a departmental waste discharge permit shall meet the applicable effluent limitations. Industrial wastewater facilities, not subject to a waste discharge permit, shall (a) provide all known, available, and reasonable methods of treatment, and (b) not alter the groundwater to the extent that this is harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses or potential uses.

NEW SECTION

WAC 173-240-130 ENGINEERING REPORT. (1) The engineering report for an industrial wastewater facility shall be sufficiently complete so that final plans can be developed from it without substantial changes. The preliminary engineering report required for some industrial wastewater facilities is defined, for the purposes of this regulation, as an engineering report. One copy of the report shall be submitted to the department for approval.

(2) The engineering report shall include the following information together with any other relevant data as requested by the department:

(a) Type of industry or business.

(b) The kind and quantity of finished product.

(c) The quantity and quality of water used by the industry and a description of how consumed or disposed of, including:

(i) The quantity and quality of all process wastewater and method of disposal;

(ii) The quantity of domestic wastewater and how disposed of;

(iii) The quantity and quality of noncontact cooling water (including air conditioning) and how disposed of; and

(iv) The quantity of water consumed or lost to evaporation.

(d) A statement concerning the receiving water (surface water, subsurface, or municipal collection system), and the location of the point of discharge.

(e) The amount and kind of chemicals used in the treatment process, if any.

(f) The basic design data and sizing calculations of the treatment units.

(g) A description of the treatment process and operation, including a flow diagram.

(h) All necessary maps and layout sketches.

(i) Provisions for bypass, if any.

(j) Physical provision for oil and hazardous waste spill control and/or accidental discharge prevention.

(k) Results to be expected from the treatment process including the predicted wastewater characteristics, as shown in the waste discharge permit, where applicable.

(l) Detailed outfall analysis.

(m) The relationship to existing treatment facilities, if any.

(n) A statement, expressing sound engineering justification through the use of pilot plant data, results from other similar installations, and/or scientific evidence from the literature, that the effluent from the proposed facility will meet applicable permit effluent limitations.

(o) A discussion of the method of final sludge disposal selected and any alternatives considered with reasons for rejection.

(p) A statement as to who will own, operate, and maintain the system after construction.

(q) A statement regarding compliance with any state or local water quality management plan or any such plan adopted pursuant to the Federal Water Pollution Control Act as amended.

(r) Provisions for any committed future plans.

(s) A discussion of the various alternatives evaluated, if any, and reasons they are unacceptable.

(t) A timetable for final design and construction.

(u) A statement regarding compliance with the State Environmental Policy Act of 1971 (SEPA) and the National Environmental Policy Act (NEPA), if applicable.

(v) Additional items to be included in an engineering report for a solid waste leachate treatment system are:

(i) A vicinity map and also a site map which shows topography, location of utilities, and location of the leachate collection network, treatment systems, and disposal;

(ii) Discussion of the landfill site, working areas, soil profile, rainfall data, and ground water movement and usage;

(iii) A statement of the capital costs and the annual operation and maintenance costs;

(iv) A description of all sources of water supply within two thousand feet of the proposed disposal site. Particular attention should be given to showing impact on usable or potentially usable aquifers.

NEW SECTION

WAC 173-240-140 FINAL PLANS. (1) The final plans for an industrial wastewater facility may be conceptual rather than the complete construction drawings required as plans and specifications for domestic wastewater facilities. One copy of the final plans shall be submitted to the department for approval prior to start of construction.

(2) The final plans shall include the following information together with any other relevant data as requested by the department:

(a) Repeat presentation of the basic engineering design criteria from the engineering report.

(b) If there are any deviations from the concepts of the engineering report, explanation of the changes to include as much detail as would have been provided in an engineering report.

(c) The plan and section drawings of major components such as the treatment units, pump stations, flow measuring devices, sludge handling equipment, and influent and effluent piping. Foundations and/or soil preparation should be shown for major structures.

(d) A general site drawing showing the location with respect to the entire plant site and a detailed site drawing showing the component siting.

(e) A schematic drawing showing flows to include: In plant collection, and wastewater pumping, treatment, and discharge.

(f) A hydraulic profile showing head under maximum flows. This requirement is not necessary where the two step submission of documents has been waived pursuant to WAC 173-240-110(4).

(g) Instrumentation, controls, and sampling schematics.

(h) General operating procedures such as startup, shutdown, spills, etc.

NEW SECTION

WAC 173-240-150 OPERATION AND MAINTENANCE MANUAL. (1) A detailed operation and maintenance manual shall be prepared for an industrial wastewater facility which includes mechanical components prior to the completion of construction. The manual is not to be submitted to the department for review, however the manual shall be kept on site at all times and be available for inspection by department staff. The purpose of the manual is to present technical guidance and regulatory requirements to the operator to enhance operation under both normal and emergency conditions.

(2) The operation and maintenance manual shall include the following list of topics:

(a) The names and phone numbers of the responsible individuals.

(b) A description of plant type, flow pattern, operation, and efficiency expected.

(c) The principal design criteria.

(d) A process description of each plant unit, including function, relationship to other plant units, and schematic diagrams.

(e) Explanation of the operational objectives for the various wastewater parameters, i.e. sludge age, settleability, etc.

(f) A discussion of the detailed operation of each unit and description of various controls, recommended settings, fail-safe features, etc.

(g) A section on laboratory procedures including sampling techniques, monitoring requirements, and sample analysis.

(h) Recordkeeping procedures and sample forms to be used.

(i) A maintenance schedule incorporating manufacturer's recommendations, preventative maintenance and housekeeping schedules, and special tools and equipment usage.

(j) A section on safety.

(k) A section containing the spare parts inventory, address of local suppliers, equipment warranties, and appropriate equipment catalogues.

(l) Emergency plans and procedures.

DOMESTIC AND INDUSTRIAL WASTEWATER FACILITIES

NEW SECTION

WAC 173-240-160 REQUIREMENT FOR PROFESSIONAL ENGINEER. (1) All required engineering reports, plans and specifications and final plans, for the construction or modification of wastewater facilities shall be prepared under the supervision of a professional engineer licensed in accordance with chapter 18.43 RCW. All copies of these documents submitted to the department for review shall bear the seal of the professional engineer under whose supervision they have been prepared.

(2) Upon request of the owner, the department may waive the above requirement for construction or modification at minor industrial wastewater facilities with insignificant discharges and at animal feeding operations.

NEW SECTION

WAC 173-240-170 RIGHT OF INSPECTION. Pursuant to RCW 90.48.090, the department or its authorized representative shall have the right to enter at all reasonable times in or upon any property, public or private, for the purposes of inspection or investigation relating to the pollution or possible pollution of the waters of the state, including the inspection of construction activities related to domestic and industrial wastewater facilities.

NEW SECTION

WAC 173-240-180 APPROVAL OF CONSTRUCTION CHANGES. All wastewater facilities subject to the provisions of this regulation shall be constructed in accordance with the plans and specifications or final plans approved by the department. Any contemplated changes during construction, which are significant deviations from the approved plans, shall first be submitted to the department for approval.

REPEALER

Chapter 372-20 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 372-20-005 SEWAGE WORKS DESIGN GUIDE. (See chapter 173-240 WAC.)

(2) WAC 372-20-010 DEFINITIONS. (See chapter 173-240 WAC.)

(3) WAC 372-20-020 ALL PLANS MAY BE SUBMITTED TO POLLUTION CONTROL COMMISSION. (See chapter 173-240 WAC.)

(4) WAC 372-20-025 LAW RELATING TO APPROVAL OF COMPREHENSIVE PLAN FOR SEWER DISTRICTS. (See chapter 173-240 WAC.)

(5) WAC 372-20-030 PLAN REQUIREMENTS GENERALLY——SEWERAGE SYSTEMS. (See chapter 173-240 WAC.)

(6) WAC 372-20-040 PLAN REQUIREMENTS GENERALLY——SEWAGE TREATMENT WORKS. (See chapter 173-240 WAC.)

(7) WAC 372-20-050 INSPECTION OF SYSTEMS AND PLANTS DURING CONSTRUCTION. (See chapter 173-240 WAC.)

(8) WAC 372-20-055 COMPLIANCE WITH RCW 90. (See chapter 173-240 WAC.)

(9) WAC 372-20-060 SEWERAGE SYSTEMS——REPORT, GENERAL LAYOUT MAP AND SPECIFICATIONS. (See chapter 173-240 WAC.)

(10) WAC 372-20-070 SEWAGE TREATMENT WORKS——REPORTS AND PLANS TO PCC. (See chapter 173-240 WAC.)

(11) WAC 372-20-080 REQUIREMENTS FOR ENGINEERS. (See chapter 173-240 WAC.)

(12) WAC 372-20-090 THE OPERATION OF SEWAGE TREATMENT PLANTS. (See chapter 173-240 WAC.)

(13) WAC 372-20-100 INDUSTRIAL WASTE TREATMENT WORKS——REPORTS AND PLANS. (See chapter 173-240 WAC.)

(14) WAC 372-20-110 OPERATION OF INDUSTRIAL WASTE TREATMENT PLANTS. (See chapter 173-240 WAC.)

WSR 79-02-034
EMERGENCY RULES
DEPARTMENT OF GENERAL ADMINISTRATION
(Division of Banking)
[Order 39—Filed January 23, 1979]

I, Michael D. Edwards, Supervisor of Banking, do promulgate and adopt at Olympia, Washington the annexed rules relating to the fees charged to banks for services performed by the Office of the Supervisor of Banking and the loan limitations of banks with respect to loans made to officers.

I, Michael D. Edwards, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

With respect to WAC 50-12-040, the Supervisor finds that immediate implementation of the new fee schedule is necessary to assure that fees collected reflect the actual costs incurred during calendar year 1979, that all banks receiving such services during calendar year 1979 are treated equally and fairly, and to preserve the financial integrity of the Supervisor's office.

With respect to WAC 50-12-050, the Supervisor finds that the current limitations on loans made to officers unduly restrict state chartered banks, and place them at an unfair disadvantage in competing with other financial institutions for qualified personnel. Immediate implementation of the amendatory section is necessary to rectify this situation.

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

This rule is promulgated pursuant to RCW 30.08.095 with respect to WAC 50-12-040, and RCW 30.12.060 with respect to WAC 50-12-050 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 22, 1979.

By Michael D. Edwards
Supervisor of Banking

AMENDATORY SECTION (Amending Order 32, filed 10/2/75)

WAC 50-12-040 SCHEDULE OF FEES FOR BANKS, TRUST COMPANIES, MUTUAL SAVINGS BANKS, AND ALIEN BANKS. The supervisor shall collect in advance the following fees: (1) $2,000.00 for filing application for a certificate of authority and attendant investigation for a new bank or trust company. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds $2,000.00, the applicant shall pay such excess when ascertained by the supervisor.

(2) $1,500.00 for filing an application for certificate authorizing an alien bank to establish and operate an office in the State of Washington and attendant investigation. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds $1,500.00, the applicant shall pay such excess when ascertained by the supervisor.

(3) $500.00 for filing an application for certificate authorizing an alien bank to establish and operate a bureau in the State of Washington. If the cost therefor (computed on the basis indicated in (1) and (2) above) exceeds $500.00, the applicant shall pay such excess when ascertained by the supervisor.

(4) $500.00 for filing an application for a certificate of authority for a branch and attendant investigation. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds $500.00, the applicant shall pay such excess when ascertained by the supervisor.

(5) $500.00 for filing an application for a certificate conferring trust powers and attendant investigation. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds $500.00, the applicant shall pay such excess when ascertained by the supervisor.

(6) $2,000.00 for filing merger agreement and attendant investigation. If three or more banks are involved, then the fee for each is $1,000.00. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds the specified fee, the applicant surviving bank shall pay such excess when ascertained by the supervisor.

(7) $300.00 for filing an application for a certificate of appropriate adjunct and attendant investigation. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds $300.00, the applicant shall pay such excess when ascertained by the supervisor.

(8) ((~~$100.00~~)) $300.00 for filing application to relocate main office or branch and attendant investigation. If the cost therefor (computed on the basis of $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds ((~~$100.00~~)) $300.00, the applicant shall pay such excess when determined by the supervisor.

(9) ((~~$25.00~~)) $100.00 for issuing each branch certificate for branch resulting from merger.

(10) ((~~$25.00~~)) $100.00 for filing articles of incorporation, or amendments thereof, or other certificates required to be filed with the supervisor.

(11) ((~~$25.00~~)) $100.00 for issuing a certificate of increase or decrease of capital stock or issuing a certificate of authority.

(12) Fifty cents per page for furnishing copies of papers filed with the supervisor.

(13) ((~~$100.00~~)) $300.00 for filing an application for approval of the supervisor for a bank, trust company or mutual savings bank to provide a satellite facility. In the event the application is for approval of the supervisor to provide more than one such satellite facility, the filing fee on such a multiple application is ((~~$100.00~~)) $300.00 for the first such satellite facility and ((~~$50.00~~)) $100.00 for each additional satellite facility. This fee shall be deemed to include the cost of processing the application and the cost of an attendant investigation, but if the cost therefor (computed at $20.00 per man hour devoted by the division of banking to processing and investigating the application) exceeds the filing fee, the applicant shall pay such excess when ascertained by the supervisor.

(14) ((~~$25.00~~)) $100.00 for the issuance of a certificate of approval to provide a satellite facility.

(15) $200.00 for issuing certificate of approval for capital notes.

AMENDATORY SECTION (Amending Order 31, filed 10/2/75)

WAC 50-12-050 LIMITING LOANS TO OFFICERS. If approved by resolution of its board of directors as required by law, a bank may make the following loans to any of its officers: (1) A loan, not exceeding ((~~$40,000.00~~)) $60,000.00 to any of its officers if, at the time the loan is made:

(a) It is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence; and

(b) No other loan made by the bank to the officer under authority of this subparagraph is outstanding;

(2) In addition to (1) above, a bank may make extensions of credit to any officer of a bank, not exceeding the aggregate amount of ((~~$10,000.00~~)) $20,000.00 outstanding at any one time, to finance the education of the children of the officer; and

(3) A bank, in addition to loans made pursuant to subparagraphs (1) and (2) above, may make extensions of credit to its officers not exceeding the aggregate amount of ((~~$5,000.00~~)) $10,000.00 outstanding at any one time;

PROVIDED: That total liability to the bank of such officer does not exceed the limit prescribed in RCW 30.04.110.

WSR 79-02-035
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-3—Filed January 23, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is chinook salmon and sturgeon in the Columbia River are of sufficient stocks to allow a commercial fishery pursuant to regulations adopted by the Columbia River Compact. It is necessary to preclude development of a gillnet fishery targeting on sturgeon, but harvesting salmon as incidental catch.

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 22, 1979.

By Gordon Sandison
Director

NEW SECTION

WAC 220-32-02200B LAWFUL GEAR - STURGEON Notwithstanding the provisions of WAC 220-32-022, it shall be unlawful to take, fish for or possess sturgeon taken with gillnet gear for commercial purposes except that it shall be lawful to retain sturgeon for commercial purposes taken incidental to any lawful commercial salmon fishery in Columbia River Management and Catch Reporting Area 1A, 1B, 1C, 1D and 1E.

NEW SECTION

WAC 220-32-03000L GILL NET SEASONS Notwithstanding the provisions of WAC 220-32-030, WAC 220-32-031, and WAC 220-32-032, it shall be unlawful to take, fish for, or possess salmon for commercial purposes with gill net gear in Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except in those areas at those times and with the gear designated below:

Areas 1A, 1B, 1C and that portion of 1D downstream from a line perpendicular to the thread of the river from Kelley Point, east bank of the Willamette River.

6 p.m. February 26 until 6 p.m. March 5, 1979
8 inch minimum mesh restriction.

NEW SECTION

WAC 220-32-04000E STURGEON - SETLINE Notwithstanding the provisions of WAC 220-32-040, it shall be unlawful to take, fish for or possess sturgeon for commercial purposes with setline gear in Columbia River Salmon Management and Catch Reporting Areas 1A, 1C, 1D, that portion of 1B south of a line projected

from Grays Point light to Harrington Point, and that portion of Area 1E downstream of a line projected due north from the mouth of Oneonta Creek on the Oregon side to a deadline marker on the Washington shore except at those times, with the gear and provisions designated below:

12 noon February 1 until 12 noon April 30, 1979.
12 noon August 1 until 12 noon October 31, 1979.

Setline gear will be limited to 3 lines with not more than 500 hooks per line.

Buoys must be marked on each end with the fishing license number.

NEW SECTION

WAC 220-32-05100H GILL NET SEASONS Notwithstanding the provisions of WAC 220-32-051 and WAC 220-32-052, it shall be unlawful to take, fish for or possess salmon for commercial purposes in Columbia River Management and Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish 12 noon February 1 until 12 noon March 31, 1979. No mesh restrictions.

NEW SECTION

WAC 220-32-05700D SEASON - STURGEON Notwithstanding the provisions of WAC 220-32-057, it shall be unlawful to take, fish for, or possess sturgeon for commercial purposes in Columbia River Management and Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish 12 noon February 1 to 12 noon May 31, 1979 and 12 noon August 1 to 12 noon October 31, 1979. Setline gear shall be limited to not more than 100 hooks per set line.

WSR 79-02-036
ADOPTED RULES
STATE BOARD OF HEALTH
[Order 171—Filed January 23, 1979]

Be it resolved by the Washington State Board of Health acting at Spokane, Washington, that it does promulgate and adopt the annexed rules relating to nursing homes, amending chapter 248-14 WAC.

This action is taken pursuant to Notice No. WSR 78-12-091 filed with the code reviser on December 6, 1978. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.51.070 which directs that the Washington State Board of Health has the authority to implement the provisions of chapter 18.51 RCW.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

This order after being first recorded in the order register of this governing body is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED January 10, 1979.

BY Irma Goertzen

Chairman

Robert H. Barnes, M.D.

Fred Quarnstrom

Ramon Esparza, Jr.

John B. Conway

John A. Beare, M.D.

Secretary

AMENDATORY SECTION (Amending Order 133, filed 8/11/76)

WAC 248-14-001 DEFINITIONS. (1) All adjectives and adverbs such as adequate, approved, qualified, reasonable, reputable, satisfactory, sufficiently, or suitable, used in these rules and regulations to qualify a person, equipment or building, shall be as determined by the Washington state department of social and health services with the advice and guidance of the council.

(2) "Activity director" means someone on the staff of a nursing home responsible for the development and maintenance of a program for patients which is intended to provide activities to meet their needs and interests and not be in conflict with the plan of treatment.

(3) "Ambulatory person" – means a person, who, unaided, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs.

(4) "Attending physician" – means the physician who is responsible for a particular person's medical care during the period of time the person is an inpatient or outpatient of the nursing home.

(5) "Bathing facility" – means a bathtub or shower. Does not include sitz baths or other fixtures designed primarily for therapy.

(6) "Client" – see "Patient".

(7) "Comfortable armchair" – means a stable chair which provides for proper body alignment and support.

This does not preclude the use of a captain's chair or a rocking chair, provided it meets the criteria contained in this definition.

A wheelchair may be used as a comfortable armchair provided it is modified to meet the criteria contained in this definition of a comfortable armchair. Such modifications may include, but not necessarily be limited to, a seat board, wider arm rest, or back board.

For a patient unable to support his neck and head, the chair shall be a high back chair or have a head rest.

For a patient, whose medical condition requires the use of a chair of a special type or design((;)) a chair which meets the requirements specified in a written order by a physician shall be considered "a comfortable armchair".

(8) "Department" – means the state department of social and health services.

(9) "Dialysis" – means the process of separating crystalloids and colloids in solution by means of their unequal diffusion through a natural or artificial, semi–permeable membrane.

(a) "Acute dialysis" – means hemodialysis or peritoneal dialysis in the treatment of a person with renal failure for a period of time during which it is medically determined whether renal function may be restored or the failure is irreversible.

(b) "Maintenance dialysis" – means recurrent hemodialysis or peritoneal dialysis in the long term treatment of a person with chronic, irreversible renal failure of such severity that other medical management will not support life.

(c) "Hemodialysis" – means dialysis of the blood by means of an "artificial kidney" through which blood is circulated on one side of a semi–permeable membrane while the other side is bathed by a salt solution. The accumulated toxic products diffuse out of the blood into the salt solution.

(d) "Peritoneal dialysis" – means dialysis of the blood by inserting a tube into a person's abdomen and instilling a sterile salt solution into the peritoneal cavity. Accumulated toxic products diffuse out of the blood through the semi–permeable membrane of the peritoneum into the salt solution. After a period of time for diffusion, the solution is allowed to drain from the peritoneal cavity.

(e) "Self–dialysis" – means carrying out dialysis on oneself, assuming primary responsibility for the dialysis procedure whether or not one has assistance.

(10) "Dialysis room" – means a room in which a patient undergoes dialysis.

(11) "Dose" – means the amount of drug to be administered at one time.

(12) "Drug facility" – means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

(13) "Facilities" – means a room or area and/or equipment to serve one or more specific functions.

(14) Faucet controls:

(a) "Wrist control" – means water supply controls at least 4((")) inch overall horizontal length designed and installed to be operated by the wrists.

(b) "Elbow control" – means water supply controls at least 6((")) inch overall horizontal length designed and installed to be operated by the elbow.

(c) "Knee control" – means water supply controls, each operated by a mixing valve designed and installed to be operated by the knee.

(d) "Foot control" – means water supply controls, each operated by a mixing valve designed and installed to be operated by the foot.

(15) "Free hanging space for clothes" – means separated space in an enclosed wardrobe or closet with a rod which provides for daytime clothing to hang full length without touching the floor of the closet.

(16) "Functional abilities" – means the physical, mental, emotional, and social abilities to cope with the activities and affairs of daily living.

(17) "Grade" – means the level of ground adjacent to the building measured at required windows. The ground must be level or slope downward for a distance of at least 10 feet from the wall of the building. From there the ground may slope upward not greater than an average of one foot vertical to two feet horizontal within a distance of 18 feet from the building.

(18) "Handwashing facility" – means a lavatory or a sink designed and equipped to serve for handwashing purposes.

(19) "He, him, his and himself" – are the pronouns used in reference to a person of either sex, male or female. This choice of pronouns has been adopted for the purpose of consistency and to facilitate reading of these rules and regulations and does not mean preference for nor exclude reference to either sex.

(20) "Immediate supervision" means supervision of the performance of one or more persons when both supervisor and the person(s) over whose performance he exercises supervision are on duty within the nursing home.

(21) "Kidney center" – means a health care facility which is designed, equipped, staffed, organized and administered to provide the following services:

(a) Medical, social and psychological evaluation and selection of persons eligible for maintenance dialysis or kidney transplantation by a formal review body.

(b) Dialysis.

(c) Kidney transplantation for patients with chronic renal failure, either directly or by appropriate referral where this form of therapy is medically indicated.

(d) Training program for physicians, nurses, technicians and members of other disciplines involved in the care and treatment of persons with chronic renal failure who receive dialysis.

(e) Self–dialysis training program for patients.

(f) Evaluation of situations or facilities and assistance in planning necessary alterations and installations to ensure safe and adequate facilities for maintenance dialysis.

(g) An organized system((;)) by which patients undergoing dialysis at home or in a nursing home or other satellite facility procure the supplies and equipment necessary to safe and efficient administration of dialysis.

(h) Continued medical management and surveillance of care of patients receiving maintenance dialysis at home or in a nursing home or other satellite facility by means of outpatient clinic services and a continuing program of review, consultation and training.

(i) An in–hospital dialysis program which can provide the full gamut of services for diagnosis and treatment of persons with chronic renal disease. The in–hospital services may be provided by means of an association or affiliation with an in–hospital dialysis program.

(22) "Lavatory" – means a plumbing fixture designed and equipped to serve for handwashing purposes.

(23) "Legend drug" – means a drug bearing the legend, "Caution, federal law prohibits dispensing without a prescription."

(24) "Licensed nurse" – means either a registered nurse or a licensed practical nurse.

(25) "Licensed practical nurse" – means a person duly licensed under the provisions of the Licensed Practical Nurse Act of the state of Washington, chapter 18.78 RCW.

(26) "New construction" shall include any of the following, started after adoption of these rules and regulations by the state board of health.

(a) New buildings to be used as a nursing home.

(b) Additions to existing buildings to be used as a nursing home.

(c) Conversions ((~~(ii)~~)) including buildings which have been licensed previously as nursing homes and have not been used as such for a period in excess of one year.

(d) Alterations other than repairs, except where an exemption has been granted by the director under WAC 248-18-060.

(27) "Night light" – means a light fixture which is flush-mounted on the wall near the entrance doorway centered about fourteen inches above the floor providing from 0.5 to 1.5 footcandles of light measured on the floor at a distance of three feet from the light fixture.

(28) "Nursing care" – means services designed to maintain or promote achievement of optimal independent function and health status; and planned, supervised and evaluated by a licensed professional nurse in the context of an overall individual plan of care.

(29) "Nursing home" – means any home, place or institution which operates or maintains facilities providing convalescent or chronic care, or both, for a period in excess of twenty-four consecutive hours for three or more patients not related by blood or marriage to the operator, who, by reason of illness or infirmity, are unable properly to care for themselves. Convalescent and chronic care may include, but not be limited to, any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside nursing care, application of dressings and bandages, and carrying out of treatment prescribed by a duly licensed practitioner of the healing arts. Nothing in this definition shall be construed to include general hospitals or other places which provide care and treatment for the acutely ill and maintain and operate facilities for major surgery or obstetrics or both. Nothing in this definition shall be construed to include any boarding home, guest home, hotel or related institution which is held forth to the public as providing, and which is operated to give only board, room and laundry, to persons not in need of medical or nursing treatment or supervision except in the case of temporary acute illness. Nothing in this definition shall be construed to include any facility licensed under chapter 71.12 RCW as a private establishment. The mere designation by the operator of any place or institution as a hospital, sanitarium, or any other similar name, which does not provide care for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both, shall not exclude such place or institution from the provisions of this chapter.

((~~(29) "Nursing services" – means services designed to maintain or promote achievement of optimal independent function and health status; and planned, supervised and evaluated by a licensed professional nurse in the context of an overall individual plan of care.~~))

(30) "Nursing services" – an organized department under the direction of a professional nurse, the members of which provide nursing care.

(31) "Outpatient service" is any service to an outpatient.

((~~(31)~~)) (32) "Patient" – means a ((~~person~~)) resident who is receiving preventive, diagnostic, therapeutic, habilitative, rehabilitative, maintenance or palliative health ((~~care~~)) related services under professional direction.

(a) "In-patient" – means a patient who is receiving ((~~health care~~)) services with board and room in a nursing home on a continuous 24-hour a day basis.

(b) "Out-patient" – means a patient who is receiving ((~~health care~~)) services at a nursing home which is not providing him these services with room and board on a continuous 24-hour a day basis.

(c) "Self-dialysis patient" – means a patient who performs self-dialysis.

(d) "Patients requiring skilled nursing care" – means those residents whose conditions, needs, and/or services are of such complexity and sophistication so as to require the continuous or frequent observation and intervention of a licensed physician and/or a registered nurse. These patients require ongoing assessments of physiological and/or psychological needs, and the development and implementation of a comprehensive total plan of care involving multidisciplinary input and coordination. Patient needs include ongoing evaluations, care plan revisions and the teaching necessary to provide for those whose condition is unstable and/or complex.

(e) "Patients requiring intermediate nursing care" – means those residents whose physiological and psychological conditions and needs are relatively stable, but who require individually planned health programs under the direction of a registered nurse for supervision, assistance, protection and restoration. The primary needs of these residents are for interdisciplinary programs/attention, designed to foster optimum independent function and prevent deterioration and disability and which may be provided by nonprofessional persons.

(f) "Patients requiring care for mental retardation or related conditions" – means residents who are found eligible by the division of developmental disabilities and who require health care services in accord with subparagraph (d) or (e) of this subsection, and who are in need of a comprehensive habilitative/developmental program which is incorporated into a 24-hour overall program plan.

((~~(32)~~)) (33) "Pharmacist" – means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy under the provisions of chapter 18.64 RCW.

((~~(33)~~)) (34) "Pharmacy" – means a place((;)) where the practice of pharmacy is conducted, properly licensed under the provisions of chapter 18.64 RCW by the Washington state board of pharmacy.

((~~(34)~~)) (35) "p.r.n. drug" – means a drug which a physician has ordered to be administered only when needed under certain circumstances.

((~~(35)~~)) (36) "Registered nurse" – means a person duly licensed under the provisions of the law regulating the practice of registered nursing in the state of Washington, chapter 18.88 RCW.

((~~(36)~~)) (37) "Respiratory isolation" – means the prevention of transmission of pathogenic organisms by means of droplets and droplet nuclei that are coughed, sneezed, or breathed into the environment.

((~~(37)~~)) (38) "Responsible party" is that legally responsible person to whom the rights of a client have legally devolved.

((~~(38)~~)) (39) "Self-dialysis training" – means a program of patient education in which a patient is taught how to perform self-dialysis safely and effectively and to care for dialysis equipment and supplies.

((~~(39)~~)) (40) "Shall" – means compliance is mandatory.

((~~(40)~~)) (41) "Should" – means a suggestion or recommendation.

((~~(41)~~)) (42) "Single unit" – means one, discrete pharmaceutical dosage form (e.g., one tablet or one capsule) of a drug. A single unit becomes a unit-dose, if the physician orders that particular amount of the drug for a person.

((~~(42)~~)) (43) "Stop order" – means a written policy that definitely prescribes the number of doses or the period of time after which administration of a drug to a patient must be stopped automatically, unless the physician's order for the drug specified the number of doses or the period of time the order was to be in effect.

((~~(43)~~)) (44) "Supervision" – means the process of overseeing the performance of one or more persons while having the responsibility and authority to guide or direct and critically evaluate performance of the person(s) and to take corrective action when indicated.

((~~(44)~~)) (45) "Toilet" – means a room containing at least one water closet.

((~~(45)~~)) (46) "Unit-dose" – means the ordered amount of a drug in a dosage form ready for administration to a particular person by the prescribed route at the prescribed time.

((~~(46)~~)) (47) "Unit-dose drug distribution system" – means a system whereby a pharmacist dispenses drugs in unit doses so the selection and issuance of individual doses of drugs for administration are pharmacy based and controlled.

((~~(47)~~)) (48) "Usable floor space", as used in reference to new construction, excludes areas taken up by vestibules, closets, wardrobes, portable lockers and toilet rooms.

((~~(48)~~)) (49) "Water closet" – means a plumbing fixture for defecation fitted with a seat and device for flushing the bowl of the fixture with water.

AMENDATORY SECTION (Amending Order 77, filed 1/9/73)

WAC 248-14-230 FOOD AND FOOD SERVICE.

((~~(1) Diets and Menus. (a) A well balanced diet of good quality food, correctly prepared, attractively served and in sufficient quantity to meet the nutritional and physiological needs of the patient shall be provided. The well balanced diet shall meet the dietary allowances of the Food and Nutrition Board of the National Research Council adjusted to age, sex, and activity.~~

~~(b) At least three meals a day shall be served at regular intervals. There shall not be more than a 14-1/2 hour span between a substantial evening meal and the breakfast meal. The substantial meal shall be one that provides one-third to one-half of the protein requirement for the day plus fruits, vegetables and other foods to compose a meal that is acceptable and pleasing to the resident and contributes to his total dietary requirement. It is recommended that evening snacks be offered. Special nourishments as required shall be served. Nutrient concentrates shall be given only on the order of a physician.~~

~~(c) Food should be prepared in ways that conserve the nutritive value and be suitably cooked for the digestive capacity of the groups served. The food should be served in such a manner that it will be acceptable to the patients. Diets for the geriatric patient usually include relatively high quantities of protein, calcium, and vitamins. The following is intended as a guide of recommended minimum daily requirements for an adult patient:~~

~~1 pint of milk~~
~~2 servings of fruit, one being citrus~~
~~1 to 2 servings of meat, fish, poultry or eggs~~
~~Cereals or bread as desired~~
~~Potatoes or substitute as desired~~
~~2 servings of vegetables, one being leafy green or yellow vegetable in addition to potatoes~~
~~Simple desserts such as fruit, custard, gelatin and puddings~~

~~(d) Special diets shall be provided as ordered by the physician.~~

~~(e) Menus shall be planned at least one week in advance and shall be posted and available for at least one year. There shall also be made available for review by the department, a record of kinds and amounts of food purchased for use in the home for a given period of time, and the number of people served during this period.~~

~~(f) Table service for the individual or group shall be available to all those who can and will eat at a table. Table service should be provided in a manner that will best serve the interest of the patients.~~

~~(2) Food service sanitation standards in both new and existing nursing homes shall be governed by chapter 248-84 WAC.~~)) (1) All food service facilities and practices shall be in compliance with chapter 248-84 WAC, rules and regulations of the state board of health governing food services sanitation.

(2) Food served shall be consistent with the physiological and socio-cultural needs of residents. Menus shall be planned that consider likes and dislikes, are well-balanced, palatable, properly prepared, and are

sufficient in quality and quantity to meet the dietary allowances of the food and nutrition board of the national research council.

(a) Required dietary allowances must be adjusted for age, sex, and activity level.

(b) Food shall be prepared by methods that conserve nutritive value, consistency, appearance and palatability. The food shall be served in such a manner that it may be attractive and at temperatures that are safe and acceptable to residents.

(c) Diets, including nutrient concentrates, shall be provided as ordered by the physician; except, that nutrient concentrates and diet modifications may be used as an interim measure when ordered by a registered nurse.

(d) Tube feedings must be of uniform consistency and quality. Facility prepared tube feedings must be made from a written recipe. The diets must be prepared, stored, distributed, and served in such a manner so as to maintain uniformity and to prevent contamination.

(e) A minimum of three meals in each twenty-four hour period shall be provided. The time interval between the evening meal and breakfast shall not be more than fourteen hours. The time interval between meals shall not be less than four hours. Nourishments or snacks shall be served as required to meet the recommended dietary allowances or the physician's prescription. Evening nourishments shall be offered when not medically contraindicated.

(f) Table service, outside of the patient's room, shall be available to all those who can eat at a table. Table service shall be provided in a manner that will best serve the social and nutritive needs of the residents.

(3) Dated menus for general and modified diets shall be planned at least two weeks in advance. The current dated general menu, including substitutions, must be posted in the food service area and in a place easily visible to residents and visitors. Dated menu records, dated records of foods purchased and received, a record of the number of meals served, records of protein foods purchased, and recipes adjusted to an appropriate yield shall be retained and available for at least one year for review by the department.

(4) There shall be a food service supervisor who shall have overall responsibility for the dietary service. This person must have completed or be enrolled in a food service supervisory course approved by the department. A food service supervisor who is enrolled in a food service supervisory course must have a set date for course completion and be under the guidance of the consulting dietitian.

(5) Consultation by a qualified dietitian, such as a member of, or a person eligible for membership in the American Dietetic Association, as approved by the department, shall be provided under contract. The consultant's visits are at times and durations which allow for, but are not limited to: A continuing liaison with medical and nursing staff and administrator, patient counseling, inservice, guidance to the food service supervisor and dietetic staff, development of effective policies and procedures, planning, and/or review and approval of regular and therapeutic menus.

NEW SECTION

WAC 248-14-235 ADMINISTRATOR. (1) There shall be a licensed administrator available either full or part time, who plans, organizes, directs and is responsible for the overall management of the nursing home.

(2) The administrator shall ensure:

(a) That health related services are delivered as necessary, by appropriately qualified staff and consultants, and in accord with accepted standards of practice.

(b) The enforcement of rules and regulations relative to safety and accident prevention and to the protection of personal and property rights.

(c) Public awareness of facility policies and services provided.

(3) The administrator or his designee shall report every case or suspected case of a reportable disease, as defined in chapter 248-100 WAC, to the local health officer.

AMENDATORY SECTION (Amending Order 166, filed 9/27/78)

WAC 248-14-240 PERSONNEL. (((~~(1) The nursing service shall be supervised by a person licensed by the state of Washington to practice as a registered nurse or licensed practical nurse. This person shall be actively on duty at least 40 hours a week.~~

~~(2) A sufficient number of registered nurses, licensed practical nurses, or aides shall be employed to provide adequate nursing care for patients.~~

~~(3) Provision shall be made for sufficient personnel to be available for relief duty and vacation replacements.~~

~~(4) Active, full-time nursing care for the patients throughout the night shall be provided.~~

~~The department may approve hourly checks of the patients and the home when full-time night care is not indicated.~~

~~(5) There shall be a sufficient number of auxiliary personnel to carry out the functions involved with the dietary, housekeeping, maintenance and laundry activities.~~)) Sufficient personnel shall be available to meet the requirements of this chapter.

(1) Relief duty and vacation replacements for each service area of the nursing home shall be available as necessary.

(2) A current personnel record shall be maintained for each employee. These records shall be kept on file in the facility and contain as a minimum:

(a) Completed application, including education, experience, and references.

(b) Evidence of current licensure or certification for all personnel who require such to practice.

(c) Records of the results of Mantoux tests or chest X-ray examinations and reports of conditions that will limit job performance.

(d) At least annual written evaluations of work performance which have been reviewed with the employee.

(3) Any employee who gives direct patient care or treatment shall be at least eighteen years of age unless the employee is enrolled in or has successfully completed a bonafide nurse or nurse aide training program.

(((~~(6)~~))) (4) No employee((s)) currently working shall evidence signs or symptoms of infectious diseases, such as running sores or fever. Each employee shall have on employment and annually thereafter a tuberculin skin test by the Mantoux method, except that an employee who is known to be a positive reactor shall have a chest x-ray examination in lieu of a required tuberculin skin test. A positive test will consist of ten mm. of induration read at 48-72 hours.

((~~(7) An employee who feels that the tuberculin skin test by the Mantoux method would present a hazard to his health because of conditions peculiar to his own physiology may present supportive medical data to this effect to the tuberculosis control program, Health Services Division, Department of Social and Health Services. The department will select three physicians expert in the management of tuberculosis and will submit the medical data to them. The three physicians will review and evaluate the data and thereafter recommend to the department whether the requirement of the tuberculin skin test should be waived for the individual employee. The department will consider the recommendation of the three physicians selected by it and will decide whether the waiver should be granted to the individual employee and will notify the employee accordingly. Any employee granted a waiver from the tuberculin skin test shall have a chest x-ray taken in lieu thereof.~~

~~(8) Any employee who gives direct patient care or treatment shall be at least 18 years of age unless the employee is enrolled in or has successfully completed a bona fide nurse or nurse aide training program.~~))

(5) In all matters relating to employment, the employer shall comply with the provisions of chapter 49.60 RCW, Law Against Discrimination, as presently enacted or hereafter amended.

NEW SECTION

WAC 248-14-245 STAFF DEVELOPMENT. The staff development program shall be under the direction of a designee who is a member of the professional staff and shall assure that:

(1) Each employee receives a formal orientation to the facility; its policies; the employee's duties and responsibilities, as outlined in the job description.

(2) Inservice education, including emergency care, is provided to all personnel for development and improvement of skills on an ongoing basis.

(3) Records are kept of the content, dates and attendance for all staff development activities.

AMENDATORY SECTION (Amending Regulation 14.250, effective 3/11/60)

WAC 248-14-250 ((~~PATIENT CARE—MEDICAL SERVICE. (1) All patients shall be under the care of a duly licensed physician. Arrangements shall be made for a physician to be available for emergency calls, and his name, address, and telephone number shall be readily available.~~

~~(2) Each patient admitted shall be examined by a physician immediately, prior to, or within 48 hours of admission, and the diagnosis, treatment, and medication ordered entered on the patient's chart and signed by the physician.~~

~~(3) The rules and regulations, Washington state board of health, relating to communicable disease read as follows:~~

~~"It shall be the duty of every physician or practitioner, every superintendent or manager of a dispensary, hospital or clinic, or any person in attendance on a case of a reportable disease or a case suspected of being a reportable disease, to report the case immediately to the local health officer, such report to include pertinent data regarding the patient and the circumstances involved as may be deemed necessary to determine the source of infection and mode of transmission. This data is to include name of patient, disease, address, age, sex, and date of onset. In case such patient is hospitalized or is receiving treatment through a dispensary, hospital or clinic, the superintendent or manager of such dispensary, hospital or clinic shall be responsible for reporting if the attending physician fails to do so."~~)) PHYSICIAN SERVICES. Patients in need of nursing home care shall be under the care of an attending physician. The alternate physician who has agreed to be responsible in the attending physician's absence, shall be identified upon admission and his/her name recorded in the personal health record.

(1) Medical care shall be promptly provided when necessary to meet identified patient needs.

(a) The patient shall be seen by the attending physician on or immediately prior to admission and within thirty days.

(b) Thereafter, an alternate schedule not to exceed ninety days for skilled level patients and one hundred twenty days for intermediate care level patients may be justified and documented.

(2) Medical information prior to or upon admission shall include:

(a) A history and physical which reflects the patient's current health status with attention to special physical and psycho-social limitations and needs.

(b) Orders, as necessary, for medications, treatments, diagnostic studies, specialized rehabilitative services, diet and precautions and limitations related to activities.

(c) A statement of rehabilitation potential and plans for continuing care and discharge.

(3) Overall patient's progress and plans of care shall be reviewed and/or revised during a visit by the attending physician in consultation with professional personnel. Patient needs shall be documented. Each need or problem (or symptom) shall have a current plan of treatment.

AMENDATORY SECTION (Amending Order 166, filed 9/27/78)

WAC 248-14-260 ((~~PATIENT CARE—~~))NURSING SERVICES. ((~~(1) Adequate nursing service shall be supplied for the home at all times. Adequacy of nursing service is based on the general physical or mental welfare of the patient with encouragement toward self help.~~

~~(2) Criteria evidencing the adequacy of the nursing service are, the neat, clean appearance of the patients,~~

~~their clothing, bed linen, and rooms, evidence of good nutrition, the absence of bed sores and skin irritations, the condition of the mouth and lack of offensive odors in the building.~~

~~(3) The nurse in charge shall be responsible for the establishment of procedures for general nursing care for the cleanliness, comfort, and welfare of the patients in accordance with the instructions of the attending physician.~~

~~(4) The nurse in charge shall be responsible for instructing all personnel in proper isolation techniques to prevent infection to themselves and the patients.~~)) (1) There shall be organized nursing services with adequate administrative space and a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients.

(a) Nursing Services shall be under the direction of a full-time registered nurse.

(b) When any patient requires skilled nursing care, there shall be a registered nurse on duty on each shift, to be effective on August 15, 1979.

(c) When all residents in the facility require intermediate nursing care, there shall be at least one registered nurse on duty for the day shift and additional licensed staff on other shifts if indicated.

(d) Sufficient trained support staff shall be available and assigned only to duties consistent with their education, their experience and the current standards of nursing practice.

(2) Nursing input into the health record shall include:

(a) Patient history and continuing assessments.

(b) Current comprehensive written patient care plans.

(c) Nursing orders.

(d) Ongoing documentation of delivery of appropriate services.

(e) Progress notes identifying and evaluating problems, approaches and measurable goals.

((~~(5)~~)) (3) No form of restraint may be applied or utilized for the primary purpose of preventing or limiting independent mobility or activity, see chapter 309, Laws of 1977 (chapter 11.92 RCW), except that a restraint may be used in a bona fide emergency situation when necessary to prevent an individual from inflicting injury upon self or others. A physician's order for proper treatment which would resolve the ((~~emergent~~)) emergency situation and eliminate the cause for the restraint must be obtained as soon as possible. If the problem cannot be resolved in seventy-two hours, timely transfer to a certified evaluation and treatment facility must be initiated.

(a) In other situations, protective restraints or support may be necessary for individuals with acute or chronic impairments. This intervention must be related to a specific problem identified in the treatment plan. The plan shall be designed to diminish or eliminate the use of restraints.

(b) Any patient who is physically restricted shall be released at intervals not to exceed two hours to provide for ambulation, exercise, elimination, food and fluid intake and socialization as independently as possible.

(c) Appropriate individualized safety measures shall be identified in the treatment plan and implemented.

(((~~(6) Every home shall have a definite understanding with respect to notification of the physician and next-of-kin, or responsible agency when there is a critical change in the patient's condition.~~

~~(7) The terminal patient shall be in a single room if possible, or well screened from the other patients. Next-of-kin or responsible agency should be consulted regarding personal belongings and arrangements for burial.~~))

AMENDATORY SECTION (Amending Order 94, filed 1/13/72)

WAC 248-14-270 ((~~RECORDS. The following records, containing the information outlined, shall be kept and shall be available to authorized representatives of the department. These records shall be either typewritten or recorded legibly in ink. Reports as requested shall be submitted to the state department of social and health services.~~

~~(1) Patient records.~~

~~(a) Record of admission and discharge.~~

~~Name~~	~~Attending physician~~
~~Home phone~~	~~Address~~
~~Previous address~~	~~Phone number~~
~~Sex~~	~~Diagnosis~~
~~Date of birth~~	~~Admission date~~
~~Place of birth~~	~~Discharge date~~
~~Occupation~~	~~Condition on~~
~~Marital status~~	~~discharge~~
~~Religion~~	~~Address to which~~
~~Name, address, and telephone number of nearest relative or friend.~~	~~discharged~~

~~(b) Record of patient's valuables and clothing.~~

~~(c) Physician's record~~

~~Diagnosis by physician~~

~~Medication, diet, and treatment prescribed, date and signature of physician~~

~~Progress notes by physician~~

~~(d) Referral sheet from home, hospital, physician, or agency sending patient.~~

~~(e) Nursing record.~~

~~(i) Date of each physician's visit~~

~~(ii) A record shall be kept of all medications administered. The information to be recorded for each medication shall include the date, time, name of substance and dosage, method of administration and initials of the nurse who administered the medication. The full signature of the nurse shall be recorded on the same page as the initials.~~

~~(iii) Entries shall be made on the nursing records whenever medications are started or discontinued.~~

~~(iv) Date and time of all treatments and dressings.~~

~~(v) Record of all pertinent factors pertaining to the patient's condition. Charting of observations shall be done by the person who gives the care. They may be done daily, weekly, or at least monthly, as indicated by the patient's condition.~~

~~(vi) Record of all accidents occurring while patient is in the home.~~

~~(vii) Other significant observations, such as moods, delusions, hallucinations, judgment, orientation and behavior.~~

~~(2) Census register. A register shall be kept in a separate bound book, listing in chronological order the names and dates of admissions and discharges. This shall be kept in such a manner that total patient days and average yearly census can be calculated.~~

~~(3) Personnel record. A current personnel record shall be kept on file. These records shall be kept on file for five years.~~

~~(4) Policy record. All standing orders, rules, regulations, nursing procedures, and policies adopted for the nursing home by the medical staff shall be placed on file and be readily accessible in the home to personnel.~~)) HEALTH RECORD SERVICE. There shall be a defined health record service in which records are kept in accordance with recognized principles of health record management. All records, policies and procedures shall be available to authorized representatives of the department for review.

(1) The health record system shall:

(a) Have a designated individual exercising responsibility for the system who shall have appropriate training and experience in health record management. This person may require consultation from a qualified health record practitioner such as a registered record administrator or accredited record technician.

(b) Include a system of record identification and filing which assures access to records.

(c) Include mechanisms to safeguard records from alteration, loss or destruction and preserve the confidentiality of each record.

(2) The health record shall:

(a) Be documented by persons making the observation or providing the service, to include the date and authentication of each entry. All entries shall be written legibly in ink, typewritten, or on a computer terminal. Dictated reports shall be promptly transcribed and included in the record.

(b) Be developed and maintained for each resident who receives care or treatment in the facility.

(c) Contain information obtained upon admission which shall include identifying and sociological data, an inventory of personal belongings, a medical history, a report of a physical examination and diagnoses by a physician.

(d) Contain information about the resident's daily care which shall include all plans, treatments, medications, observations, teaching, examinations, physician's orders, allergic responses, consents, authorizations, releases, diagnostic reports and revisions of assessments.

(e) Contain a summary upon discharge which includes diagnoses, treatments, and prognosis, by the person responsible for the total plan of care; instructions given to the person, a record of any referrals directed toward continuity of care.

(f) Contain appropriate information if the patient has died which shall include the time and date of death, apparent cause of death, appropriate notification of the physician and relevant others, and the disposition of the body and personal effects.

(3) At the time of discharge, the facility provides those responsible for the patient's postdischarge care with an appropriate summary of information about the discharged patient to ensure the optimal continuity of care.

(4) Health records shall be retained in the nursing home for the time period required by RCW 18.51.300.

(a) If a nursing home ceases operation, it shall make arrangements prior to cessation, as approved by the department, for preservation of the health records.

(b) In event of transfer of ownership of the nursing home, health records, registers, indexes, and reports shall remain with the nursing home and shall be retained and preserved by the new owner in accordance with state statutes and regulations.

(5) A chronological census register shall be maintained, which includes all admissions, discharges, deaths and transfers, noting the receiving facility. A daily census shall be kept of those residents who are not on leave. A record of cumulative patient days shall be kept on a monthly basis.

(a) A new health record shall be opened when a resident returns to the nursing home from any treatment facility after a stay in excess of seventy-two hours. Current information from the treatment facility shall accompany the resident on return to the nursing home.

(b) Social leaves in excess of twenty-four hours must be noted in the census, but a new health record need not be opened when the resident returns to the nursing home. See WAC 388-88-115.

(6) A master patient index shall be maintained which has a reference for each resident including the health record number, if applicable, full name, date of birth, admission date(s) and discharge date(s). Nursing homes which provide outpatient services pursuant to WAC 248-14-295 shall maintain and file records of such services pursuant to that section.

NEW SECTION

WAC 248-14-401 ASSESSMENTS. The department shall evaluate the health care status of residents admitted to a nursing home. Permission will be obtained if non-Medicaid patients are to be assessed.

(1) Evaluation shall be performed through the use of a uniform evaluation process.

(2) Evaluation shall be performed through a review of the resident's health record and an assessment.

(3) Evaluations shall be entered into the computer storage, so that changes in status may be retrieved and compared.

(4) Evaluations shall remain confidential and shall not be disclosed in any format which could potentially lead to the identification of any individual. An evaluation may be disclosed to the director of nursing services of the facility who has rendered direct care to a patient and provided information about that resident's health status as part of the evaluation process.

WSR 79-02-037
ADOPTED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Order 79-1—Filed January 23, 1979]

I, John C. Hewitt, director of the Department of Labor and Industries, do promulgate and adopt at the Director's Office, Olympia, Washington the annexed rules relating to:

New WAC 296-62-07347 Inorganic Arsenic.
New WAC 296-62-14531 Exposure to cotton dust in cotton gins.

This action is taken pursuant to Notice No. WSR 78-10-047 filed with the code reviser on September 20, 1978. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 49.17.040, 49.17.150 and 49.17.240 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED December 14, 1978.

By John C. Hewitt
Director

NEW SECTION

WAC 296-62-07347 INORGANIC ARSENIC. (1) Scope and Application. This section applies to all occupational exposures to inorganic arsenic except that this section does not apply to employee exposures in agriculture or resulting from pesticide application, the treatment of wood with preservatives or the utilization of arsenically preserved wood.

(2) Definitions. (a) "Action level" – a concentration of inorganic arsenic of 5 micrograms per cubic meter of air (5 $\mu g/m^3$) averaged over any eight hour period.

(b) "Authorized person" – any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under subsection (5) of this section.

(c) "Director" – the Director of the Department of Labor and Industries, or his designated representative.

(d) "Inorganic arsenic" – copper aceto-arsenite and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

(3) Permissible Exposure Limit. The employer shall assure that no employee is exposed to inorganic arsenic at concentrations greater than 10 micrograms per cubic meter of air (10 $\mu g/m^3$), averaged over any 8-hour period.

(4) Notification of Use. (a) By October 1, 1978, or within 60 days after the introduction of inorganic arsenic into the workplace, every employer who is required to establish a regulated area in his workplaces shall report in writing to the Department of Labor and Industries for each such workplace:

(i) The address of each such workplace;

(ii) The approximate number of employees who will be working in regulated areas; and

(iii) A brief summary of the operations creating the exposure and the actions which the employer intends to take to reduce exposures.

(b) Whenever there has been a significant change in the information required by subsection (4)(a) of this section, the employer shall report the changes in writing within 60 days to the Department of Labor and Industries.

(5) Exposure Monitoring. (a) General. (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to inorganic arsenic over an eight-hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(iii) The employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(b) Initial Monitoring. Each employer who has a workplace or work operation covered by this standard shall monitor each such workplace and work operation to accurately determine the airborne concentration of inorganic arsenic to which employees may be exposed.

(c) Frequency. (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in subsection (5)(d) of this section.

(ii) If the initial monitoring, required by this section, or subsequent monitoring reveals employer exposure to be above the permissible exposure limit, the employer shall repeat monitoring at least quarterly.

(iii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the action level and below the permissible exposure limit the employee shall repeat monitoring at least every six months.

(iv) The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the action level at which time the employer may discontinue monitoring for that employee until such time as any of the events in subsection (5)(d) of this section occur.

(d) Additional monitoring. Whenever there has been a production, process, control or personal change which may result in new or additional exposure to inorganic arsenic, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to inorganic arsenic, additional monitoring which complies with subsection (5) of this section shall be conducted.

(e) Employee notification. (i) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposures.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken to reduce exposure to or below the permissible exposure limit.

(f) Accuracy of measurement. (i) The employer shall use a method of monitoring and measurement which has an accuracy (with a confidence level of 95 percent) of not less than plus or minus 25 percent for concentrations of inorganic arsenic greater than or equal to 10 $\mu g/m^3$.

(ii) The employer shall use a method of monitoring and measurement which has an accuracy (with confidence level of 95 percent) of not less than plus or minus 35 percent for concentrations of inorganic arsenic greater than 5 $\mu g/m^3$ but less than 10 $\mu g/m^3$.

(6) Regulated Area. (a) Establishment. The employer shall establish regulated areas where worker exposures to inorganic arsenic, without regard to the use of respirators, are in excess of the permissible limit.

(b) Demarcation. Regulated areas shall be demarcated and segregated from the rest of the workplace in any manner that minimizes the number of persons who will be exposed to inorganic arsenic.

(c) Access. Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto to enter such areas.

(d) Provision of respirators. All persons entering a regulated area shall be supplied with a respirator, selected in accordance with subsection (8)(b) of this section.

(e) Prohibited activities. The employer shall assure that in regulated areas, food or beverages are not consumed, smoking products, chewing tobacco and gum are not used and cosmetics are not applied, except that these activities may be conducted in the lunchrooms, change rooms and showers required under subsection (12) of this section. Drinking water may be consumed in the regulated area.

(7) Methods of Compliance. (a) Controls. (i) The employer shall institute at the earliest possible time but not later than December 31, 1979, engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(ii) Where engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest levels achievable by these controls and shall be supplemented by the use of respirators in accordance with subsection (8) of this section and other necessary personal protective equipment. Employee rotation is not required as a control strategy before respiratory protection is instituted.

(b) Compliance program. (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limit by means of engineering and work practice controls.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which inorganic arsenic is emitted; e.g., machinery used, material processed, controls in place, crew size, operating procedures and maintenance practices;

(B) Engineering plans and studies used to determine methods selected for controlling exposure to inorganic arsenic;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data;

(E) A detailed schedule for implementation of the engineering controls and work practices that cannot be implemented immediately and for the adaption and implementation of any additional engineering and work practices necessary to meet the permissible exposure limit;

(F) Whenever the employer will not achieve the permissible exposure limit with engineering controls and work practices by December 31, 1979, the employer shall include in the compliance plan an analysis of the effectiveness of the various controls, shall install engineering controls and institute work practices on the quickest schedule feasible, and shall include in the compliance plan and implement a program to minimize the discomfort and maximize the effectiveness of respirator use; and

(G) Other relevant information.

(iii) Written plans for such a program shall be submitted upon request to the Director, and shall be available at the worksite for examination and copying by the Director, any affected employee or authorized employee representatives.

(iv) The plans required by this subsection shall be revised and updated at least every six months to reflect the current status of the program.

(8) Respiratory Protection. (a) General. The employer shall assure that respirators are used where required under this section to reduce employee exposures to below the permissible exposure limit and in emergencies. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering or work practice controls;

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations in which engineering controls and supplemental work practice controls are not yet sufficient to reduce exposures to or below the permissible exposure limit; or

(iv) In emergencies.

(b) Respirator selection. (i) Where respirators are required under this section the employer shall select, provide at no cost to the employee and assure the use of the appropriate respirator or combination of respirators from Table I for inorganic arsenic compounds without significant vapor pressure, or Table II for inorganic arsenic compounds which have significant vapor pressure.

(ii) Where employee exposures exceed the permissible exposure limit for inorganic arsenic and also exceed the

relevant limit for particular gasses such as sulfur dioxide, any air purifying respirator supplied to the employee as permitted by this standard must have a combination high efficiency filter with an appropriate gas sorbent. (See footnote in Table I)

TABLE I

RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE

Concentration of Inorganic Arsenic (as As) or Condition of Use.	Required Respirator
(i) Unknown or greater or lesser than 20,000 $\mu g/m^3$ (20 mg/m^3) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 $\mu g/m^3$ (20 mg/m^3)	(A) Supplied air respirator with full facepiece, hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 $\mu g/m^3$ (10 mg/m^3)	(A) Powered air-purifying respirators in all inlet face coverings with high-efficiency filters.[1] (B) Half-mask supplied air respirators operated in positive pressure mode.
(iv) Not greater than 500 $\mu g/m^3$	(A) Full facepiece air-purifying respirator equipped with high-efficiency filter.[1] (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 $\mu g/m^3$	(A) Half-mask air-purifying respirator equipped with high-efficiency filter.[1] (B) Any half-mask supplied air respirator.

[1]High-efficiency filter-99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

TABLE II

RESPIRATORY PROTECTION FOR INORGANIC ARSENICALS (SUCH AS ARSENIC TRICHLORIDE[2] AND ARSENIC PHOSPHIDE) WITH SIGNIFICANT VAPOR PRESSURE

Concentration of Inorganic Arsenic (as As) or Condition of Use	Required Respirator
(i) Unknown or greater or lesser than 20,000 $\mu g/m^3$(20 mg/m^3) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 $\mu g/m^3$(20 mg/m^3)	(A) Supplied air respirator with full facepiece hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 $\mu g/m^3$(10 mg/m^3)	(A) Half-mask[2] supplied air respirator operated in positive pressure mode.
(iv) Not greater than 500 $\mu g/m^3$	(A) Front or back mounted gas mask equipped with high-efficiency filter[1] and acid gas canister. (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 $\mu g/m^3$	(A) Half-mask[2] air-purifying respirator equipped with high-efficiency filter[1] and acid gas cartridge. (B) Any half-mask supplied air respirator.

[1]High efficiency filter-99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

[2]Half-mask respirators shall not be used for protection against arsenic trichloride, as it is rapidly absorbed through the skin.

(iii) The employer shall select respirators from among those approved for protection against dust, fume, and mist by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(c) Respirator usage. (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall perform qualitative fit tests at the time of initial fitting and at least semi-annually thereafter for each employee wearing respirators, where quantitative fit tests are not required.

(iii) Employers with more than 20 employees wearing respirators shall perform a quantitative face fit test at the time of initial fitting and least semi-annually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in Table I or II.

(iv) If an employee has demonstrated difficulty in breathing during the fitting test or during use, he or she shall be examined by a physician trained in pulmonary medicine to determine whether the employee can wear a respirator while performing the required duty.

(d) Respirator program. (i) The employer shall institute a respiratory protection program in accordance with WAC 296-24-08103, 296-24-08107, 296-24-08109 and 296-24-08111.

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece to prevent skin irritation associated with respirator use.

(e) Commencement of respirator use. (i) The employer's obligation to provide respirators commences on August 1, 1978, for employees exposed over 500 $\mu g/m^3$ of inorganic arsenic, as soon as possible but not later than October 1, 1978, for employees exposed to over 50 $\mu g/m^3$ of inorganic arsenic, and as soon as possible but not later than December 1, 1978, for employees exposed between 10 and 50 $\mu g/m^3$ of inorganic arsenic.

(ii) Employees with exposures below 50 $\mu g/m^3$ of inorganic arsenic may choose not to wear respirators until December 31, 1979.

(iii) After December 1, 1978, any employee required to wear air purifying respirators may choose, and if so chosen the employer must provide, if it will give proper protection, a powered air purifying respirator and in addition if necessary a combination dust and acid gas respirator for times where exposures to gases are over the relevant exposure limits.

(9) RESERVED.

(10) Protective Work Clothing and Equipment. (a) Provision and use. Where the possibility of skin or eye irritation from inorganic arsenic exists, and for all workers working in regulated areas, the employer shall provide at no cost to the employee and assure that employees use appropriate and clean protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, and shoes or coverlets;

(iii) Face shields or vented goggles when necessary to prevent eye irritation, which comply with the requirements of WAC 296-24-07801(1) - (6).

(iv) Impervious clothing for employees subject to exposure to arsenic trichloride.

(b) Cleaning and replacement. (i) The employer shall provide the protective clothing required in subsection (10)(a) of this section in a freshly laundered and dry condition at least weekly, and daily if the employee works in areas where exposures are over 100 $\mu g/m^3$ of inorganic arsenic or in areas where more frequent washing is needed to prevent skin irritation.

(ii) The employer shall clean, launder, or dispose of protective clothing required by subsection (10)(a) of this section.

(iii) The employer shall repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms prescribed in subsection (13)(a) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of inorganic arsenic outside the container.

(vi) The employer shall inform in writing any person who cleans or launders clothing required by this section, of the potentially harmful affects including the carcinogenic effects of exposure to inorganic arsenic.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment in the workplace or which are to be removed from the workplace are labeled as follows:

CAUTION: Clothing contaminated with inorganic arsenic; do not remove dust by blowing or shaking. Dispose of inorganic arsenic contaminated wash water in accordance with applicable local, state, or Federal regulations.

(viii) The employer shall prohibit the removal of inorganic arsenic from protective clothing or equipment by blowing or shaking.

(11) Housekeeping. (a) Surfaces. All surfaces shall be maintained as free as practicable of accumulations of inorganic arsenic.

(b) Cleaning floors. Floors and other accessible surfaces contaminated with inorganic arsenic may not be cleaned by the use of compressed air, and shoveling and brushing may be used only where vacuuming or other relevant methods have been tried and found not to be effective.

(c) Vacuuming. Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner to minimize the reentry of inorganic arsenic into the workplace.

(d) Housekeeping plan. A written housekeeping and maintenance plan shall be kept which shall list appropriate frequencies for carrying out housekeeping operations, and for cleaning and maintaining dust collection equipment. The plan shall be available for inspection by the Director.

(e) Maintenance of equipment. Periodic cleaning of dust collection and ventilation equipment and checks of their effectiveness shall be carried out to maintain the effectiveness of the system and a notation kept of the last check of effectiveness and cleaning or maintenance.

(12) RESERVED.

(13) Hygiene Facilities and Practices. (a) Change rooms. The employer shall provide for employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic, clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment in accordance with WAC 296-24-12011.

(b) Showers. (i) The employer shall assure that employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with WAC 296-24-12009(3).

(c) Lunchrooms. (i) The employer shall provide for employees working in regulated areas, lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(ii) The employer shall assure that employees working in the regulated area or subject to the possibility of skin or eye irritation from exposure to inorganic arsenic wash their hands and face prior to eating.

(d) Lavatories. The employer shall provide lavatory facilities which comply with WAC 296-24-12009(1) and (2).

(e) Vacuuming clothes. The employer shall provide facilities for employees working in areas where exposure, without regard to the use of respirators, exceeds 100 $\mu g/m^3$ to vacuum their protective clothing and clean or change shoes worn in such areas before entering change rooms, lunchrooms or shower rooms required by subsection (10) of this section and shall assure that such employees use such facilities.

(f) Avoidance of skin irritation. The employer shall assure that no employee is exposed to skin or eye contact with arsenic trichloride, or to skin or eye contact with liquid or particulate inorganic arsenic which is likely to cause skin or eye irritation.

(14) Medical Surveillance. (a) General. (i) Employees covered. The employer shall institute a medical surveillance program for the following employees:

(A) All employees who are or will be exposed above the action level, without regard to the use of respirators, at least 30 days per year; and

(B) All employees who have been exposed above the action level, without regard to respirator use, for 30 days or more per year for a total of 10 years or more of combined employment with the employer or predecessor employers prior to or after the effective date of this standard. The determination of exposures prior to the effective date of this standard shall be based upon prior exposure records, comparison with the first measurements taken after the effective date of this standard, or comparison with records of exposures in areas with similar processes, extent of engineering controls utilized and materials used by that employer.

(ii) Examination by physician. The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(b) Initial examinations. By December 1, 1978, for employees initially covered by the medical provisions of this section, or thereafter at the time of initial assignment to an area where the employee is likely to be exposed over the action level at least 30 days per year, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include a smoking history and the presence and degree of respiratory symptoms such as breathlessness, cough, sputum production and wheezing.

(ii) A medical examination which shall include at least the following:

(A) A 14" by 17" posterior-anterior chest X-ray and International Labor Office UICC/Cincinnati (ILO U/C) rating;

(B) A nasal and skin examination;

(C) A sputum cytology examination; and

(D) Other examinations which the physician believes appropriate because of the employees exposure to inorganic arsenic or because of required respirator use.

(c) Periodic examinations. (i) The employer shall provide the examinations specified in subsections (14)(b)(i) and (14)(b)(ii)(A),(B) and (D) of this section at least annually for covered employees who are under 45 years of age with fewer than 10 years of exposure over the action level without regard to respirator use.

(ii) The employer shall provide the examinations specified in subsections (14)(b)(i) and (ii) of this section at least semi-annually for other covered employees.

(iii) Whenever a covered employee has not taken the examinations specified in subsection (14)(b)(i) and (ii) of this section within six months preceding the termination of employment, the employer shall provide such examinations to the employee upon termination of employment.

(d) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to inorganic arsenic the employer shall provide an appropriate examination and emergency medical treatment.

(e) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(f) Physician's written opinion. (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and tests performed;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to inorganic arsenic;

(C) Any recommended limitations upon the employee's exposure to inorganic arsenic or upon the use of protective clothing or equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(15) Employee information and training. (a) Training program. (i) The employer shall institute a training program for all employees who are subject to exposure to inorganic arsenic above the action level without regard to respirator use, or for whom there is the possibility of

skin or eye irritation from inorganic arsenic. The employer shall assure that those employees participate in the training program.

(ii) The training program shall be provided by October 1, 1978 for employees covered by this provision, at the time of initial assignment for those subsequently covered by this provision, and shall be repeated at least quarterly for employees who have optional use of respirators and at least annually for other covered employees thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendix A;

(B) The quantity, location, manner of use, storage, sources of exposure, and the specific nature of operations which could result in exposure to inorganic arsenic as well as any necessary protective steps;

(C) The purpose, proper use, and limitation of respirators;

(D) The purpose and a description of medical surveillance program as required by subsection (14) of this section;

(E) The engineering controls and work practices associated with the employee's job assignment; and

(F) A review of this standard.

(b) Access to training materials. (i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Director.

(16) Signs and Labels. (a) General. (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this subsection.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this subsection which contradicts or detracts from the meaning of the required sign or label.

(b) Signs. (i) The employer shall post signs demarcating regulated areas bearing the legend:

DANGER

INORGANIC ARSENIC

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

NO SMOKING OR EATING

RESPIRATOR REQUIRED

(ii) The employer shall assure that signs required by this subsection are illuminated and cleaned as necessary so that the legend is readily visible.

(c) Labels. The employer shall apply precautionary labels to all shipping and storage containers of inorganic arsenic, and to all products containing inorganic arsenic except when the inorganic arsenic in the product is bound in such a manner so as to make unlikely the possibility of airborne exposure to inorganic arsenic. (Possible examples of products not requiring labels are semiconductors, light emitting diodes and glass.) The label shall bear the following legend:

DANGER

CONTAINS INORGANIC ARSENIC

CANCER HAZARD

HARMFUL IF INHALED OR SWALLOWED

USE ONLY WITH ADEQUATE VENTILATION

OR RESPIRATORY PROTECTION

(17) Recordkeeping. (a) Exposure monitoring. (i) The employer shall establish and maintain an accurate record of all monitoring required by subsection (5) of this section.

(ii) This record shall include:

(A) The date(s), number, duration location, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employees monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of the employee's exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(b) Medical surveillance. (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by subsection (14) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to inorganic arsenic.

(iii) The employer shall in addition keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under subsection (14) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) The initial X-ray;

(D) The X-rays for the most recent five years;

(E) Any X-rays with a demonstrated abnormality and all subsequent X-rays;

(F) The initial cytologic examination slide and written description;

(G) The cytologic examination slide and written description for the most recent five years; and

(H) Any cytologic examination slides with demonstrated atypia, if such atypia persists for three years, and all subsequent slides and written descriptions.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment, plus 20 years, whichever is longer.

(c) Availability. (i) The employer shall make available upon request all records required to be maintained by subsection (16) of this section to the Director for examination and copying.

(ii) The employer shall make available upon request records of employee exposure monitoring required by subsection (17)(a) of this section for inspection and copying to affected employees, former employees and their designated representatives.

(iii) The employer shall make available upon request an employee's medical records and exposure records representative of that employee's exposure required to be maintained by subsection (17) of this section to the affected employee or former employee or to a physician designated by the affected employee or former employee.

(d) Transfer of records. (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least three months prior to the disposal of such records and shall transmit those records to the Director if he requests them within that period.

(18) Observation of Monitoring. (a) Employee observation. The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to inorganic arsenic conducted pursuant to subsection (5) of this section.

(b) Observation procedures. (i) Whenever observation of the monitoring of employee exposure to inorganic arsenic requires entry into an area where the use of respirators, protective clothing, or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing, and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to;

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of inorganic arsenic performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(19) Effective Date. This emergency rule shall become effective upon filing with the Code Reviser.

(20) Appendices. The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(21) Startup Dates. (a) General. The startup dates of requirements of this standard shall be the effective date of this standard unless another startup date is provided for, either in other subsections of this section or in this subsection.

(b) Monitoring. Initial monitoring shall be commenced by August 1, 1978, and shall be completed by September 15, 1978.

(c) Regulated areas. Regulated areas required to be established as a result of initial monitoring shall be set up as soon as possible after the results of that monitoring is known and no later than October 1, 1978.

(d) Compliance program. The written program required by subsection (7)(b) as a result of initial monitoring shall be made available for inspection and copying as soon as possible and no later than December 1, 1978.

(e) Hygiene and lunchroom facilities. Construction plans for change-rooms, showers, lavatories, and lunchroom facilities shall be completed no later than December 1, 1978, and these facilities shall be constructed and in use no later than July 1, 1979. However, if as part of the compliance plan it is predicted by an independent engineering firm that engineering controls and work practices will reduce exposures below the permissible exposure limit by December 31, 1979, for affected employees, then such facilities need not be completed until one year after the engineering controls are completed or December 31, 1980, whichever is earlier, if such controls have not in fact succeeded in reducing exposure to below the permissible exposure limit.

(f) Summary of startup dates set forth elsewhere in this standard.

STARTUP DATES

August 1, 1978 - Respirator use over 500 $\mu g/m^3$.

AS SOON AS POSSIBLE BUT NO LATER THAN

September 15, 1978 - Completion of initial monitoring.

October 1, 1978 - Complete establishment of regulated areas.
Respirator use for employees exposed above 50 $\mu g/m^3$. Completion of initial training. Notification of use.

December 1, 1978 - Respirator use over 10 $\mu g/m^3$. Completion of
initial medical. Completion of compliance plan. Optional use of
powered air-purifying respirators.

July 1, 1979 - Completion of lunch rooms and hygiene facilities.

December 31, 1979 - Completion of engineering controls.

All other requirements of the standard have as their startup date August 1, 1978.

NEW SECTION

WAC 296-62-14531 EXPOSURE TO COTTON DUST IN COTTON GINS. (1) Scope and Application. This section applies to the control of employee exposure to cotton dust in cotton gins.

(2) Definitions. For the purposes of this section:

(a) "Blow down" – the cleaning of equipment and surface with compressed air.

(b) "Cotton dust" – dust present in the air during the handling or processing of cotton which may contain a mixture of many substances including ground-up plant matter, fiber, bacteria, fungi, soil, pesticides, non-cotton plant matter and other contaminants which may have accumulated with the cotton during the growing, harvesting and subsequent processing or storage periods.

(c) "Director" – The Director of the Department of Labor and Industries, or his designated representative.

(3) Work Practices. Each employer shall immediately establish and implement a written program of work practices, which shall minimize cotton dust exposure for each specific job. Where applicable, the following work practices shall be included in the written work practices program:

(a) General. (i) All surfaces shall be maintained as free as practicable of accumulations of cotton dust.

(ii) The employer shall inspect, clean, maintain and repair, all engineering control equipment, production equipment and ventilation systems including power sources, ducts, and filtration units of the equipment, and at a minimum, tape or cover leaks in valves, flashing, elbows, and bands on air lines.

(iii) Cotton and cotton waste shall be stacked, sorted, baled, dumped, removed or otherwise handled by mechanical means except where the employer can show that it is infeasible to do so. Where infeasible, the method used for handling cotton and cotton waste shall be the method which most effectively reduces exposure to the lowest level feasible.

(b) Specific. (i) Floors and other accessible surfaces contaminated with cotton dust may not be cleaned by the use of compressed air.

(ii) Cleaning of clothing with compressed air is prohibited.

(iii) Floor sweeping shall be performed by a vacuum or with methods designed to minimize dispersal of dust.

(iv) Compressed air "blow-down" cleaning shall be prohibited, except where alternative means are not feasible. Where compressed air "blow-down" is done, respirators shall be worn by the employees performing the "blow-down," and employees in the area whose presence is not required to perform the "blow-down" shall be required to leave the area during this cleaning operation.

(c) Work practice plan. A written work place plan shall be kept which shall list appropriate schedules for carrying out housekeeping operations, and for cleaning and maintaining dust collection equipment. The plan shall be made available for inspection by the Director.

(4) Use of Respirators. (a) General. Where the use of respirators is required under this section, the employer shall provide, at no cost to the employee, and assure the use of respirators which comply with the requirements of this subsection.

(b) Use of respirators. Respirators shall be used in the following circumstances:

(i) By workers identified by medical surveillance under subitem (5)(f)(i)(D) of this subsection; or

(ii) During operations such as maintenance and repair activities in which work practice controls are not feasible; or

(iii) In operations specified under subitem (3)(b)(iv) of this subsection.

(c) Availability upon request. Respirators shall be made available upon request, to any employee exposed to cotton dust.

(d) Respirator selection. (i) Where respirators are required under this section, the employer shall select, provide and assure the use of any respirator tested and approved for protection against dust by the National Institute Of Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(ii) Where respirators are required by this subsection, the employer shall provide either any NIOSH approved respirator or at the option of each affected worker, a NIOSH approved powered air purifying respirator with a high efficiency filter.

(e) Respirator program. The employer shall institute a respirator program in accordance with WAC 296-24-08103, 296-24-08107, 296-24-08109 and 296-24-08111.

(f) Respirator usage. (i) The employer shall assure that the respirator used by each employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall allow each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected by the employee, and shall maintain an adequate supply of filter elements for this purpose.

(iii) The employer shall allow employees who wear respirators to wash their faces and respirator facepieces to prevent skin irritation associated with respirator use.

(5) Medical Surveillance. (a) General. (i) Each employer who has an operating gin in which cotton dust is present shall institute a program of medical surveillance for all employees exposed to cotton dust.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided without cost to the employee.

(iii) Persons other than licensed physicians, who administer the pulmonary function testing required by this section, shall complete a NIOSH approved training course in spirometry.

(b) Initial examinations. For each ginning season, at the time of initial assignment, the employer shall provide each employee who is or may be exposed to cotton dust, with an opportunity for medical surveillance that shall include:

(i) A medical history;

(ii) The standardized questionnaire in Appendix B; and

(iii) A pulmonary function measurement, including a determination of forced vital capacity (FVC) and forced expiratory volume in 1 second (FEV_1), and the percentage that the measured values of FEV and FVC differ from the predicted values, using the standard tables in Appendix C.

(iv) Based upon the questionnaire results, each employee shall be graded according to Schilling's byssinosis classification system.

(c) Mid-season retest. The determinations required under subsection (5)(b) of this section shall be made again for each employee after at least 14 days of employment and before the termination of employment for the season. The determinations shall be made following at least 24 hours or one working day after previous exposure to cotton dust. The pulmonary function tests shall be repeated during the shift, no sooner than four and no more than 10 hours after the beginning of the work shift; and, in any event, no more than one hour after cessation of exposure.

(d) Periodic examinations. (i) The employer shall provide the medical surveillance under this subsection (5) annually.

(ii) A comparison shall be made between the current examination results and those of previous examinations and a determination made by the physician as to whether there has been a significant change.

(iii) An employee whose FEV_1 is less than 60 percent of the predicted value shall be referred to a physician for a detailed pulmonary examination.

(e) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its Appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) A description of any personal protective equipment used or to be used; and

(iv) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(f) Physician's written opinion. (i) The employer shall obtain and furnish the employee with a copy of the written opinion from the examining physician containing the following:

(A) The results of the medical examination and tests, including any determinations made under subitem (5)(d)(ii) of this section.

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to cotton dust;

(C) The physician's recommended limitations upon the employee's exposure to cotton dust or upon the employee's use of respirators;

(D) The physician's recommendations for the employee's use of a respirator where dust effects could be suppressed by respirator use;

(E) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnosis unrelated to occupational exposure.

(g) Spanish speaking employees. An employer whose workforce consists of a significant percentage of Spanish speaking workers who cannot communicate effectively in English, shall provide bilingual administration of the medical surveillance requirements, including use of the Spanish questionnaire provided in Appendix B.

(h) Non-duplication of medical surveillance. (i) During any one ginning season, an employer is not required to provide medical surveillance as described in subsection (5) of this section for any employee who can demonstrate that both the background medical surveillance and the mid-season retest required by subsection (5) of this section were administered during that ginning season while in the employment of another gin employer.

(ii) If an employee can demonstrate that the background medical surveillance has been administered but not the mid-season retest, the employer shall provide the mid-season medical retest of subdivision (5)(c) of this section, and comply with provisions of subdivision (5)(d)-(5)(f) of this section. Where the employer is administering only the mid-season retest, the employer shall provide the mid-season retest after at least 14 days of employment in his gin and before termination of employment for the season.

(iii) For purposes of this section, where the employer does not administer any medical surveillance, the employer shall be satisfied that an employee has undergone the medical surveillance required under subdivisions (5)(a) to (5)(c) of this section upon receipt of written notification from the employer who administered the test, or upon receipt by the physician supervising the program, of a copy of the results of medical surveillance.

(6) Employee Education and Training. (a) Training program. (i) Each employer who operates an active gin shall institute a training program for all his employees, prior to initial assignment, and shall assure that each employee is informed of the following:

(A) The specific nature of the operations which could result in exposure to cotton dust;

(B) The measures, including work practices, required by subsection (3) of this section, necessary to protect the employee from excess exposures;

(C) The purpose, proper use and limitations of respirators required by subsection (4) of this section;

(D) The purpose for and a description of the medical surveillance program required by subsection (5) of this section; and other information which will aid exposed employees in understanding the hazards of cotton dust exposure; and

(E) The contents of this standard and its appendices.

(b) Access to training materials. (i) Each employer shall post a copy of this section with its Appendices in a public location at the workplace, and shall, upon request, make copies available to employees.

(ii) The employer shall provide all materials relating to the employee training and information program to the Director upon request.

(iii) An employer whose workforce consists of a significant percentage of Spanish speaking employees who cannot communicate effectively in English shall provide bilingual administration of the provisions of this section.

(iv) In addition to the information required by subdivision (6)(a), the employer shall include as part of his training program and distribute to employees any materials pertaining to the Washington Industrial Safety and Health Act, the regulations issued pursuant to that Act, and to this cotton dust standard which are made available by the Director.

(7) Signs. (a) The employer shall post the following warning sign in each work area where there is potential exposure to cotton dust:

WARNING:

COTTON DUST WORK AREA MAY CAUSE ACUTE
OR DELAYED LUNG INJURY (BYSSINOSIS).

(b) An employer whose workforce consists of a significant percentage of Spanish–speaking employees who cannot communicate effectively in English shall provide bilingual versions of the sign required by subdivision (7)(a) of this section.

(8) Recordkeeping. (a) Medical surveillance. (i) The employer shall establish and maintain an accurate medical record for each employee subject to medical surveillance required by subsection (5) of this section.

(ii) The record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) A copy of the medical surveillance results including the medical history, questionnaire responses, results of all tests and the physician's recommendation;

(C) A copy of the physician's written opinion;

(D) Any employee medical complaints related to exposure to cotton dust;

(E) The type of protective devices worn, and length of time worn;

(F) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees: provided that he references the standard in the medical surveillance records of each employee.

(iii) The employer shall maintain this record for at least 10 years.

(B) Availability. (i) The employer shall make available upon request all records required to be maintained by subsection (8) of this section to the Director for examination and copying.

(ii) The employer shall make available an employee's medical records required by this section, for examination and copying, to the affected employee or former employee or to a physician or other individual designated by such affected employee or former employee.

(c) Transfer of records. (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by subsection (8) of this section.

(ii) Whenever the employer ceases to do business, and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least three months prior to the disposal of such records and shall transmit those records to the Director if he requests them within that period.

(9) Effective Date. This emergency rule shall become effective immediately upon filing with the Code Reviser.

(10) Appendices. Appendices to this section are found in the Federal Register, Vol. 43, No. 122, dated 6–23–78, and the corrections in Vol. 43, No. 153, dated 8–8–78; the contents of these appendices are mandatory.

WSR 79-02-038
EMERGENCY RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Order 79-2—Filed January 23, 1979]

I, John C. Hewitt, director of Labor and Industries, do promulgate and adopt at Olympia, Washington the annexed rules relating to benzene, to be comparable to the changes in 29 CFR 1910.1028, OSHA, amending chapter 296–62 WAC.

I, John C. Hewitt, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is OSHA has amended to rule regarding occupational exposure to benzene and the state must be at least as effective as OSHA regarding each place of employment where benzene is produced, reacted, packaged, repackaged, stored, transported, handled, or used.

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

This rule is promulgated pursuant to RCW 49.17.040, 49.17.050 and 49.17.240 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 23, 1979.

By John C. Hewitt
Director

AMENDATORY SECTION (Amending Order 16, filed 8/31/78)

WAC 296-62-07335 BENZENE. (1) Scope and application.

(a) This section applies to each place of employment where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled, or used.

(b) This section does not apply to:

(i) The storage, transportation, distribution, dispensing, sale or use as fuel of gasoline motor fuels or other fuels subsequent to discharge from bulk terminals; or

(ii) The storage, transportation, distribution or sale of benzene in intact containers sealed in such a manner as to contain benzene vapors or liquid, except for the requirements of subsection (11)(b),(c),(d) and (e), and subsection (10) of this section.

(iii) Work operations where the only exposure to benzene is from liquid mixtures containing 0.5 percent (0.1 percent after June 27, 1981) or less of benzene by volume, or the vapors released from such liquids.

(2) Definitions applicable to this section:

(a) "Action level" - an airborne concentration of benzene of 0.5 ppm, averaged over an 8-hour work day.

(b) "Authorized person" - any person required by his duties to enter a regulated area and authorized to do so by his employer, by this section or by the Washington Industrial Safety and Health Act of 1973. Authorized person includes a representative of employees who is designated to observe monitoring and measuring procedures under subsection (13) of this section.

(c) "Benzene" - (C_6H_6) CAS Registry No. 00071432), means solid, liquefied or gaseous benzene. It includes mixtures of liquids containing benzene and the vapors released by these liquids.

(d) "Bulk terminal" - a facility which is used for the storage and distribution of gasoline, motor fuels or other fuels and which receives its petroleum products by pipeline, barge or marine tanker.

(e) "Director" - the Director of Labor and Industries, or his authorized representative.

(f) "Emergency" - any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may, or does, result in a massive release of benzene.

(3) Permissible exposure limits. (a) Inhalation.

(i) Time-weighted average limit (TWA). The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of ((1)) 10 ppm (parts benzene fume per million parts of air) (((1 ppm),)) as an eight (8) ((=)) time-weighted average.

(ii) Ceiling limit. The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of ((5)) 25 ppm ((as averaged over any 15 minute period)) except for excursions totaling ten minutes in any eight hour shift into concentrations not to exceed 50 ppm.

((b) Dermal and eye exposure limit. The employer shall assure that no employee is exposed to eye contact with liquid benzene, or to skin contact with liquid benzene, unless the employer can establish that the skin contact is an isolated instance.

(4) Regulated areas. (a) The employer shall establish within each place of employment, regulated areas where benzene concentrations are in excess of the permissible airborne exposure limit.

(b) The employer shall limit access to regulated areas to authorized persons.

(c) Notification of regulated areas. Within 30 days following the establishment of a regulated area, the employer shall report the following information to the Director:

(i) The address of each establishment which has one or more regulated areas;

(ii) The locations, within the establishment, of each regulated area;

(iii) A brief description of each process or operation which results in employee exposure to benzene in regulated areas; and

(iv) The number of employees engaged in each process or operation within each regulated area which results in exposure to benzene and an estimate of the frequency and degree of exposure within each regulated area.

(5) Exposure monitoring and measurement. (a) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to benzene over an eight hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(b) Initial monitoring. (i) Each employer who has a place of employment where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used, shall monitor each of these workplaces and work operations to accurately determine the airborne concentrations of benzene to which employees may be exposed.

(ii) The initial monitoring required under subsection (5)(b)(i) of this section shall be conducted and the results obtained within 30 days of the effective date of this section. Where the employer has monitored after January 4, 1977, and the monitoring satisfies the accuracy requirements of subsection (5)(f) of the section, the employer may rely on such earlier monitoring to satisfy the requirements of subsection (5)(b)(i) of this section, unless there has been a production, process, personnel or control change which may have resulted in new or additional exposures to benzene or the employer has any other reason to suspect a change which may have resulted in new or additional exposures to benzene; and provided that the employer maintains a record of the monitoring in accordance with subsection (12)(a) and notifies each employee in accordance with subsection (5)(e).

(c) Frequency. (i) Measurements below the action level. If the measurements conducted under subsection(5)(b)(i) of this section reveal employee exposure to be below the action level, the measurements need not be repeated, except as otherwise provided in subsection (5)(d) of this section.

(ii) Measurements at or above the action level. If the measurements reveal employee exposure to be at or in excess of the action level, but below the permissible exposure limit, the employer shall repeat the monitoring at

least quarterly. The employer shall continue these quarterly measurements until at least two consecutive measurements, taken at least seven days apart, are below the action level, and thereafter the employer may discontinue monitoring, except as provided in subsection (5)(e) of this section.

(iii) Measurements above the permissible exposure limit. If the measurements reveal employee exposure to be in excess of the permissible exposure limits, the employer shall repeat the measurements at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(d) Additional monitoring. (i) Whenever there has been a production, process, personnel or control change which may result in new or additional exposure to benzene or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to benzene, the employer shall repeat the monitoring which is required by subsection (5)(b)(i) of this section.

(ii) Whenever spills, leaks, ruptures or other breakdowns occur, the employer shall repeat the monitoring which is required by subsection (5)(b)(i) after cleanup of the spill or repair of the leak, rupture or other breakdown.

(e) Employee notification. (i) Within 5 working days after the receipt of measurement results, the employer shall notify each employee in writing of the exposure measurements which represent that employee's exposure.

(ii) Where the results indicate that the employee's exposure exceeds the permissible exposure limits, the notification shall also include the corrective action being taken or to be taken by the employer to reduce exposure to or below the permissible exposure limit.

(f) Accuracy of measurement. The employer shall use a method of measurement which has an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent for concentrations of benzene greater than or equal to 1 ppm.

(6) Methods of compliance. (a) Priority of compliance methods. The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to benzene at or below the permissible exposure limits, except to the extent that the employer establishes that these controls are not feasible. Where feasible engineering and work practice controls are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by the use of respiratory protection.

(b) Compliance program. (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls required by subsection (6)(a) of this section.

(ii) The written program shall include a schedule for development and implementation of the engineering and work practice controls. These plans shall be revised and updated at least every six months to reflect the current status of the programs.

(iii) Written plans for these compliance programs shall be submitted, upon request, to the Director, and shall be available at the worksite for examination and copying by the Director, and the employees or their authorized representatives.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(7) Respiratory protection. (a) General. Where respiratory protection is required under this section, the employer shall select, provide and assure the use of respirators. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) During maintenance and repair activities in which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(iv) In emergencies.

(b) Respirator selection. (i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate respirator from Table I and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the National Institute for Occupational Safety and Health, and according to WAC 296-24-081.

(c) Respirator program. The employer shall institute a respiratory protection program in accordance with WAC 296-24-081.

(d) Respirator use. (i) Where air-purifying respirators (cartridge, canister, or gas mask) are used, the employer shall, except as provided in subsection (7)(d)(ii) of this section, replace the air-purifying canisters or cartridges prior to the expiration of their service life or the end of shift in which they are first used, whichever occurs first.

(ii) Where a cartridge or canister of an air-purifying respirator has an end of service life indicator certified by NIOSH for benzene, the employer may permit its use until such time as the indicator shows the end of service life.

(iii) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is properly fitted.

(iv) The employer shall allow each employee who wears a respirator to wash his or her face and respirator facepiece to prevent skin irritation association with respirator use.

TABLE I

RESPIRATORY PROTECTION FOR BENZENE

Airborne Concentration of Benzene or Condition of Use	*Respirator Type*
(a) Less than or equal to 10 p/m	*(1) Any chemical cartridge respirator with organic vapor cartridge; or* *(2) Any supplied air respirator.*
(b) Less than or equal to 50 p/m	*(1) Any chemical cartridge respirator with organic vapor cartridge and full facepiece;* *(2) Any supplied air respirator with full facepiece;* *(3) Any organic vapor gas mask; or* *(4) Any self-contained breathing apparatus with full facepiece.*
(c) Less than or equal to 1,000 p/m	*(1) Supplied air respirator with half mask in positive pressure mode.*
(d) Less than or equal to 2,000 p/m	*(1) Supplied air respirator with full facepiece, helmet or hood, in positive pressure mode.*
(e) Less than or equal to 10,000 p/m	*(1) Supplied air respirator and auxiliary self-contained facepiece in positive pressure mode; or* *(2) Open circuit self-contained breathing apparatus with full facepiece in positive pressure mode.*
(f) Escape	*(1) Any organic vapor gas mask; or* *(2) Any self-contained breathing apparatus with full facepiece.*

(8) Protective clothing and equipment. Where eye or dermal exposure may occur, the employer shall provide, at no cost to the employee, and assure that the employee wears impermeable protective clothing and equipment to protect the area of the body which may come in contact with liquid benzene. Eye and face protection shall meet the requirements of WAC 296-24-07801.

(9) Medical surveillance. (a) General. (i) The employer shall make available a medical surveillance program for employees who are or may be exposed to benzene at or above the action level and employees who are subjected to an emergency.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and provided without cost to the employee.

(b) Initial examinations. (i) Within thirty days of the effective date of this section, or before the time of initial assignment, the employer shall provide each employee who is or may be exposed to benzene at or above the action level with a medical examination, including at least the following elements:

(A) A history which includes past work exposure to benzene or any other hematologic toxins; a family history of blood dyscrasias including hematological neoplasms; a history of blood dyscrasias including genetically related hemoglobin alterations, bleeding abnormalties, abnormal function of formed blood elements; a history of renal or liver dysfunction, a history of drugs routinely taken, alcoholic intake and systemic infections; a history of exposure to marrow toxins outside of the current work situation, including volatile cleaning agents and insecticides;

(B) Laboratory tests, including a complete blood count with red cell count, white cell count with differential, platelet count, hematocrit, hemoglobin and red cell indices (MCV, MCH, MCHC), serum bilirubin and reticulocyte count; and

(C) Additional tests where, in the opinion of the examining physician, alterations in the components of the blood are related to benzene exposure.

(ii) No medical examination is required to satisfy the requirements of subsection (9)(b)(i) of this section if adequate records show that the employee has been examined in accordance with the procedures of subsection (9)(b)(i) of this section within the previous six months.

(c) Information provided to the physician. The employer shall provide the following information to the examining physician for each examination under this section:

(i) A copy of this regulation;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(d) Physician's written opinions. (i) For each examination under this section, the employer shall obtain and provide the employee with a copy of the examining physician's written opinion containing the following:

(A) The results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee's health at increased risk of material impairment from exposure to benzene;

(C) The physician's recommended limitations upon the employee's exposure to benzene or upon the employee's use of protective clothing or equipment and respirators.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(e) Periodic examinations. (i) The employer shall provide each employee covered under subsection (9)(b) of this section with a medical examination at least semi-annually following the initial examination. These periodic examinations shall include at least the following elements:

(A) A brief history regarding any new exposure to potential marrow toxins, changes in drug and alcohol intake and the appearance of physical symptoms relating to blood disorders;

(B) A complete blood count with red cell count, white cell count with differential, platelet count, hemoglobin, hematocrit and red cell indices (MCV, MCH, MCHC); and

(C) Additional tests where in the opinion of the examining physician, alterations in the components of the blood are related to benzene exposure.

(ii) Where the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(f) Emergency situations. If the employee is exposed to benzene in an emergency situation, the employer shall provide the employee with a urinary phenol test at the end of the employee's shift. The urine specific gravity shall be corrected to 1.024. If the result of the urinary phenol test is below 75 mg phenol/L of urine, no further testing is required. If the result of the urinary phenol test is equal to or greater than 75 mg phenol/L of urine, the employer shall provide the employee with a complete blood count including a red cell count, white cell count with differential, and platelet count as soon as practicable, and shall provide these same counts one month later.

(g) Special examinations. (i) Where the results of any tests required by this section reveal that any of the following conditions exist, the employer shall have the test results of the employee evaluated by a hematologist:

(ii) In addition to the information required to be provided to the physician under subsection (9)(c) of this section, the employer shall provide the hematologist with the medical record required to be maintained by subsection (12)(b) of this section.

(iii) The hematologist's evaluation shall include a determination as to the need for additional tests, and the employer shall assure that these tests are provided.

(10) Employee information and training. (a) Training program. (i) The employer shall institute a training program for all employees assigned to workplaces where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used and shall assure that each employee assigned to these workplaces is informed of the following:

(A) The information contained in Appendix A and B(1);*

(B) The quantity, location, manner of use, release, or storage of benzene and the specific nature of operations which could result in exposure above the permissible exposure limits as well as necessary protective steps;

(C) The purpose, proper use, and limitations of personal protective equipment and clothing required by subsection (8) of this section and of respiratory devices required by subsection (7) of this section and WAC 296-24-081;

(D) The purpose and a description of the medical surveillance program required by subsection (9) of this section and the information contained in Appendix C(1); and*

(E) The contents of this standard.

(ii) The training program required under subsection (10)(a)(i) of this section shall be provided within 90 days of the effective date of this section or at the time of initial assignment to workplaces where benzene is produced, reacted, released, packaged, repackaged, stored, transported, handled or used, and at least annually thereafter.

(b) Access to training materials. (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Director.

(11) Signs and labels. (a) The employer shall post signs in regulated areas bearing the following legend:

DANGER
BENZENE
CANCER HAZARD
FLAMMABLE-NO SMOKING
AUTHORIZED PERSONNEL ONLY
RESPIRATOR REQUIRED

(b) The employer shall assure that caution labels are affixed to all containers of benzene and of products containing any amount of benzene, except:

(i) Pipelines, and

(ii) Transport vessels or vehicles carrying benzene or benzene products in sealed intact containers.

(iii) Liquid mixtures containing 5.0 percent or less benzene by volume which were packaged before June 27, 1978.

(c) The employer shall assure that the caution labels remain affixed when the benzene or products containing benzene are sold, distributed or otherwise leave the employer's workplace.

(d) The caution labels required by subsection (11)(b) of this section shall be readily visible and legible. The labels shall bear the following legend:

CAUTION
CONTAINS BENZENE
CANCER HAZARD

(e) The employer shall assure that no statement which contradicts or detracts from the information required by subsections (11)(a) and (d) of this section appears on or near any required sign or label.

(12) Recordkeeping. (a) Exposure measurements. (i) The employer shall establish and maintain an accurate record of all measurements required by subsection (5) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(b) Medical surveillance. (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by subsection (9) of this section.

(ii) This record shall include:

(A) The name, and social security number of the employee;

(B) A copy of the physicians' written opinions, including results of medical examinations and all tests, opinions and recommendations;

(C) The peripheral blood smear slides of the initial test, the most recent test, and any test demonstrating hematological abnormalities related to benzene exposure;

(D) Any employee medical complaints related to exposure to benzene;

(E) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and its appendices for all employees provided that he references the standard and its appendices in the medical surveillance record of each employee;

(F) A copy of the information provided to the physician as required by subsections (9)(c)(ii) through (9)(c)(v) of this section; and

(G) A copy of the employee's medical and work history related to exposure to benzene or any other hematologic toxins.

(iii) The employer shall maintain this record for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(c) Availability. (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records as required by this section be made available for examination and copying to affected employees or their designated representatives.

(iii) The employer shall assure that former employees and the former employees' designated representatives have access to such records as will indicate the former employee's own exposure to benzene.

(iv) The employer shall assure that employee medical records required to be maintained by this section be made available upon request for examination and copying to the employee or former employee or to a physician or other individual designated by the affected employee or former employee.

(d) Transfer of records. (i) When the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by subsection (12) of this section for the prescribed period.

(ii) When the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under subsection (12) of this section, the employer shall transmit these records by mail to the Director.

(13) Observation of monitoring. (a) Employee observation. The employer shall provide affected employees, or their designated representatives, an opportunity to observe any measuring or monitoring of employee exposure to benzene conducted pursuant to subsection (5) of this section.

(b) Observation procedures. (i) When observation of the measuring or monitoring of employee exposure to benzene requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the measurement, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of benzene performed at the place of exposure; and

(C) Record the results obtained.

(14) Effective date. This emergency rule shall become effective immediately upon filing with the Code Reviser.

**(1) Appendices printed in addition to this Section and information contained therein is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations.*

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

WSR 79-02-039
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed January 24, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules relating to settlement, amending WAC 388-96-222.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart, Executive Assistant
Department of Social and Health Services
Mailstop OB-44 C
Olympia, WA 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's Office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

The authority under which these rules are proposed is RCW 74.09.120.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to 3/21/79, and/or orally at 10:00 a.m., Wednesday, March 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

Dated: January 24, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1300, filed 6/1/78)

WAC 388-96-222 SETTLEMENT. (1) Following completion of the field audit of an annual report, the department will compare the prospective rates paid to the contractor during the report period, weighted according to the number of patient days during which each rate was in effect, with the contractor's audited allowable costs for the period, taking into account all authorized shifting (WAC 388-96-223) and the upper rate limits set out in WAC 388-96-760.

(2) Within sixty days after completion of the field audit, the department will send a written audit report to the contractor. In this report, the department will:

(a) Explain the application of relevant contract provisions, regulations, auditing standards, rate formulas, and department policies to the contractor's report, in sufficient detail to permit the contractor to calculate with reasonable certainty its audited allowable costs and its settlement with the department;

(b) Advise the contractor of rules and regulations justifying a settlement determination resulting in reimbursement in any cost center at less than actual allowable costs, as reported by the contractor and verified by audit;

(c) Summarize all audit disallowances; and

(d) Request the contractor to refund money, if necessary, in accordance with the following principles((;)):

(i) In the patient care and food cost areas, the contractor shall refund all portions of payments received for recipients in excess of allowable patient care and food costs, respectively, for those recipients;

(ii) In the patient care cost area, the contractor shall also refund the percentage of the amount paid (less any recovery under subsection (i) above) equal to the percentage by which average per patient day nursing service hours provided were less than the minimum number of hours issued by the department;

(iii) In the administration and operations and property cost areas, payments in excess of allowable costs will normally be retained by the contractor. Those overpayments shall be refunded only in the following circumstances:

(A) Costs totaling $.02 per patient day or $1,000, whichever is higher, in any cost area, were reported which cannot be documented at audit, or accumulated liabilities of at least that amount were not properly reversed in accordance with WAC 388-96-032 or 388-96-113; or

(B) All conditions and standards were not met during the entire fiscal year, as determined by the department in Title XIX certification surveys. The portion of the total overpayment attributable to thirty days plus the number of days from the date of the first survey at which a standard or condition was found unmet until the date of the survey showing all conditions and standards met will be recovered. For IMR facilities with initial certification conditioned upon meeting a plan of correction relating solely to IMR program standards, overpayments will not be recovered ((~~due to failure to comply with these standards during the period covered by~~)) if the IMR program standards are not within this initial plan of correction; and

(iv) In the property cost area, the contractor shall refund amounts determined under WAC 388-96-571(4) or 388-96-573.

(3) The contractor shall pay the refund, or shall commence repayment in accordance with a schedule determined by the department, within sixty days after receiving the audit report, unless the contractor contests settlement issues in good faith in accordance with the procedures set out in WAC 388-96-904. If the settlement determination is contested, the contractor shall pay or commence repayment in accordance with a schedule determined by the department within sixty days after such proceedings are concluded. The department will pay any amount due the contractor as the result of errors discovered at audit in billing or payment within thirty days after the audit report is received by the contractor or within thirty days after proceedings to contest the settlement are concluded.

(4) If the contractor does not refund the over-payment or any installment when due, the department may withhold payments from current billings until the overpayment is refunded. Payments will only be withheld under this subsection up to the unrefunded amount of the overpayment.

WSR 79-02-040
NOTICE OF PUBLIC MEETINGS
STATE HOSPITAL COMMISSION
[Memorandum—January 23, 1979]

The Hospital Commission will hold its second meeting of January on Monday, January 29, 1979, beginning at 9:30 a.m., at the University Tower Hotel, N. E. 45th and Brooklyn Avenue, Seattle, Washington. Hospitals scheduled for informal hearings have previously filed with the Commission their annual budget and rate requests or requests for amendments to previously approved budgets and rates. Staff findings and recommendations have been prepared and transmitted to each of the scheduled hospitals and to members of the Hospital Commission. Such information is on file in the Commission offices and is available for inspection.

WSR 79-02-041
NOTICE OF PUBLIC MEETINGS
WHATCOM COMMUNITY COLLEGE
[Memorandum—January 29, 1979]

Notification is hereby given that the Board of Trustees of Whatcom Community College, District Number Twenty-One will hold meetings at the following times and places:

February 13, 1979	3:00 p.m.	Mid-Town Second Floor, Douglas Building 1407 Commercial Bellingham, WA 98225
February 22, 1979	10:00 a.m.	President's Office College Service Center 5217 Northwest Road Bellingham, WA 98225

WSR 79-02-042
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-4—Filed January 26, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington the annexed rules relating to shellfish regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is this order is necessary to

provide for normal rotation and avoid overharvest of sea urchin beds.

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 26, 1979.

By Gordon Sandison
Director

NEW SECTION

WAC 220-52-07400B SEA URCHIN - AREAS & SEASONS Notwithstanding the provisions of WAC 220-52-074, it shall be unlawful to take, fish for or possess sea urchins for commercial purposes except during the following times and in the following areas:

(1) That portion of Puget Sound Marine Fish-Shellfish Area 23 lying west of a line projected true north and south from the navigation bell buoy Number One in central Clallam Bay, except for those portions closed in WAC 220-52-074 (7), immediately until further notice.

(2) Coastal Marine Fish-Shellfish Areas 58 and 59, except those portions closed in WAC 220-52-073, open the entire year.

REPEALER

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

WAC 220-52-07400A SEA URCHIN - AREAS & SEASONS (78-136)

WSR 79-02-043
EMERGENCY RULES
DEPARTMENT OF LICENSING
(Board of Registration for Architects)
[Order PL-299—Filed January 26, 1979]

I, R. Y. Woodhouse, director of the state of Washington Department of Licensing, do promulgate and adopt at Olympia, Washington, the annexed rules relating to application and renewal fees for architect examination candidates and registered architects.

I, R. Y. Woodhouse, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is the Board of Registration for Architects, at a previous rules hearing, mistakenly repealed WAC 308-12-310 which established fees for architects and architect applicants.

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

This rule is promulgated pursuant to RCW 43.24.085 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 25, 1979.

By R. Y. Woodhouse
Director

NEW SECTION

WAC 308-12-311 FEES. The following fees shall be charged by the Professional Licensing Division of the Department of Licensing:

TITLE OF FEE	*FEE*
Examination	*$45.00*
Re-examination (per section)	*20.00*
Initial Application	*25.00*
Reciprocity	*65.00*
License Renewal	*25.00*
License Renewal Penalty	*25.00*
Replacement Certificates	*3.00*

WSR 79-02-044
ADOPTED RULES
MEDICAL DISCIPLINARY BOARD
[Order 296, Resolution 296—Filed January 29, 1979]

Be it resolved by the Medical Disciplinary Board, acting at Seattle, Washington, that it does promulgate and adopt the annexed rules relating to the practice of medicine, restricting the prescription of amphetamines and other Schedule II non-narcotic stimulant drugs to specified medical situations, adopting chapter 320-18 WAC.

This action is taken pursuant to Notice No. WSR 78-12-097 filed with the code reviser on 12/6/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.72.150(1) which directs that the Medical Disciplinary Board has authority to implement the provisions of chapter 18.72 RCW, including RCW 18.72.030(13).

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 26, 1979.
By Carrold K. Iverson
Chairman

NEW SECTION

WAC 320-18-010 PRESCRIPTIONS—SCHEDULE II STIMULANT DRUGS (1) A physician shall be guilty of unprofessional conduct if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any amphetamines or other Schedule II non-narcotic stimulant drug to any person except for the therapeutic treatment of:

(a) narcolepsy
(b) hyperkinesis
(c) brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control
(d) epilepsy
(e) differential psychiatric evaluation of depression
(f) depression shown to be refactory to other therapeutic modalities;

or for the clinical investigation of the effects of such drugs or compounds in which case an investigative protocol must be submitted to and reviewed and approved by the medical disciplinary board before the investigation has begun.

(2) A physician prescribing or otherwise distributing controlled substances as permitted by section 1 shall maintain a complete record which must include:

(a) documentation of the diagnosis and reason for prescribing
(b) name, dose, strength, and quantity of drug, and the date prescribed or distributed.

(3) The records required by section 2 shall be made available for inspection by the board or its authorized representative upon request.

(4) Schedule II stimulant drugs shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

WSR 79-02-045
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-5—Filed January 29, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington the annexed rules relating to commercial bottomfish regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is the three inch mesh is necessary to harvest pollock present in Area 20A during this period. Permits to check other areas will allow prospecting for pollock. A 12 inch minimum protects immature sole and flounder during the use of smaller mesh size.

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 29, 1979.
By Gordon Sandison
Director

NEW SECTION

WAC 220-48-08000A PUGET SOUND BOTTOMFISH GEAR Notwithstanding the provisions of WAC 220-48-080, effective February 1 through April 15, 1979 it shall be lawful to use or operate in Marine Fish-Shellfish Area 20A, otter trawl or beam trawl gear having a minimum mesh size of 3 inches in the codend section.

It shall be unlawful to retain, in Area 20A, any sole or flounder under 12 inches, except starry flounder which must be 14 inches as provided in WAC 220-20-020.

It shall be unlawful to fish with or have aboard, trawl gear with mesh smaller than 4-1/2 inches in the codend section outside Area 20A (except in Marine Fish Shellfish Areas 28A, 28B, 28C and 28D as provided in WAC 220-48-080 (9)) without first having obtained a permit from the Department of Fisheries. Conditions of such fishery will be specified in the permit.

WSR 79-02-046
ADOPTED RULES
DEPARTMENT OF AGRICULTURE
[Order 1591—Filed January 29, 1979]

I, Bob J. Mickelson, director of Washington State Department of Agriculture, do promulgate and adopt at Olympia, Washington, the annexed rules relating to the use of desiccants and defoliants in Eastern Washington, WAC 16-230-150, 16-230-160, 16-230-170, 16-230-180, 16-230-190 and 16-230-200.

This action is taken pursuant to Notice No. WSR 78-12-078 filed with the code reviser on 12/5/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to chapters 17.21 and 15.58 RCW and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 29, 1979.

By Errett Deck
Deputy Director

AMENDATORY SECTION (Amending Order 1545, Filed 11/30/77)

WAC 16-230-150 AREA UNDER ORDER—RESTRICTED USE DESICCANTS AND DEFOLIANTS. (1) Area under order: All counties located east of the crest of the Cascade Mountains, including additional restrictions for Walla Walla county.

(2) Restricted use desiccants and defoliants: ((~~All~~)) The following desiccants and defoliants ((~~including but not limited to~~)) are by this order declared to be restricted use desiccants and defoliants: 6,7-dihydrodipyrido (1,2-a:2',1'c) pyrazidiinimum dibromide, herein and commonly referred to as Diquat; Paraquat dichloride (1,1'-dimethyl-4,4'-bipyridinium dichloride, herein and commonly referred to as Paraquat; ((~~Disodium 3,6 endoxohexahydrophthalate, herein and commonly referred to as Disodium Endothall;~~)) Mono (N,N dimethylalkylamine) salt of ((~~3,6-endoxohexahydrophtalic~~)) 7-oxabicyclo (2.2.1) heptane-2,3-dicarbonxylic acid, herein and commonly referred to as the amine salt of Endothall; Dinitro-o-sec-butylphenol, herein and commonly referred to as Dinitro ((~~; are by this order declared to be restricted use desiccants and defoliants~~)).

AMENDATORY SECTION (Amending Order 1545, Filed 11/30/77)

WAC 16-230-160 GROUND EQUIPMENT—NOZZLE AND PRESSURE REQUIREMENTS FOR THE ENTIRE AREA UNDER ORDER ((~~:Ground applications of restricted use desiccants and defoliants shall be made with nozzles having a minimum orifice diameter of 0.52 inches. Pressure for ground application shall not exceed 35 psi at the nozzles.~~)): (1) Nozzle requirements - A minimum orifice diameter of 0.072 inches shall be used for application of all restricted use desiccants and defoliants: PROVIDED, That applications of Dinitro may use a minimum orifice diameter of 0.052 inches.

(2) Pressure requirements - Maximum pressure at the nozzles for all applications of restricted use desiccants and defoliants shall be 30 psi.

AMENDATORY SECTION (Amending Order 1548, Filed 1/19/78)

WAC 16-230-170 AERIAL EQUIPMENT—BOOM LENGTH, PRESSURE ((~~AND~~)), NOZZLE HEIGHT OF DISCHARGE AND SMOKE DEVICE REQUIREMENTS FOR THE ENTIRE AREA UNDER ORDER. (1) Boom length restrictions:

(a) Fixed wing: The working boom length shall not exceed 3/4 of the ((~~wing span~~)) distance from center of aircraft to wing tip on each side of aircraft.

(b) Helicopters: The working boom length shall not exceed 6/7 of the ((~~total~~)) distance from the center of rotor ((~~length or 3/4 of the total rotor length where the rotor exceeds 40 feet~~)) to rotor tip on each side of the aircraft for rotors 40 feet or under or 3/4 of the distance from the center of rotor to rotor tip on each side of the aircraft where the rotor exceeds 40 feet while applying restricted use desiccants and defoliants.

(2) ((~~Aerial equipment pressure: Pressure for aerial equipment shall not exceed 30 psi at the nozzles~~)) Pressure restrictions: Maximum pressure at the nozzles for all aerial applications of restricted use desiccants and defoliants shall be 25 psi.

(3) ((~~Aerial equipment nozzle: Applications shall be made using the following minimum nozzle orifice and core plate sizes as listed~~)) Nozzle requirements:

(a) Fixed wing applications of Diquat or Paraquat:

(i) ((~~Nozzle orifice of 0.156 inches to 0.188 inches shall not use a core plate~~)) Straight stream jet nozzles, without core plates, with a minimum orifice diameter of 0.094 inches;

(ii) ((~~Nozzle orifice of 0.188 inches or larger (may use No. 46 or larger core plate): PROVIDED, That by written permit, RD8 nozzles with orifice size of 0.125 inches and No. 45 core plates may be used.~~)) By written permit from Washington State Department of Agriculture, the Raindrop nozzle may be used with a minimum orifice diameter of 0.156 inches with a No. 46 core plate or larger.

((~~(iii) Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight.~~))

(b) ((~~Helicopters~~)) Fixed wing applications of Endothall and Dinitro:

(i) ((~~Nozzle orifice of 0.156 inches or larger (may use No. 46 core plate or larger). PROVIDED, That by written permit, RD8 nozzles with orifice size of 0.125 inches and core plate No. 45 may be used.~~)) Straight stream jet nozzles, without core plates, with a minimum orifice diameter of 0.063 inches;

(ii) ((~~Nozzles shall be directed downward and backward 90 degrees or more from the direction of flight~~)) The Raindrop nozzle may be used with a minimum orifice diameter of 0.156 inches with a No. 46 core plate or larger.

(c) Helicopter applications of restricted use desiccants and defoliants:

(i) Straight stream jet nozzles, without core plates, with a minimum orifice diameter of 0.063 inches;

(ii) Straight stream jet nozzles with a minimum orifice diameter of 0.125 inches with No. 46 core plates or larger;

(iii) By written permit from Washington State Department of Agriculture, the Raindrop nozzles may be used with a minimum orifice diameter of 0.156 inches with No. 46 core plates or larger.

(d) Nozzle direction:

(i) Nozzles shall be directed backward 180 degrees from the direction of flight while discharging restricted use desiccants or defoliants from any aircraft.

(4) ((~~A smoke device shall be required on each aircraft and shall be utilized during the application of restricted use desiccants and defoliants.~~)) Height of discharge requirements: No aircraft shall discharge restricted use desiccants and defoliants from the nozzles while either descending on to the target field or ascending from the target field.

(5) Smoke device requirements: All aircraft applying restricted use desiccants and defoliants shall utilize a smoke device to determine wind directions and temperature inversion situations.

AMENDATORY SECTION (Amending Order 1545, Filed 11/30/77)

WAC 16-230-180 WEATHER AND EVENING CUTOFF ((~~RESTRICTIONS~~)) REQUIREMENTS. (1) Weather conditions: Restricted use desiccants and defoliants shall not be applied when there is a temperature inversion, or if wind or weather conditions are such that damage could result to ((~~nearby towns,~~)) susceptible crops ((~~and plantings~~)) or ornamentals.

(2) Evening cutoff: ((~~The~~)) All applications of restricted use desiccants and defoliants shall be prohibited ((~~daily~~)) from ((~~3~~)) three hours prior to sunset to one hour after sunrise the following morning: PROVIDED, That ((~~if there is a mean sustained legal wind velocity of not less than 5 mph, the application of restricted use desiccants and defoliants is allowed up to one hour prior to sunset in all counties under order except Walla Walla County~~)) ground applications of Dinitro may begin at sunrise the following morning.

AMENDATORY SECTION (Amending Order 1545, Filed 11/30/77)

WAC 16-230-190 RESTRICTIONS ON THE USE OF DIQUAT, PARAQUAT AND DINITRO IN WALLA WALLA COUNTY ((~~AREA 1~~)). (1) ((~~Town of Walla Walla and vicinity. This area includes all lands lying within Walla Walla and vicinity beginning at the Washington state line at the common boundary line between sections 15 and 16, T6N, R34E, north along Hoon Road and continuing north on McDonald Bridge Road, across U.P.R.R. and Highway 12; thence north 4 miles more or less to the northwest corner of Section 10, T7N, R37E; thence east 20 miles to the northeast corner of Section 11, T7N, R37E; thence south 7 miles more or less to the Washington-Oregon state line; thence west to point of beginning~~)) Applications of Diquat or any mix containing Diquat is hereby prohibited in Walla Walla county and application equipment used for Diquat applications in allowable areas in Eastern Washington must be decontaminated prior to bringing the application equipment into Walla Walla county.

(2) Area 1 ((~~restrictions~~))description((~~. The application of Diquat or any mix containing Diquat shall be prohibited. The loading and/or mixing of Diquat is prohibited on any airstrip, airfield, or any location within Area 1 of Walla Walla County. Application equipment used for Diquat application shall be clean prior to being brought into Area 1~~)) - Town of Walla Walla and vicinity: This area includes all lands lying within the Town of Walla Walla and vicinity beginning at the Washington state line at the common boundary line between Sections 15 and 16, T6N, R34E, north along Hoon Road and continuing north on McDonald Bridge Road; across U.P.R.R. and Highway 12; thence north 4 miles more or less to the northwest corner of Section 10, T7N, R34E; thence east 20 miles to the northeast corner of Section 11, T7N, R37E; thence south 7 miles more or less to the Washington-Oregon state line; thence west to point of beginning.

(3) Area 1 restrictions:

(a) The application of Paraquat or any mix containing Paraquat is hereby prohibited in Area 1.

(b) The loading and/or mixing of Paraquat is prohibited on any airstrip, airfield or any location within Area 1 of Walla Walla county and application equipment used for Paraquat applications in allowable areas in Eastern Washington must be decontaminated prior to bringing the application equipment back into Area 1 of Walla Walla county.

(c) Aerial applications of Dinitro or any mix containing Dinitro is hereby prohibited in Area 1 of Walla Walla county.

(4) Area 2 description: All lands in Walla Walla county excluding Area 1.

(5) Area 2 restriction: The application of Paraquat or mix containing Paraquat is hereby prohibited four hours prior to sunset to two hours after sunrise the following morning.

REPEALER

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

WAC 16-230-200 WALLA WALLA COUNTY AREA 2

WSR 79-02-047
NOTICE OF PUBLIC MEETINGS
STATE HOSPITAL COMMISSION
[Memorandum—January 25, 1979]

The Hospital Commission will hold its first meeting of February on Thursday, February 8, 1979, beginning at 9:30 a.m., at the University Tower Hotel, N. E. 45th and Brooklyn Avenue, Seattle, Washington. Hospitals scheduled for informal hearings have previously filed with the Commission their annual budget and rate requests or requests for amendments to previously approved budgets and rates. Staff findings and recommendations have been prepared and transmitted to each of the scheduled hospitals and to members of the

Hospital Commission. Such information is on file in the Commission offices and is available for inspection.

WSR 79-02-048
ADOPTED RULES
STATE BOARD OF EDUCATION
[Order 1-79—Filed January 30, 1979]

Be it resolved by the state Board of Education, that it does promulgate and adopt the annexed rules relating to the amending of chapter 180-16 WAC, state support of public schools and repealing WAC 180-16-167.

This action is taken pursuant to Notice No. WSR 78-12-039 filed with the code reviser on 11/22/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 28A.58-.750 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 26, 1979.

By Wm. Ray Broadhead
Secretary

AMENDATORY SECTION (Amending Order 3-78, filed 6/5/78)

WAC 180-16-240 SUPPLEMENTAL PROGRAM STANDARDS. (1) Each school district superintendent shall file each year a statement of district standing relative to these standards noting any deviations. Such statement shall be submitted at the same time as the annual basic education allocation entitlement program data report(s) required by WAC 180-16-195 is submitted. Deviation from these standards shall not result in withholding of any or all of a district's basic education allocation funds, however. The deviations shall be made available to the public separately or as a portion of the annual district guide pursuant to RCW 28A.58.758(3).

(2) Supplemental program standards are as follows:

(a) Appropriate measures are taken to safeguard all student and school district permanent records against loss or damage. See, e.g., RCW 40.14.070 regarding the preservation and destruction of local government agency records.

(b) Provision is made for the supervision of instructional practices and procedures.

(c) Current basic instructional materials are available for required courses of study.

(d) A program of guidance, counseling and testing services is maintained for students in all grades offered by that school district.

(e) A learning resources program is maintained pursuant to chapter 180-46 WAC and WAC 392-190-055, each as now or hereafter amended.

(f) The physical facilities of each district are adequate and appropriate for the educational program offered.

(g) There is adequate provision for the health and safety of all pupils within the custody of the school district. See, e.g., RCW 28A.04.120(11) regarding emergency exit instruction and drills and the rules or guidelines implementing the statute; the building code requirements of chapter 19.27 RCW and local building and fire code requirements; chapter 70.100 RCW regarding eye protection and the rules or guidelines implementing the chapter; RCW 28A.31.010 regarding contagious diseases and the rules, chapters 248-100 and 248-101 WAC, implementing the statute; RCW 43.20-.050 regarding environmental conditions in schools and the rules, chapter 248-64 WAC, implementing the statute; and local health codes.

(h) A current policy statement pertaining to the administration and operation of the school district is available in each district's administrative office including, but not limited to, policies governing the school building and classroom visitation rights of nonstudents.

(i) Chapters 49.60 and 28A.85 RCW are complied with. These statutes prohibit unequal treatment of students on the basis of race, sex, creed, color, and national origin in activities supported by common schools.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-16-167 KINDERGARTEN OPERATION ON NINETY FULL-DAY SCHOOL YEAR BASIS—APPROVAL PROVISIONS.

WSR 79-02-049
EMERGENCY RULES
WASHINGTON STATE HOSPITAL COMMISSION
[Order 79-01, Resolution 79-01—Filed January 30, 1979]

Be it resolved by the Washington State Hospital Commission acting at Seattle, Washington, that it does promulgate and adopt the annexed rules relating to emergency amendment of WAC 261-40-020 relating to review and approval of annual budget submittals, rates, rate schedules, other charges and changes.

We, the Washington State Hospital Commission, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is it has become apparent that paragraph (2) of the existing WAC 261-40-020 may, when applied to certain circumstances, be in excess of the statutory authority of the Washington State Hospital Commission. The emergency amendment is intended to remove from the operation of this section any factual situations which could involve an application of the rules in a manner which is beyond the statutory authority of the agency.

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

This rule is promulgated pursuant to RCW 70.39.160 and is intended to administratively implement that statute.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 29, 1979.

By Francis D. Baker
Executive Director

AMENDATORY SECTION (Amending Order 75-05, filed 11/10/75)

WAC 261-40-020 APPLICABILITY OF THIS CHAPTER. (1) Required commission approval of rate changes: No rate described in any hospital's annual budget submittal and approved by the commission may be changed by such hospital without applying to the commission for the approval of a rate change in accordance with the procedures set forth in this chapter.

(2) Required use of approved rates: Hospitals shall utilize only those rates that have been approved by the commission: PROVIDED, That except for hospitals which have not filed such information as the commission shall require concerning the total financial needs of such hospital within the period specified in WAC 261-30-040, this subsection shall not apply if, on the effective date of any proposed rate change filed by any hospital with the commission, no order shall have been issued by the commission either suspending, approving, disapproving or modifying such proposed rate change: PROVIDED FURTHER, That for any hospital concerning whose proposed rate change the commission shall have instituted proceedings as to the reasonableness of the proposed change pursuant to RCW 70.39.160(2) or (4), the period during which this subsection shall not apply due to the passage of the effective date of the hospital's proposed rate change without the commission having issued its order either suspending, approving, disapproving or modifying such proposed rate change shall extend only until the issuance by the commission of an order either approving, disapproving or modifying such proposed rate change on a prospective basis.

(3) Public hearing on initial annual budget submittal: Since no hospital will have utilized the rate concept adopted by the commission under chapter 261-30 WAC prior to preparation and submission of its initial annual budget submittal, the rates proposed therein will constitute "new" rates. As such, they will be deemed by the commission to propose a change in rates subject to commission review in a public hearing in accordance with RCW 70.39.160.

WSR 79-02-050
PROPOSED RULES
TRANSPORTATION COMMISSION
[Filed January 30, 1979]

(1) Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 47.60.325, that the Washington State Transportation Commission intends to adopt, amend, or repeal rules concerning the adoption of a new schedule of tolls for the Washington State Ferry System and the repealing of the existing schedule of tolls as last amended by Resolution No. 21, Administrative Order No. 2, filed 5/19/78;

that such agency will at 2:00 p.m., Tuesday, March 20, 1979, in the Highway Administration Building, Room 1D2, Olympia, Washington conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 2:00 p.m., Tuesday, March 20, 1979, in the Highway Administration Building, Room 1D2, Olympia, Washington.

The authority under which these rules are proposed is RCW 47.56.033 and RCW 47.60.325.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 20, 1979, and/or orally at 2:00 p.m., Tuesday, March 20, 1979, Room 1D2, Highway Administration Building, Olympia, Washington.

Dated: January 30, 1979
By: Lue Clarkson
Administrator

AMENDATORY SECTION

WAC 468-300-010 FERRY PASSENGER TOLLS

ROUTES	PASSENGER Full Fare One Way	Half Fare** One Way	COMMUTATION 20 Rides *****	SCHOOL COMMUTATION**** 20 Rides 12-20	5-11	EXCURSION-ROUND TRIP*** Full Fare	Half Fare
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow ------- Edmonds-Kingston Pt. Townsend-Keystone	((~~$~~85)).95	((~~$~~45)).50	((~~$~~20~~$~~20))11.40	((~~$~~8~~$~~50))9.50	((~~$~~4~~$~~25))4.75	((~~$~~1~~$~~20))1.30	((~~$~~60)).65
Fauntleroy-Vashon Southworth-Vashon *------- Pt. Defiance-Tahlequah	((~~$~~1~~$~~10))1.20	((~~$~~55)).60	((~~$~~6~~$~~60))7.20 ******	((~~$~~5~~$~~50))6.00	((~~$~~2~~$~~75))3.00	N/A	N/A
Mukilteo-((Columbia Beach))-- Clinton	((~~$~~55)).60	((~~$~~30)).35	((~~$~~6~~$~~60))7.20	((~~$~~5~~$~~50))6.00	((~~$~~2~~$~~75))3.00	((~~$~~75)).85	((~~$~~40)).45
Anacortes to Lopez ----------	((~~$~~1~~$~~00))1.10	((~~$~~50)).55	((~~$~~12~~$~~00))13.20	((~~$~~10~~$~~00))11.00	((~~$~~5~~$~~00))5.50		
Shaw or Orcas ----------	((~~$~~1~~$~~15))1.25	((~~$~~60)).65	((~~$~~13~~$~~80))15.00	((~~$~~11~~$~~50))12.50	((~~$~~5~~$~~75))6.25	N/A	N/A
Friday Harbor ----------	((~~$~~1~~$~~30))1.45	((~~$~~65)).70	((~~$~~15~~$~~60))17.40	((~~$~~13~~$~~00))14.50	((~~$~~6~~$~~50))7.25		
Sidney ----------	((~~$~~3~~$~~50))3.85	((~~$~~1~~$~~75))1.95	N/A	N/A	N/A	((~~$~~4~~$~~00))4.40	((~~$~~2~~$~~00))2.20
Friday Harbor to Lopez, Shaw or Orcas ---	((~~$~~85)).95	((~~$~~45)).50	((~~$~~10~~$~~20))11.40	((~~$~~8~~$~~50))9.50	((~~$~~4~~$~~25))4.75	N/A	N/A
Between Lopez, Shaw, or Orcas	((~~$~~55)).60	((~~$~~30)).35	((~~$~~6~~$~~60))7.20	((~~$~~5~~$~~50))6.00	((~~$~~2~~$~~75))3.00	N/A	N/A
Sidney to Lopez ----------	((~~$~~2~~$~~50))2.75	((~~$~~1~~$~~25))1.40					
Shaw or Orcas ----------	((~~$~~2~~$~~35))2.60	((~~$~~1~~$~~20))1.30	N/A		N/A	N/A	N/A
Friday Harbor ----------	((~~$~~2~~$~~20))2.40	((~~$~~1~~$~~10))1.20					

*These routes operate on one-way only toll collection system.

**Half Fare

Senior Citizens - Passengers and driver, age 65 and over, with proper identification establishing proof of age, may travel at half-fare tolls on any route. NOTE: Half-fare privilege does not include vehicle.

Children - 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 charge full-fare.

Handicapped - 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, may travel at half-fare tolls on any route upon presentation of a WSF Handicapped Travel Permit at time of travel. NOTE: Half-fare privilege does not include vehicle.

***One day excursion for walk-on passengers with limited time ashore. Special stay aboard excursion rate (one-half of amounts shown) effective only during designated special events on routes and at times as determined by the Secretary of Transportation (not to exceed 14 days per year on any route).

****School Commutation Tickets - Tickets are for the exclusive use of bona fide students under twenty-one years of age attending grade, junior high, and high schools. Student shall be required to present credentials at time of purchase. A letter indicating school attendance signed by school principal or authorized representative shall be considered proper credentials. Tickets are valid for transportation on school days only.

*****A combination Ferry/Bus Public Transit Passenger Ticket Book Rate may be available for a particular route in conjunction with a public transit operating authority whenever it is determined by the Transportation Commission that said ticket book is a necessary element of a Transit Operating Plan designed to eliminate the necessity for assigning an additional ferry to such particular route; and that the resulting savings in Ferry System operating and amortized capital costs exceed the total revenue lost as a result of this reduced rate as projected during the period of time during which such transit operating plan is projected to eliminate the need for an additional ferry. The equivalent ferry fare per ride with this special rate shall be one-half the equivalent fare per ride with the standard commutation book. The assigning of an additional ferry to such particular route may be cause for removal of the special rate.

******On the Fauntleroy-Vashon route, a combination Ferry/Bus Transit Ticket Book Rate shall apply. 20 ride combination Ferry/Bus Public Transit Ticket Books shall be sold for $((~~$~~16~~$~~60)) 18.25 effective upon appropriate fare adjustment by the public transit operating authority.

AMENDATORY SECTION

WAC 468-300-020 AUTO, MOTORCYCLE AND BICYCLE FERRY TOLLS

	AUTO** INCL. DRIVER		MOTORCYCLE INCL. DRIVER		BICYCLE & RIDER				
	One Way	Commutation 20 Rides	One Way	Commutation 20 Rides	Full Fare One Way	Half Fare One Way	Commutation 20 Rides	Excursion Round Trip*** Full Fare	Excursion Round Trip*** Half Fare
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow ------ Edmonds-Kingston Pt. Townsend-Keystone	((2.85))3.15	((45.60))50.40	((1.50))1.65	((20.00))22.00	((1.20))1.30	((.80)).90	((12.00))13.00	((1.90))2.10	((1.30))1.45
Fauntleroy-Vashon Southworth-Vashon ---- Pt. Defiance-Tahlequah	((3.80))4.20	((30.40))33.60	((2.00))2.20	((13.35))14.65	((1.60))1.75	((1.05))1.15	((8.00))8.75	N/A	N/A
Mukilteo-((Columbia Beach)) Clinton ----	((1.90))2.10	((30.40))33.60	((1.00))1.10	((13.35))14.65	((.80)).90	((.55)).60	((8.00))9.00	((1.25))1.40	((.90))1.00
		10 Rides							
Anacortes to Lopez ---	((3.10))3.40	((24.50))27.20	((1.80))2.00	((24.00))26.65	((1.40))1.55	((.90))1.00	((14.00))15.50		
Shaw or Orcas ---	((3.50))3.85	((28.00))30.80	((2.10))2.30	((28.00))30.65	((1.60))1.75	((1.05))1.15	((16.00))17.50	N/A	N/A
Friday Harbor ---	((4.00))4.40	((31.50))35.20	((2.40))2.65	((32.00))35.35	((1.80))2.00	((1.15))1.25	((18.00))20.00		
Sidney ----------((15.00))	16.50	N/A	((7.50))8.25	N/A	((4.90))5.40	((3.50))3.85	N/A	((6.80))7.50	((4.80))5.30
Friday Harbor to Lopez, Shaw or Orcas ----------	((2.50))2.75	((20.00))22.00	((1.50))1.65	((20.00))22.00	((1.20))1.30	((.80)).90	((12.00))13.00	N/A	N/A
Between Lopez, Shaw, Or Orcas ----------	((1.70))1.85	((13.30))14.80	((1.00))1.10	((13.35))14.65	((.80)).90	((.55)).60	((8.00))9.00	N/A	N/A
Sidney to Lopez ------((11.90))	13.10		((5.70))6.25		((3.50))3.85	((2.25))2.50			
Shaw or Orcas ---((11.50))	12.65	N/A	((5.40))5.95	N/A	((3.40))3.65	((2.15))2.35	N/A	N/A	N/A
Friday Harbor ---((11.00))	12.10		((5.10))5.60		((3.10))3.40	((2.00))2.20			

*These routes operate on one-way only toll collection system.

**Stages - option of paying Auto rate plus full fare for passengers (See Stages and Busses). A charge of $25.00 will be assessed for an emergency trip during non-operating hours at locations where a crew is on duty.

**Vanpools - A commuter vanpool which carries ((nine)) seven or more persons on a regular and expense-sharing basis for the purpose of travel to or from work or school and which is certified as such by a local organization approved by the Washington State Ferry System, may purchase for a $10 fee, a permit valid for a three-month period on Mondays through Fridays only and valid only during the hours shown on the permit. These hours are selectable by the purchaser but shall designate two periods of use each day not to exceed two hours per period. The permit so purchased shall allow passage of the vehicle only during the valid periods. All riders in the van, including the driver, shall pay the applicable passenger fare. Except that thei minimum total paid for all riders in the van shall not be less than the amount equal to seven times the applicable passenger fare.

***One day excursion for bicycle and rider with limited time ashore.

PENALTY CHARGES

Owner of vehicle without driver will be assessed a $25.00 penalty charge.

Overhang on passenger vehicles will be assessed a penalty charge of 10¢ per lineal foot of overhang in addition to regular applicable tolls, except that no charge for overhang will be assessed when overall length of vehicle and overhang is less than twenty feet. A fraction of a foot of overhang in excess of six inches will be counted as one foot in assessment of charge for overhang.

SPECIAL SCHOOL RATE

School groups when traveling in authorized school vehicles for institution-sponsored activities shall be assessed a flat fee of $1.00 per vehicles load of students and/or advisors and staff. The flat fee shall be in addition to regular vehicle and drive toll. Private vehicles need letter of authorization.

NOTE: Special School Rate is $2.00 on routes where one-way only toll systems are in effect. Special Student Rate not available on Anacortes-Sidney, B.C. route between May 1, and September 1 due to limited space.

AMENDATORY SECTION

WAC 468-300-030 OVERSIZED VEHICLE, STAGE AND BUS, NEWSPAPER AND EXPRESS SHIPMENT FERRY TOLLS

ROUTES	OVERSIZED VEHICLES** One Way	OVERSIZED VEHICLES** Commutation 20 Rides	STAGES AND BUSES INCL. DRIVER*** ONe Way	STAGES AND BUSES INCL. DRIVER*** Each**** Passenger	BULK NEWSPAPERS Per 100 Lbs.	EXPRESS SHIPMENTS Per 100 Lbs.
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow Edmonds-Kingston Pt. Townsend-Keystone Fauntleroy-Vashon Southworth-Vashon	((4.50))4.95 ((6.00))6.60	((72.00))79.20 ((48.00))52.80	((6.25))6.90 ((8.00))8.80	((.45)).50 ((.55)).60	(1) (($1.10)) $1.20 per 100 Pounds (Shipments exceeding 60,000 lbs. in any month shall be assessed ((55¢)) 60¢ per 100 lbs.)	(2) ((9.00)) $9.90 per 100 Pounds (Shipments Exceeding 100 lbs. assessed ((2.25)) $2.50 for each 25 lbs. or fraction thereof.)
Pt. Defiance-Tahlequah Mukilteo-((Columbia Beach)) Clinton	((3.00))3.30	((48.00))52.80	((4.00))4.40	((.30)).35		
Anacortes to Lopez Shaw or Orcas Friday Harbor Sidney	((6.25))6.90 ((20.50))22.55	10 Rides ((50.00))55.20 N/A	((8.50))9.35 ((28.00))30.80	((.50)).55 ((.60)).65 ((.65)).70 ((1.75))1.95		
Friday Harbor to Lopez, Shaw or Orcas	((4.50))4.95	((36.00))39.60	((6.25))6.90	((.45)).50		
Between Lopez, Shaw or Orcas	((3.00))3.30	((24.00))26.40	((4.00))4.40	((.30)).35		Inter-island Express shipments will be handled @ (($1.10)) $1.20 per 100 lbs.
Sidney to Lopez Shaw or Orcas Friday Harbor	((14.25))15.70	N/A	((19.50))21.45	((1.25))1.40 ((1.20))1.30 ((1.10))1.20		

*These routes operate on one-way only toll collection system.

**Includes Motor Homes, and Mobile Campers that exceed eight feet in height. Excludes trucks licensed over 8,000, passenger busses and stages.

***Stages - Option of paying Auto-driver rate plus full fare for each passenger.

- A public transportation operator providing regularly scheduled week-day service for public necessity and convenience may pay a $10 annual fee for each scheduled vehicle. This fee covers the fare for each trip of the vehicle and operator only. All occupants shall be assessed the applicable passenger rate per trip. The $10 annual fee does not apply to vehicles providing chartered service or vehicles providing service for special events such as trips for recreational purposes.

****Half fare.

PENALTY CHARGES

Owner of vehicle without driver will be assessed a $25.00 penalty charge.

(1) Daily Newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

(2) Emergency shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight requiring a minimum of handling by carrier's employees. Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

AMENDATORY SECTION

WAC 468-300-040 TRUCK FERRY TOLLS

ROUTES	TRUCK, INCL DRIVER ***8,001 to 10,000	10,001 to 16,000	16,001 to 22,000	22,001 to 28,000 ****	28,001 to 36,000	36,001 to 48,000	48,001 to 60,000	60,001 to 72,000	72,001 to 80,000	Over 80,000 per 1000 Lbs.
Fauntleroy-Southworth Seattle-Bremerton Seattle-Kingston Edmonds-Kingston Pt. Townsend-Keystone	((4.50))4.95	((6.25))6.90	((8.00))8.80	((9.75))10.75	((12.00))13.20	((15.75))17.35	((19.50))21.45	((23.25))25.60	29.50	((.45)).80
Fauntleroy-Vashon Southworth-Vashon --- Pt. Defiance-Tahlequah	((6.00))6.60	((8.00))8.80	((10.00))11.00	((12.00))13.20	((15.00))16.50	((20.00))22.00	((25.00))27.50	((30.00))33.00	38.00	((.55))1.00
Mukilteo-((Columbia-Beach)) Clinton	((3.00))3.30	((4.00))4.40	((5.00))5.50	((6.00))6.60	((7.50))8.25	((10.00))11.00	((12.50))13.75	((15.00))16.50	19.00	((.30)).50
**Anacortes to Lopez Shaw or Orcas Friday Harbor Sidney	((6.25))6.90 ((28.50))22.55	((8.50))9.35 ((28.00))30.80	((10.75))11.85 ((35.50))39.05	((13.00))14.30 ((43.00))47.30	((16.00))17.60 ((52.00))57.20	((21.00))23.10 ((69.00))75.90	((26.00))28.60 ((86.00))94.60	((31.00))34.10 ((103.00))113.30	39.50 118.20	((.60))1.05 ((2.90))2.85
**Friday Harbor to Lopez, Shaw or Orcas	((4.50))4.95	((6.25))6.90	((8.00))8.80	((9.75))10.75	((12.00))13.20	((15.75))17.35	((19.50))21.45	((23.25))25.60	29.50	((.45)).80
**Between Lopez, Shaw or Orcas	((3.00))3.30	((4.00))4.40	((5.00))5.50	((6.00))6.60	((7.50))8.25	((10.00))11.00	((12.50))13.75	((15.00))16.50	19.00	((.30)).50
**Sidney to Lopez Shaw or Orcas Friday Harbor	((14.25))15.70	((19.50))21.45	((25.00))27.50	((30.00))33.00	((36.00))39.60	((48.00))52.80	((60.00))66.00	((72.00))79.20	82.40	((1.30))1.95

*These routes operate on one-way only toll collection system.
**Commercial trucks are allowed stop-over at intermediate points upon payment of $2.00 per stop-over.
***Trucks under 8,001 lbs. will be classifed as automobiles, unless over 8' in overall height. (See Oversized Vehicles.)
****UNITED STATES GOVERNMENT SPECIAL RATE - Special rates are available to the United States Government through advance, bulk ticket purchase at the general offices of Washington State Ferries. The per unit price is the same as the "22,001 to 28,000" rate. Semi-trucks are considered two truck units.

PENALTY CHARGES -

Owner of vehicle without driver will be assessed a $25.00 penalty charge.

DISCOUNT PERCENTAGES FROM REGULAR TOLL -

12 to 23, inclusive, one-way unit crossings within any consecutive six (6) day period----------25%
24 or more one-way unit crossings with any consecutive six (6) day period----------33-1/3%
Semi-trucks are considered two truck units.

AMENDATORY SECTION

WAC 468-300-050 TRAILER FERRY TOLLS

ROUTES	Under 10' One Way	10'-0" to Under 20' One Way	20'-0" to Under 30' One Way	TRAILER 30'-0" to Under 40' One Way	40'-0" to Under 50' One Way	50'-0" & Over One Way
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow Edmonds-Kingston Pt. Townsend-Keystone	((1.50))1.65	((2.85))3.15	((4.50))4.95	((9.75))10.75	((15.75))17.35	((19.50))21.45
Fauntleroy-Vashon Southworth-Vashon Pt. Defiance-Tahlequah	((2.00))2.20	((3.80))4.20	((6.00))6.60	((12.00))13.20	((20.00))22.00	((25.00))27.50
Mukilteo-((Columbia Beach)) Clinton	((1.00))1.10	((1.90))2.10	((3.00))3.30	((6.00))6.60	((10.00))11.00	((12.50))13.75
Anacortes to Lopez	((1.80))2.00	((3.10))3.40				
Shaw or Orcas	((2.10))2.30	((3.50))3.85	((6.25))6.90	((13.00))14.30	((21.00))23.10	((26.00))28.60
Friday Harbor	((2.40))2.65	((4.00))4.40				
Sidney	((7.50))8.25	((15.00))16.50	((20.50))22.55	((43.00))47.30	((69.00))75.90	((86.00))94.60
Friday Harbor to Lopez, Shaw or Orcas	((1.50))1.65	((2.50))2.75	((4.50))4.95	((9.75))10.75	((15.75))17.35	((19.50))21.45
Between Lopez, Shaw, or Orcas	((1.00))1.10	((1.70))1.85	((3.00))3.30	((6.00))6.60	((10.00))11.00	((12.50))13.75
Sidney to Lopez	((5.70))6.25	((11.90))13.10				
Shaw or Orcas	((5.40))5.95	((11.50))12.65	((14.25))15.70	((30.00))33.00	((48.00))52.80	((60.00))66.00
Friday Harbor	((5.10))5.60	((11.00))12.10				

*These routes operate on one-way only toll collection system.

REPEALER

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

(1) WAC 468-300-060 ROUND TRIP PARTY FERRY TOLLS

WSR 79-02-051
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 79-8—Filed January 30, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use shellfish regulations.

I, Gordon Sandison, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is there is a large population of small clams south of Oysterville approach on Long Beach. Continued sampling shows that the majority of these clams are still undersized for sport harvest.

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

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 30, 1979.

By Gordon Sandison
Director

NEW SECTION

WAC 220-56-08000G RAZOR CLAMS-AREAS & SEASONS Notwithstanding the provisions of WAC 220-56-080, effective immediately until further notice, it shall be unlawful to take, dig for or possess razor clams for personal use from that portion of Long Beach between the Oysterville approach and the Columbia River.

WSR 79-02-052
ADOPTED RULES
DEPARTMENT OF FISHERIES
[Order 79-7—Filed January 30, 1979—Eff. April 1, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use regulations.

This action is taken pursuant to Notice No. WSR 78-12-094 filed with the code reviser on 12/6/78. Such rules shall take effect at a later date such date being April 1, 1979.

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 17, 1979.

By Gordon Sandison
Director

AMENDATORY SECTION (Amending Order 76-14, filed 4/5/76)

WAC 220-56-019 DEFINITIONS—RIVER MOUTH DEFINITIONS. When pertaining to food fish angling, unless otherwise defined, any reference to the mouths of rivers or streams shall be construed to include those waters of any river or stream including sloughs and tributaries upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" shall be construed to mean those lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

Abernathy Creek – Highway 4 Bridge.
Bear River – Highway 101 Bridge.
Bone River – Highway 101 Bridge.
Chehalis River – U.P. Railway Bridge in Aberdeen.
Chinook River – The tide gates at the Highway 101 Bridge.
Columbia River – Line from inshore end of the north jetty to the knuckle of the south jetty.
Cowlitz River – A line ((~~running true north and south through Red Day Beacon No. 6~~)) projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.
Duwamish River – First Avenue South Bridge.
Elk River – Highway 105 Bridge.
Entiat River – Highway 97 Bridge.
Germany Creek – Highway 4 Bridge.
Hoquiam River – Highway 101 Bridge.
Humptulips River – Highway 109 Bridge.
Johns River – Highway 105 Bridge.
Lake Washington Ship Canal – Line 400 feet below the fish ladder at the Chittendon Locks.
Lewis River – A straight line running from Austin Point through the Warrior Rock Range Front south across the Lewis River to the opposite shore.
Methow River – Highway 97 Bridge.

Mill Creek – Highway 4 Bridge.
Naselle River – Highway 101 Bridge.
North Nemah River – Line from markers approximately 1/2 mile below the Highway 101 Bridge.
Niawiakum River – Highway 101 Bridge.
North River – Highway 105 Bridge.
Palix River – Highway 101 Bridge.
Puyallup River – 11th Street Bridge.
Samish River – The Samish Island Bridge (Bayview–Edison Road).
Sammamish River – Kenmore Highway Bridge.
Skagit River (North Fork) – A line projected from the white monument on the easterly end of Ika Island to the terminus of the jetty with McGlinn Island.
Skagit River (South Fork) – A line projected from the flashing red four–second navigational light true north to its intersection with the old jetty shown on U.S.C.G.S. chart No. 6450.
Skamokawa Creek – Highway 4 Bridge.
Snohomish River – Great Northern Railway Bridges crossing main river and sloughs.
South Nemah River – Lynn Point 117 degrees true to the opposite shore.
Tucannon River – State Highway 261 Bridge.
Washougal River – A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.
Wenatchee River — lower most Burlington Northern Railroad bridge immediately downstream from Highway 97.
White Salmon River – Highway 14 Bridge.
Little White Salmon River – At boundary markers on river bank downstream from the federal salmon hatchery.
Willapa River – Highway 101 Bridge.
((~~Wind River – Highway 14 Bridge.~~))
Yakima River – Highway 240 Bridge.

AMENDATORY SECTION (Amending Order 77–3, filed 1/28/77)

WAC 220–56–021 DEFINITIONS—HOOK REGULATIONS—FRESH WATER ANGLING. (1) Nonbuoyant lures: Lures that do not have enough buoyancy to float in freshwater must have no more than one single hook and that hook must not exceed 3/4 inch from point to shank.

(2) Buoyant lures: Lures that have enough buoyancy to float in freshwater may have any number of hooks.

(3) No leads, weights or sinkers may be attached below the lure or less than 12 inches above the lure.

(4) It shall be unlawful to take, fish for or possess salmon in the areas listed below with nonbuoyant lures unless they meet the requirements for nonbuoyant lures as defined in subsection (1):

Columbia River – From marker one mile upstream from mouth of Spring Creek at Ringold Pond downstream to the Richland–Pasco Highway 410 Bridge; and, during the period September 1 through October 15, those north bank Columbia River waters below Spring Creek National Fish Hatchery, from boundary marker at Broughton Mill east to the Federal fishery marker located downriver from the Spring Creek fishway.
Capitol Lake
Coweeman River
Cowlitz River upstream from the mouth of Toutle River
Dungeness River
Elokomin River
Grays River
Humptulips River (September 15 through December 31)
Icicle River (May 30 through June 30)
Kalama River upstream from Interstate 5 Bridge
Klickitat River
Lewis River (North Fork)
Lewis River (East Fork) upstream from Interstate 5 Bridge
North Nemah River
Salmon Creek (Clark County)
Samish River
Sammamish River (Slough)
Satsop River upstream from the mouth of Cook Creek
Stillaguamish River
Toutle River
Washougal River
White Salmon River (September 1 through October 15)
Wind River

AMENDATORY SECTION (Amending Order 77–121, filed 10/19/77)

WAC 220–56–023 SALMON CATCH RECORD CARDS. It shall be unlawful for any person to take and possess salmon for personal use without first having obtained and in his possession a sport salmon catch record card except as described in WAC 220–69–237.

Any salmon angler, when obtaining a sport salmon catch record card shall completely, accurately, and legibly complete all information in ink on the sport salmon catch record stub prior to detaching the sport salmon catch record punch card from the stub, and enter his name and address in ink on the sport salmon catch record card.

(((~~a~~))) (1) Immediately upon catching and possessing a salmon, the person catching the salmon shall remove from the punch card one punch for each such salmon and shall enter in ink in the corresponding space the place, date of catch, and species, and it shall be unlawful to fail to do so.

(((~~b~~))) (2) Every person possessing a sport salmon catch record punch card shall by January 31 of the year following the date of issuance return such card to the Department of Fisheries.

(((~~c~~))) (3) Any person possessing a sport salmon catch record punch card shall upon demand of any law enforcement officer or authorized Fisheries Department

employee exhibit said card to such officer or employee for inspection.

((~~(d)~~)) (4) A sport salmon catch record punch card shall not be transferred, borrowed, altered, or loaned to another person.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-56-065 PERSONAL-USE FISHERY—AREAS AND SEASONS—OTHER FOOD FISH AND SHELLFISH. (1) It shall be unlawful to take, fish for or possess food fish and shellfish by any means from within the boundaries of the city of Edmonds underwater marine park located inside the following lines:

That portion of Edmonds Tidelands fronting on Government Lot 2, Section 23, Township 27 North, Range 3 East, W.M., described as extending between the mean high tide and the Outer Harbor Line, and lying between the northeasterly line of Main Street and its westerly projection and a line parallel with and 250 feet northerly of (measured at right angles) the northeasterly line of aforesaid Main Street.

(2) It shall be unlawful to take, fish for, or possess food fish or shellfish taken by any means from within the boundaries of the underwater artificial reef surrounding the Edmonds Public Fishing Pier to be constructed in 1977 as described ((~~below~~)) in subdivision (a) of this subsection, except while fishing from the Edmonds Public Fishing Pier.

(a) Underwater artificial reef area: Those waters lying northerly and easterly of the north breakwater of the Port of Edmonds Marina inside of a line from a boundary marker on the north breakwater, northwesterly 275 feet to a marker buoy thence northeasterly 1350 feet to a marker buoy thence southeasterly to the northeastern end of the city of Edmonds public beach.

(b) Daily bag limit: Pier anglers' daily bag limits for all food fish and shellfish are those posted on the sign at the entrance to the Edmonds Public Fishing Pier due to possible frequent change by emergency regulation action.

(c) Lawful gear and practices: Lawful gear and practices for pier anglers are the same as those stated for other anglers in the current Washington sport fishing regulation pamphlet unless otherwise restricted and posted on the sign at the entrance to the Edmonds Public Fishing Pier.

(3) It shall be unlawful to take, fish for or possess food fish taken by any means in Percival Cove.

(4) It shall be unlawful to take, fish for or possess lingcod for personal use except during the areas and seasons herein provided:

(a) Coastal area (salmon punch card areas 1 through 4) open the entire year;

(b) Salmon punch card areas 5, 6, 7 and that portion of area 9 north of a line between Liplip Point and Bush Point – April 1 through November 30;

(c) All other areas closed the entire year.

(5) It shall be unlawful to take, fish for or possess bottomfish and other food fish taken for personal use in those waters lying within ((~~1~~)) one mile below any fish rack, fishway, dam, or other artificial or natural obstruction, either temporary or permanent, unless otherwise provided.

(6) It shall be lawful to take, fish for or possess bottomfish and other food fish in waters outside of or downstream from the following described lines and as provided in WAC 220-56-019:

(a) Hood Canal: A radius of 100 ft from the confluence of Finch Creek with tidewater adjacent to the Hood Canal Salmon Hatchery;

(b) Sinclair Inlet: A line 50 yd from the pierhead line of the Puget Sound Naval Shipyard at Bremerton;

(c) Budd Inlet: The 4th Avenue Bridge at Olympia;

(d) Shilshole Bay: A line 400 ft below the fish ladder at the Chittendon Locks from October 1 through May 31; and below the Burlington Northern Railroad Bridge all year;

(e) Chinook River: The tidegate at the Highway 101 Bridge.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-56-080 GENERAL PROVISIONS—CLAMS—AREAS AND SEASONS. (1) It shall be lawful to take, dig for and possess clams, cockles, borers and mussels taken for personal use on Puget Sound the entire year((;)): PROVIDED, That it shall be unlawful to take, dig for or possess such shellfish taken for personal use:

(a) West of the tip of Dungeness Spit from April 1 through October 31.

(b) From state-owned tidelands along the east shore of Garrison Bay between Bell Point and a boundary marker approximately 1,010 yards southerly of Bell Point except from August 1 through December 31. Those tidelands south of the above-described boundary marker to the head of the bay and tidelands around Guss Island are closed to clam digging the entire year.

(c) Camano Island State Park—All state-owned tidelands at Camano Island State Park from the ((~~NW~~)) most ((~~boundary to a boundary marker approximately 650 yd south easterly shall be closed to the personal-use harvest of all species of clams through March 31, 1979~~)) northerly launch ramp northwest to the most northwesterly boundary shall be closed to the personal-use harvest of all clams through December 31, 1979.

All state-owned tidelands at Camano Island State Park from the most northerly launch ramp southeast to the most southeasterly boundary shall be closed to the personal-use harvest of all clams from January 1, 1980 through December 31, 1981.

(d) From that portion of the Sequim Bay State Park public beach from the launch ramp ((~~southeast~~)) northwest to the park boundary through ((~~March~~)) December 31, ((~~1979~~)) 1980.

(e) Saltwater State Park—All state-owned tidelands at Saltwater State Park shall be closed to the personal-use harvest of all species of clams from June 16 through December 31((~~, 1978~~)).

(f) Twanoh State Park—All state-owned tidelands at Twanoh State Park shall be closed to the personal-use

harvest of all species of clams and oysters from June 16 through December 31.

(2) It shall be unlawful to take, dig for or possess razor clams taken for personal use from Pacific Ocean beaches in Razor Clam Areas 1, 2 and 3, provided, that:

(a) From January 1 through March 15, it is lawful to dig 24 hours per day.

(b) From March 16 through June 30, it is unlawful to dig except from 12 midnight to 12 noon daily.

(c) It is unlawful to dig during the months of July, August and September.

(d) From October 1 through December 31, it is lawful to dig 24 hours per day.

(3) It shall be lawful to take, dig for or possess clams, cockles, borers, and mussels, not including razor clams, taken for personal use in Grays Harbor and Willapa Harbor the entire year; and from the Pacific Ocean beaches from November 1 through March 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-56-084 GENERAL PROVISIONS—SHRIMP—AREAS AND SEASONS. ((~~(1)~~)) It shall be unlawful to take, fish for or possess shrimp taken for personal use except from May 15 through September 15: PROVIDED, That all waters of Hood Canal southerly of the Hood Canal floating bridge and Carr Inlet inside and northerly of a line projected from Penrose Point to Green Point shall remain closed except as specifically provided for by emergency regulation.

((~~(2) It shall be unlawful to take, fish for or possess shrimp taken for personal use from the waters of Hood Canal southerly of the Hood Canal floating bridge that are less than 200 ft in depth.~~))

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-56-086 GENERAL PROVISIONS—OYSTERS—AREAS AND SEASONS. ((~~(1)~~)) It shall be unlawful to take, fish for or possess oysters taken for personal use from the waters of the state from July 15 through September 15((~~;~~)): PROVIDED, That:

((~~(a)~~)) (1) It shall be unlawful to take oysters for any purpose from State oyster reserves without written permission of the Director of Fisheries.

((~~(b)~~)) (2) It shall be unlawful to take, fish for and possess oysters from the Point Whitney public beach((~~; Seal Rock Forest Camp public beach,~~)) and Dosewallips State Park public beach((~~, and the Hoodsport Salmon Hatchery public beach~~)) from July 15 to September 15. All state-owned tidelands at the Hoodsport Salmon Hatchery are closed to personal-use harvest of oysters through December 31, 1980. All federally-owned tidelands at Seal Rock Forest Service campground are closed to personal-use harvest of oysters through March 31, 1980.

((~~(c)~~)) (3) It shall be unlawful to pick or take oysters for personal use from waters measuring more than two feet in depth at the time of removal.

((~~(d)~~)) (4) It shall be lawful for private beach owners to harvest oysters for their own personal use from their own tidelands.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-56-088 GENERAL PROVISIONS—SHELLFISH GEAR—UNLAWFUL. (1) It shall be unlawful for the owner or operator of any personal-use shellfish gear to leave such gear unattended in the waters of the state unless said gear is marked with a buoy to which shall be affixed in a visible and legible manner the name and address of the operator.

(2) Effective January 1, 1977 it shall be unlawful to take, fish for, or possess crab taken with shellfish pot gear that are equipped with tunnel triggers or other devices which prevent free exit of crabs under the legal limit unless such gear is equipped with not less than one escape ring not less than 4 1/8 inches inside diameter located in the upper half of the crab pot.

(3) Effective with the beginning of the 1979 Hood Canal shrimp season, it shall be unlawful to take, fish for or possess shrimp taken for personal use with shellfish pot gear in the waters of Hood Canal southerly of the Hood Canal floating bridge unless such gear meets the following requirements:

(a) The top, bottom, and at least one-half of the area of the sides of the shellfish pots shall have the minimum mesh size defined below.

(b) The minimum mesh size for shrimp pots is defined as a square or rectangular mesh such that the inside distance between ((~~the inside of one~~)) any knot or corner ((~~to the inside of the next~~)) and each adjacent knot or corner shall be no less than 7/8-inch, provided that the shortest inside diagonal of each mesh shall be no less than 1-1/8 inches.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-130 BOGACHIEL RIVER. Bag limit ((~~A~~)) C - July 1 through ((~~November 30~~)) October 31: Downstream from the Highway 101 Bridge. ((~~From November 1 through November 30, chinook salmon over 28 inches must be released.~~))

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-135 CALAWAH RIVER. Bag limit ((~~A~~)) C - July 1 through ((~~November 30~~)) October 31: Downstream from the Highway 101 Bridge. ((~~From November 1 through November 30, all chinook salmon over 28 inches must be released.~~))

NEW SECTION

WAC 220-57-137 CARBON RIVER. Bag limit B - October 1 through November 30: Downstream from old bridge abutments near the east end of Bridge Street in Orting to confluence with Puyallup River. Chinook salmon over 28 inches must be released.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-145 CISPUS RIVER. ((~~Bag limit 1 - September 1 through December 31 - downstream from Yellowjacket Creek.~~)) Closed to salmon angling the entire year.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-155 CLEARWATER RIVER (JEFFERSON COUNTY). Bag limit C - October 1 through ((~~November 30~~)) October 31: Downstream from the mouth of the Snahapish River.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-160 COLUMBIA RIVER. (1) Bag limit A - open entire year: Downstream from Chief Joseph Dam to the Richland-Pasco Highway 12 Bridge with the exception of the following closed waters:

(a) Chief Joseph Dam - waters between the upstream line of Chief Joseph Dam to a line perpendicular to the thread of the stream from a point 400 feet downstream from the west end of the tailrace deck.

(b) Wells Dam - waters between the upstream line of Wells Dam to a point 400 feet below the spawning channel discharge stream.

(((~~b~~))) (c) Rocky Reach, Rock Island and Wanapum Dams - waters between the upstream line of these dams to a point 1,000 feet downstream.

(((~~c~~))) (d) Priest Rapids Dam - waters between the upstream line of Priest Rapids Dam and a point 1,500 feet downstream.

(((~~d~~))) (e) Jackson (Moran) Creek - waters within 500 feet of the mouth.

(2) ((~~Bag limit A - open August 8 through December 31.~~)) Waters downstream from the Richland-Pasco Highway 12 Bridge to Bonneville Dam((~~, with the exception of~~)): Bag limit A - January 1 through March 31; Closed April 1 through May 31; Bag limit C - June through August 7; Bag limit A - August 8 through December 31. The following are closed waters:

(a) McNary Dam - waters between the upstream line of McNary Dam downstream to a line across the river from the red and white marker on the Oregon shore on a line that intersects the downstream end of the wingwall of the boat lock near the Washington shore.

(b) John Day Dam - from the upstream line of John Day Dam to markers approximately 3,000 feet downstream, except that fishing is permitted up to 400 feet below the fishway entrance from the Washington shore.

(c) The Dalles Dam - from the upstream line of The Dalles Dam to the upstream side of the Interstate Bridge at The Dalles, except that fishing is permitted up to 400 feet below the fishway entrance from the Washington shore.

(d) Spring Creek - waters within 1/4 mile of the U.S. Fish & Wildlife Service Hatchery grounds between posted boundary markers located 1/4 mile on either side of the fish ladder entrance.

(3) Bag limit A - open August 1 through March 31; closed April 1 through May 31; Bag limit C - June through July 31: That portion downstream from Bonneville Dam to the Megler-Astoria Bridge, with the exception of the following closed waters:

(((~~a~~))) Waters between the upstream line of Bonneville Dam and the downstream power line crossing between the Washington shore and Bradford Island, thence on a direct line through the westernmost steel mooring dolphin in the navigation channel to the Oregon shore provided that it shall be lawful to fish from the Washington shore to within 600 feet of the spillway dam, with bait-lure presentation restricted to rod-and-reel casting only. All other modes of terminal gear transport to set baits are prohibited.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-200 DICKEY RIVER. Bag limit C - July 1 through ((~~November 30~~)) October 31: Downstream of the mouth of East Fork of the ((~~Dichey [Dickey]~~)) Dickey River to the National Park Boundary.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-205 DOSEWALLIPS RIVER. Bag limit B - October 15 through January 31 ((=)): Downstream from the Highway 101 Bridge. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-210 DUCKABUSH RIVER. Bag limit B - October 15 through January 31 ((=)): Downstream from the Highway 101 Bridge. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-215 DUNGENESS RIVER. Bag limit B - October 15 through December 31: Downstream from markers at former Taylor Bridge site approximately one mile below the state salmon hatchery rack. Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-220 DUWAMISH RIVER. (1) Bag limit B - May ((~~30~~)) 26 through November 30: Upstream from the First Avenue South Bridge to the Highway 405 Bridge.

(2) Bag limit H - open the entire year: Downstream from the First Avenue South Bridge.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-235 ELOKOMIN RIVER. Bag limit A - September 1 through December 31 ((=)): Downstream from the Elokomin Salmon Hatchery Bridge located 400 feet below the upper hatchery rack. Closed from the ((~~temporary~~)) Department of Fisheries temporary rack downstream to ((~~Risk~~)) Foster (Risk) Road Bridge while this rack is installed in river. Chinook salmon over 28 inches must be released.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-240 ELWHA RIVER. Bag limit A - October 15 through December 31: Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-260 GREEN RIVER (KING COUNTY). (1) Bag limit B - May ((~~30~~)) 26 through July 31: Downstream from markers 400 feet below City of Tacoma headworks dam to Highway 405 Bridge.

(2) Bag limit B - August 1 through ((~~October 31: downstream from the East Valley Highway Bridge (State Highway 167) to Highway 405 Bridge.~~

~~(3) Bag limit B - November 1 through~~)) November 30: Downstream from the Porter Bridge (Auburn Eighth Street NW Bridge) to Highway 405 Bridge.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-265 HAMMA HAMMA RIVER. Bag limit B - October 15 through January 31 ((=)): Downstream from the Highway 101 Bridge. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-270 HOH RIVER. (((~~1~~))) Waters downstream from a marker approximately a quarter mile above Highway 101 Bridge to the National Park boundary at Oil City:

May 26 through September 15 - special bag limit: Six salmon per day not less than 10 inches, not more than one of which may exceed 24 inches.

September 16 through October 31 - Bag limit C.

Bag limit C - May ((~~27~~)) 26 through ((~~November 30~~)) October 31: Upstream from a marker approximately one-quarter mile above Highway 101 Bridge to the National Park Boundary near the confluence of the South Fork.

((~~(2) Bag limit C - May 27 through September 15: downstream from a marker approximately one-quarter mile above Highway 101 bridge.~~

~~(3) Bag limit A - September 16 through November 30: downstream from a marker approximately one-quarter mile above Highway 101 bridge.~~))

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-290 ICICLE RIVER. Bag limit A - May ((~~27~~)) 26 through June 30: Downstream from a point ((~~400~~)) 600 feet below the Leavenworth National Fish Hatchery rack to mouth of Icicle River.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-305 KALALOCH CREEK. Bag limit C - July 1 through ((~~November 30~~)) October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-310 KALAMA RIVER. (1) Bag limit A - May ((~~27~~)) 26 through November 30: From Summers Creek upstream to the 6420 Road (approximately one mile above the gate at the end of the county road) is open to the taking of salmon with lawful fly fishing tackle only. Legal flies are limited to single-hook artificial flies measuring not more than 1/2 inches between shank and point.

(2) Bag limit A - May ((~~27~~)) 26 through November 30: Downstream from the mouth of Summers Creek to the markers at the Kalama Falls (Upper) Salmon Hatchery.

(3) Bag limit A - open the entire year: Downstream from markers at Italian Creek with the following exception: During the period September 1 through October 31, that portion of the Kalama River from markers at the Lower Kalama Hatchery pumphouse (intake) downstream to the natural gas pipeline crossing at Mahaffey's Campground will be open for fly fishing only.

September 1 through December 31: Chinook salmon over 28 inches caught in the area downstream from markers at Italian Creek to the natural gas pipeline must be released.

(4) During the time the Department of Fisheries temporary rack is installed just below the Modrow Bridge, that portion of the river from the rack, downstream 400 feet will be closed to angling.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-345 NISQUALLY RIVER. Bag limit B - July 1 through January 31 ((=)): Downstream from military tank-crossing bridge located one mile upstream from the mouth of Muck Creek. Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-350 NOOKSACK RIVER. (1) Bag limit B - July 1 through March 31: Downstream from the confluence of North and South Forks to Lummi Indian Reservation boundary.

(2) Bag limit D - September 1 through October 31: (North Fork) downstream from Maple Creek to mouth

of North Fork. The Nooksack River is closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-370 PUYALLUP RIVER. Bag limit B - July 1 through November 30: Downstream from the mouth of the Carbon River to the 11th Street Bridge. Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-385 QUILLAYUTE RIVER. Bag limit A - May ((~~27~~)) 5 through ((~~November 30~~)) October 31: Outside the boundaries of the Quillayute Indian Reservation. ((~~Chinook~~)) Salmon over ((~~28~~)) 24 inches caught after ((~~October 31~~)) September 30 must be released.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-400 SALMON RIVER (JEFFERSON COUNTY). Bag limit C - October 1 through ((~~November 30~~)) October 31: ((~~upstream from~~)) Outside the boundaries of the Quinault Indian Reservation ((~~boundary~~)).

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-435 SKYKOMISH RIVER. Bag limit B - ((~~September~~)) August 1 through December 31: Downstream from the confluence of North and South Forks. Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57-455 SNOQUALMIE RIVER. Bag limit B - July 1 through November 30: Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-460 SOLEDUCK RIVER. ((~~(1)~~)) Bag limit A - May ((~~27~~)) 5 through ((~~November 30~~)) October 31: Downstream from the mouth of Spring Creek at Soleduck Hatchery. ((~~Chinook~~)) Salmon over ((~~28~~)) 24 inches caught after ((~~October 31~~)) September 30 must be released.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-465 STILLAGUAMISH RIVER. Bag limit B - July 1 through January 31 ((=)): Downstream from confluence of North and South forks. Chinook salmon over 28 inches must be released. Closed to the taking of pink salmon in 1979.

NEW SECTION

WAC 220-57-473 TILTON RIVER. Bag limit A - May 26 through November 30.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-480 TOUTLE RIVER. (1) Bag limit A - open entire year: Downstream from mouth of North Fork.

October 1 through December 31 - chinook salmon over 28 inches must be released.

(2) North Fork - bag limit A - May ((~~27~~)) 26 through December 31: Downstream from Weyerhaeuser Railroad Bridge above Green River mouth to the South Fork. During the period October 1 through December 31, chinook salmon over 28 inches must be released.

September 1 through October 31 - taking of salmon from the area between the Weyerhaeuser Railroad Bridge and the Cook Road Bridge is open to the taking of salmon with lawful fly fishing tackle only. Legal flies are limited to single-hook artificial flies measuring no more than 1/2 inch between shank and point.

AMENDATORY SECTION (Amending Order 76-14, filed 3/15/76)

WAC 220-57-505 WHITE SALMON RIVER. Bag limit A - open entire year ((=)): Downstream from points 1,200 feet north of Highway 14 Bridge. (Little) White Salmon River (Drano Lake): Bag limit A - August 1 through April 30: Downstream from markers on point of land downstream and across from Federal salmon hatchery. Chinook salmon over 28 inches must be released from May 1 through December 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57-515 WIND RIVER. (1) Bag limit A - January 1 through ((~~June 30~~)) May 31: Downstream from markers 400 feet below Wind River Fishway No. 1 (Shippard Falls) to the mouth.

(2) Bag limit A - May ((~~27~~)) 26 through October 31: Beginning 1-1/2 river miles upstream from the High Bridge to the south boundary of Section 36, Township 4 North, Range 7-1/2 East as posted (about 2-1/2 miles). Fly fishing only. Legal angling tackle is limited to single-hook artificial flies measuring no more than 1/2 inch between the shank and point.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-005 AMERICAN LAKE (PIERCE COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-010 ARMSTRONG LAKE (SNOHOMISH COUNTY). Bag limit 1 - April ((~~16~~)) 22 through September ((~~4~~)) 3.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-040 CUSHMAN LAKE (MASON COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-065 DUCK LAKE (GRAYS HARBOR COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-080 GOODWIN LAKE (SNOHOMISH COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-095 HICKS LAKE (THURSTON COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-115 MERIDIAN LAKE (KING COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-120 MERWIN LAKE (RESERVOIR). Bag limit 1 - April ((~~16~~)) 22 through November 30.

AMENDATORY SECTION (Amending Order 76-14, filed 3/24/76)

WAC 220-57A-135 ROESIGER LAKE. ((~~Closed to salmon angling entire year~~)) Bag limit 1 - April 22 through October 31.

AMENDATORY SECTION (Amending Order 77-3, filed 1/28/77)

WAC 220-57A-150 SERENE LAKE (SNOHOMISH COUNTY). ((~~Closed the entire year~~)) Bag limit 1 - April 22 through October 31.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-155 SHOECRAFT LAKE (SNOHOMISH COUNTY). Bag limit 1 - April ((~~16~~)) 22 through September ((~~4~~)) 3.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-185 WILDERNESS LAKE (KING COUNTY). Bag limit 1 - April ((~~16~~)) 22 through September ((~~4~~)) 3.

AMENDATORY SECTION (Amending Order 78-8, filed 2/21/78)

WAC 220-57A-190 WYNOOCHEE RESERVOIR (GRAYS HARBOR COUNTY). Bag limit 1 - April ((~~16~~)) 22 through October 31.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-57A-060 DRANO LAKE.

WSR 79-02-053
ADOPTED RULES
DEPARTMENT OF FISHERIES
[Order 79-6—Filed January 30, 1979]

I, Gordon Sandison, director of state Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial shellfish regulations.

This action is taken pursuant to Notice No. WSR 78-12-095 filed with the code reviser on 12/6/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

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

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 16, 1979.

By Gordon Sandison
Director

AMENDATORY SECTION (Amending Order 76-152, filed 12/17/76)

WAC 220-52-018 CLAMS—GEAR. It shall be unlawful to take, dig for or possess clams or mussels taken for commercial purposes from any of the tidelands in the state of Washington except with a pick, mattock, fork or shovel operated by hand((;)): PROVIDED, That permits for the use of mechanical clam digging devices may be obtained from the director of fisheries subject to the following conditions:

(1) Any or all types of mechanical devices used in the taking or harvesting of shellfish must be approved by the director of fisheries.

(2) A separate permit shall be required for each and every device and the permit shall be attached to the specific unit at all times.

(3) All types of clams to be taken for commercial use must be of legal size and in season during the proposed operations unless otherwise provided in specially authorized permits for the transplanting of seed to growing areas or for research purposes.

(4) The holder of a permit to take shellfish from tidelands by mechanical means shall limit operations to privately owned or leased land.

(5) The taking of clams from bottoms under navigable water below the level of mean lower low water by any mechanical device shall be prohibited except as authorized by the director of fisheries. Within the enclosed bays and channels of Puget Sound, Strait of Juan de Fuca, Grays Harbor and Willapa Harbor, the operators of all mechanical devices shall confine their operations to bottoms leased from the Washington Department of Natural Resources, subject to the approval of the director of fisheries. The harvesting of shellfish from bottoms of the Pacific Ocean westward from the western shores of the state shall not be carried out in waters less than two fathoms deep at mean lower low water. In said waters more than two fathoms deep the director of fisheries may reserve all or certain areas thereof and prevent the taking of shellfish in any quantity from such reserves established on the ocean bottoms.

(6) ((~~The operator shall keep an accurate log of operations indicating location, time of digging, species and quantities of clams, and other pertinent data in regard to production and operations as requested by the department of fisheries. This log shall be available to agents of the department of fisheries at all times.~~

~~(7)~~)) Noncompliance with any part of these regulations or with special requirements of individual permits will result in immediate cancellation of and/or subsequent nonrenewal of all permits held by the operator.

((~~(8)~~)) (7) Applications must be made on the forms provided by the department of fisheries and permits must be in the possession of the operator before digging commences.

((~~(9)~~)) (8) All permits to take or harvest shellfish by mechanical means shall expire on December 31 of the year of issue.

((~~(10)~~)) (9) All mechanical clam harvesting machines must have approved instrumentation that will provide deck readout of water pressure.

((~~(11)~~)) (10) Effective July 1, 1977, all mechanical clam harvest machines must have approved instrumentation that will provide deck readout of:

(a) Depth of cut.

(b) Harvest head angle with bottom.

((~~(12)~~)) (11) All clam harvest machines operating on intertidal grounds where less than ((~~10%~~)) ten percent of the substrate material is above 500 microns in size must be equipped with a propeller guard suitable for reducing the average propeller wash velocity at the end of the guard to approximately ((~~25%~~)) twenty-five percent of the average propeller wash velocity at the propeller. The propeller guard must also be positioned to provide an upward deflection to propeller wash.

((~~(13)~~)) (12) Clam harvest machines operating in fine substrate material where less than ((~~10%~~)) ten percent of the substrate material is above 500 microns in size, shall have a maximum harvest head width of 3 feet (overall) and the maximum pump volume as specified by the department of fisheries commensurate with the basic hydraulic relationship of 828 gpm at 30 pounds per square inch, pressure to be measured at the pump discharge.

((~~(14)~~)) (13) Clam harvest machines operating in coarser substrate material where more than ((~~10%~~)) ten percent of the substrate material is above 500 microns in size, shall have a maximum harvest head width of 4 feet (overall) and a maximum pump volume as specified by the department of fisheries commensurate with a basic hydraulic relationship of 1,252 gpm at 45 pounds per square inch, pressure to be measured at the pump discharge.

((~~(15)~~)) (14) All clam harvest machine operators must submit accurate performance data showing revolutions per minute, gallons per minute, and output pressure for the water pump on their machine. In addition, they shall furnish the number and sizes of the hydraulic jets on the machines. If needed, the operator shall thereafter modify the machine (install a sealed pressure relief valve) as specified by the department of fisheries to conform with values set forth in either WAC 220-52-018(12) or ((~~WAC~~)) 220-52-018(13). Thereafter, it shall be illegal to make unauthorized changes to the clam harvester water pump or the hydraulic jets. Exact description of the pump volume, maximum pressure and number and size of the hydraulic jet for each harvester machine shall be included in the department of fisheries' clam harvest permit. All existing clam harvest machines must complete the needed steps to comply with the provisions of this regulation no later than July 1, 1976.

((~~(16)~~)) (15) All clam harvest machines shall be equipped with a 3/4-inch pipe thread tap and valve that will allow rapid coupling of a pressure gauge for periodic testing by enforcement personnel.

((~~(17)~~)) (16) Each mechanical clam harvester must have controls so arranged and situated near the operator which will allow the operator to immediately cut off the flow of water to the jet manifold without affecting the capability of the vessel to maneuver.

AMENDATORY SECTION (Amending Order 77-65, filed 8/5/77 and 8/25/77)

WAC 220-52-019 GEODUCK CLAMS—GEAR. ((~~(1)~~)) It shall be unlawful to take, fish for or possess geoduck clams taken for commercial purposes from any of the tidelands of the state of Washington((;)): PROVIDED, That pursuant to RCW 75.24.100, validations for the use of hand-held manually operated water jet or suction devices for harvesting geoduck clams for commercial purposes may be obtained from the director of fisheries subject to the following conditions:

((~~(a)~~)) (1) All harvesting methods and types of water jet and suction devices used in the taking or harvesting of geoduck clams must be approved by the director of fisheries prior to their use, except that water jet devices meeting the following requirements are approved for use:

((~~(i)~~)) (a) The water jet must have an automatic spring-triggered shutoff valve or a manual valve capable of being operated from full flow to completely off within one-half turn.

((~~(ii)~~)) (b) The device shall consist of not more than one jet, the nozzle of which shall not exceed 5/8 inch inside diameter.

(2) One geoduck validation must be physically present on board the harvest vessel for each and every geoduck harvest nozzle license in use. It is the responsibility of the lease holder to issue validations only to divers authorized to harvest on the lessee's tract or tracts. It is the responsibility of the lease holder to ensure that the required number of validations are on board the harvesting vessel engaged in geoduck harvesting.

(3) ((~~It shall be unlawful for any commercial geoduck harvester engaged in the geoduck fishery to fail to maintain an accurate log and is the obligation of each commercial geoduck harvester to obtain the appropriate log from the Washington Department of Fisheries. The number of geoducks must be recorded at the end of each day's fishing, weights must be recorded upon landing or sale of the geoducks. The geoduck harvest log must be kept aboard the vessel while the vessel is engaged in geoduck harvest or has geoducks aboard. The department's copy of the completed geoduck log must be submitted to the department at the end of each calendar month and at termination of commercial geoduck fishing, whichever occurs first.~~

~~(4)~~)) A separate license is required for each and every harvest head in actual operation.

((~~(5)~~)) (4) It shall be lawful to harvest geoducks only from one-half hour before sunrise to one-half hour after sunset.

((~~(6)~~)) (5) It shall be unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

((~~(7)~~)) (6) It shall be unlawful to retain any shellfish other than geoduck clams during geoduck harvesting operations unless the operator is licensed for the taking of clams other than geoduck clams as provided for in RCW 75.24.100.

((~~(8)~~)) (7) It shall be unlawful for a geoduck lease holder to operate more than six geoduck harvest nozzles at any one time on a single geoduck tract at any given time. It shall be the responsibility of the lease holder to assure that no more than six nozzles are used.

((~~(9)~~)) (8) At all times when geoduck harvest is occurring, copies of the official geoduck tract map and complete tract boundary identification documents or photographs as issued by the department of natural resources for the specific tract must be on board the vessel.

((~~(10)~~)) (9) No processing of geoducks is permitted on board the harvest vessel.

((~~(11)~~)) (10) It shall be unlawful to take, fish for or possess geoduck clams except within boundaries of subtidal tracts leased from the department of natural resources for geoduck harvest. It shall be unlawful to harvest from bottoms which are shallower than 10 feet below mean lower low water (0.0 feet), or which lie in areas bounded by the line of ordinary high tide (mean high tide), and a line 1/4-mile seaward from and parallel to said line of ordinary high tide.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-040 CRAB FISHERY—LAWFUL AND UNLAWFUL. (1) It shall be unlawful for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while fishing with said gear or having commercially caught food fish or other species of shellfish aboard.

(2) Unless otherwise provided, it shall be unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs, for commercial purposes, in any area at any time when it is unlawful to take or fish for crabs for commercial purposes therein.

(3) It shall be unlawful for any person to take, or possess for commercial purposes female crabs, or crabs measuring less then 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(4) It shall be unlawful for any person to take or fish for crabs for commercial purposes in Puget Sound with more than 100 shellfish pots or ring nets in the aggregate, and it shall be unlawful for any group of persons using the same vessel to take or fish for crabs for commercial purposes in Puget Sound with more than 100 shellfish pots or ring nets in the aggregate, provided it shall be unlawful for any person, or group of persons using the same vessel, to take or fish for crabs for commercial purposes with more than 20 shellfish pots or ring nets in the aggregate within the waters of Dungeness Bay lying west of a line projected from the new Dungeness Light southward to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

((~~(5) Effective October 1, 1977, it shall be unlawful for any commercial crab fisherman engaged in the Puget Sound commercial crab fishery to fail to maintain an accurate fishing log, and it is the obligation of each Puget Sound commercial crab vessel operator to obtain the appropriate log from the Washington Department of Fisheries. The crab fishing log must be kept aboard the vessel while the vessel is engaged in crab fishing or has crab aboard. The department's copy of the crab log must be submitted to the department at the end of each calendar month and at the termination of commercial crab fishing, or at the end of the commercial crab fishing season, whichever comes first.~~))

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-043 CRAB FISHERY—GEAR. (1) It shall be unlawful to take or fish for crabs for commercial purposes except with shellfish pots and ring nets.

(2) It shall be unlawful to use or operate any shellfish pot gear in the commercial crab fishery unless such gear meets the following requirements:

(a) Effective October 1, 1975 through September 30, 1979 shellfish pot gear must have one or more escape rings or ports, not less than 4-1/8 inches ((~~in~~)) inside diameter.

(b) Effective October 1, 1979 shellfish pot gear must have not less than two escape rings or ports not less than 4-1/4 inches ((~~in~~)) inside diameter.

(c) Escape rings or ports described above must be located in the upper half of the trap.

AMENDATORY SECTION (Amending Order 76-152, filed 12/17/76)

WAC 220-52-050 SHRIMP FISHERY—LAWFUL AND UNLAWFUL. (1) It shall be unlawful for any commercial shrimp fisherman to possess any quantity of shrimp exceeding ((~~10~~)) ten percent by weight or number which is undersized or unmarketable. Unmarketable or undersized shrimp shall be defined as including any size or species of shrimp unacceptable to the market for human consumption.

(2) ((~~It shall be unlawful for any commercial shrimp vessel operators engaged in the shrimp fishery to fail to maintain an accurate fishing log and it is the obligation of each commercial shrimp vessel operator to obtain the appropriate log from the Washington Department of Fisheries. The shrimp fishery log must be kept aboard the vessel while the vessel is engaged in shrimp fishing or has shrimp aboard. The department's copy of the shrimp log must be submitted to the department at the end of each calendar month and at termination of commercial shrimp fishing or the end of the commercial shrimp fishing season, whichever comes first.~~

~~(3) It shall be unlawful for any commercial shrimp vessel operator to fail to show the shrimp log to agents of the department of fisheries upon request.~~

~~(4)~~)) It shall be unlawful for any person to take or fish for shrimp for commercial purposes in Puget Sound with more than 100 shellfish pots, and it shall be unlawful for any group of persons using the same vessel to take or fish for shrimp for commercial purposes in Puget Sound with more than 100 shellfish pots; provided, it shall be unlawful for any person, or for any group of persons using the same vessel, to take or fish for shrimp for commercial purposes with more than 75 shellfish pots in Puget Sound Marine Fish-Shellfish Area 28B as described in WAC 220-22-400.

(((~~5~~))) (3) It shall be unlawful to operate or set any baited or unbaited shellfish pots for taking of shrimp for commercial purposes in any area or at any time that it is unlawful to take or fish for shrimp for commercial purposes therein.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-053 SHRIMP FISHERY—SEASONS—AREAS AND GEAR. (1) It shall be lawful during the period May 15 through September 15 of each year to take, fish for and possess shrimp taken for commercial purposes with shellfish pot gear in the waters of Puget Sound: PROVIDED, That all waters of Hood Canal southerly of the Hood Canal floating bridge and Carr Inlet inside and northerly of a line projected from Penrose Point to Green Point shall remain closed except as specifically provided for by emergency regulation.

(2) It shall be lawful during the period April 15 through October 15 of each year to take, fish for and possess shrimp taken for commercial purposes with beam trawl gear in any Puget Sound marine fish-shellfish area described in WAC 220-22-400 except in Puget Sound marine fish-shellfish areas 27A, 27B, 27C, 28A, 28B, 28C, 28D, and other waters when closed to otter and beam trawling as provided in WAC 220-48-090.

(3) It shall be unlawful at any time to take or fish for shrimp for commercial purposes with otter trawl gear in the waters of Puget Sound.

(4) It shall be lawful the entire year to take, fish for and possess shrimp for commercial purposes with shrimp trawl, beam trawl or shellfish pot gear in or from the coastal waters of the state of Washington and the adjoining waters of the Pacific Ocean.

(5) It shall be unlawful to possess for commercial purposes in the state of Washington any fresh shrimp taken from the waters of the Pacific Ocean off the Oregon coast from October 16 through March 31 of the following year.

(6) Effective with the beginning of the 1979 Hood Canal shrimp season, it shall be unlawful to take, fish for, or possess shrimp taken for commercial purposes with shellfish pot gear in the waters of Hood Canal southerly of the Hood Canal floating bridge unless such gear meets the following requirements:

(a) The top, bottom and at least one-half of the area of the sides of the shellfish pots shall have the minimum mesh size defined below.

(b) The minimum mesh size for shrimp pots is defined as a square or rectangular mesh such that the inside distance between ((~~the inside of one~~)) any knot or corner ((~~to the inside of the next~~)) and each adjacent knot or corner shall be no less than 7/8 of an inch provided that the shortest inside diagonal of each mesh shall be no less than 1-1/8 inches.

((~~(7) It shall be unlawful to take, fish for, or possess shrimp taken for commercial purposes in the waters of Hood Canal southerly of the Hood Canal floating bridge that are less than two hundred feet in depth.~~))

AMENDATORY SECTION (Amending Order 76-26, filed 4/20/76)

WAC 220-52-060 CRAWFISH FISHERY. (1) It shall be unlawful to take, fish for or possess crawfish for commercial purposes from waters of the state of Washington without first obtaining and having in possession a commercial crawfish permit from the director of fisheries and it shall be unlawful to fail to comply with any of the provisions of a commercial crawfish permit and with the following regulations.

(2) It shall be lawful to take, fish for and possess crawfish for commercial purposes only in those waters specified and with no more than the number of shellfish pots specified in the commercial crawfish permit issued by the director of fisheries.

(3) It shall be unlawful to take, fish for or possess crawfish for commercial purposes with gear other than shellfish pots.

(4) It shall be unlawful to take, fish for or possess crawfish for commercial purposes from the waters of the

state of Washington except from the first Monday in May through October 31; provided that it shall be lawful to take, fish for and possess crawfish for commercial purposes in Washington waters of the Columbia River downstream from the mouth of the Walla Walla River from April 1 through October 31.

(5) It shall be unlawful to take, fish for or possess crawfish for commercial purposes less than 3-1/4 inches in length from the tip of the rostrum (nose) to the tip of the tail and all undersize crawfish and female crawfish with eggs or young attached to the abdomen must be immediately returned unharmed to the waters from which taken: It shall be unlawful for crawfish fishermen to fail to sort and return illegal crawfish to the waters from which taken immediately after the crawfish are removed from the shellfish pot and prior to lifting additional pots from the water.

(6) It shall be unlawful for crawfish fishermen to discard into any water of the state any crawfish bait.

(7) It shall be unlawful to plant or place in the waters of the state any crawfish imported from any other state or country without prior written approval of the director of fisheries.

(8) ((~~It shall be unlawful for any crawfish fisherman to fail to submit a crawfish catch log as specified in the provisions of the commercial crawfish permit issued by the director of fisheries.~~

~~(9)~~)) It shall be unlawful to engage in culture of crawfish for commercial purposes without having obtained a Crawfish Culture Permit from the director of fisheries, and it shall be unlawful to fail to comply with any provisions of the Crawfish Culture Permit.

((~~(10)~~)) (9) Commercial crawfish harvest permits will be issued only in those "waters" where fishing will not conflict with high-density residential or recreational areas provided that no permit will be issued in areas where developed parks encompass more than one-half of the water shoreline. In areas where developed parks encompass less than one-half of the water shoreline, fishing will not be permitted within 1/4 mile of the park shoreline.

((~~(11)~~)) (10) Commercial crawfish harvest permits will be issued to restrict the number of crawfish pots per fisherman per lake, reservoir, pond, river, slough, or stream as follows:

(a) Under 10 acres - no commercial harvest.

(b) Between 10 and 25 acres - 50 pots.

(c) Between 25 and 400 acres - 100 pots.

(d) Over 400 acres - 200 pots.

Provided that permits issued and number of pots allowed for individual fishermen will not exceed a maximum total of 400 pots per individual fisherman.

((~~(12)~~)) (11) The department of fisheries shall fix the maximum number of pots to be permitted in any given body of water. Once the permitted maximum number of pots for any given body of water has been reached, no further permits will be issued. Permits will be issued on a first-come, first-serve basis consistent with all other regulations concerning issuance of commercial crawfish harvest permits.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-071 SEA CUCUMBERS. (1) It shall be lawful to take, fish for and possess sea cucumbers for commercial purposes with dip bag net gear the entire year and with trawl gear in areas open to bottom fish trawling except as provided in subsection (2).

(2) It shall be unlawful to harvest sea cucumbers for commercial purposes within one-half mile of the shorelines of San Juan Island and Henry Island.

(3) ((~~It shall be unlawful for any commercial sea cucumber harvester engaged in the commercial sea cucumber fishery to fail to maintain an accurate fishing log and is the obligation of each commercial sea cucumber harvester to obtain the appropriate log from the department of fisheries. The approximate number of sea cucumbers shall be entered in the log before leaving the sea cucumber bed where taken, and exact weight must be recorded upon landing or sale. The sea cucumber harvest log must be kept aboard the vessel while the vessel is engaged in sea cucumber harvest or has sea cucumbers aboard. The department's copy of the completed sea cucumber harvest log must be submitted to the department at the end of each calendar month or at termination of commercial sea cucumber fishing, whichever comes first.~~

~~(4)~~)) It shall be unlawful to harvest sea cucumbers for commercial purposes from one-half hour after sunset to one-half hour before sunrise.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-073 SEA URCHINS. (1) It shall be unlawful to take, fish for or possess sea urchins for commercial purposes except using dip bag net gear.

(2) It shall be unlawful to take, fish for or possess sea urchins for commercial purposes except by divers using hand-operated equipment that does not penetrate the shell.

(3) It shall be unlawful to take sea urchins for commercial purposes in waters shallower than 10 feet below mean lower low water.

(4) It shall be lawful to utilize sea urchins as prescribed in this section for purposes other than human consumption or bait.

(5) It shall be unlawful to take, fish for or possess for commercial purposes, purple urchins at any time.

(6) It shall be unlawful to take, fish for or possess red sea urchins ((~~smaller than the minimum size of 3.75 inches or larger than the maximum size of 5.5 inches measured at the largest diameter of the shell, caliper measurement, exclusive of the spines~~)) except between the minimum and maximum sizes, measured caliper measure at the largest diameter of the shell, exclusive of the spines, as follows:

(a) In coastal marine fish-shellfish areas 58 and 59 and Puget Sound marine fish-shellfish area 23, minimum 3.75 inches - maximum 5.5 inches.

(b) All other areas, minimum 4.5 inches - maximum 5.5 inches.

(7) It shall be unlawful to take, fish for or possess sea urchins for commercial purposes at any time in the following areas:

(a) San Juan Channel and Upright Channel within the following lines: North of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island; south of a line projected from Flat Point true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island and south of a line from Steep Point to Limestone Point on San Juan Island.

(b) Within one-quarter mile north and one-half mile south of Eagle Point on San Juan Island.

(c) Within one-quarter mile in any direction of Green Point on the East end of Spieden Island.

(d) Within one-quarter mile of Gull Reef located between Johns Island and Spieden Island.

(e) Within one-half mile of Portage Head in marine fish-shellfish area 59.

(f) Within one-quarter mile of Tatoosh Island.

(g) Within one-quarter mile in any direction of Lime Kiln Light on the west shore of San Juan Island.

(h) The area that lies southerly of a line projected true west from a point one-fourth mile north of Pile Point on the west shore of San Juan Island and northerly of a line projected true west from the boundary marker located approximately one-half mile southerly of the east headland of False Bay on San Juan Island.

(i) Within one-quarter mile in any direction of the boundary marker located on the west shore of San Juan Island at a latitude of 48° 29.8' north and longitude of 123° 07.6' west. (Located approximately 1.5 miles south of Lime Kiln Light; locally known as Edwards Reef.)

(8) ((~~It shall be unlawful for any commercial sea urchin harvester engaged in the commercial sea urchin fishery to fail to maintain an accurate fishing log and is the obligation of each commercial sea urchin harvester to obtain the appropriate log from the Washington department of fisheries. The approximate number of sea urchins shall be entered in the log before leaving the sea urchin bed where taken, and exact weight must be recorded upon landing or sale. The sea urchin harvest log must be kept aboard the vessel while the vessel is engaged in sea urchin harvest or has sea urchins aboard. The department's copy of the completed sea urchin harvest log must be submitted to the department at the end of each calendar month and at termination of commercial sea urchin fishing, or at the end of the sea urchin season whichever comes first.~~

~~(9)~~)) It shall be unlawful to take, fish for or possess sea urchins for commercial purposes without having a number, which has been assigned by the department of fisheries, placed in a visible location on each side of each vessel and on the top in a manner to be clearly visible from the side or from the air. The letters and numbers shall be black on white and shall be not less than 18 inches high and of proportionate width.

((~~(10)~~)) (9) It shall be unlawful to harvest sea urchins for commercial purposes from one-half hour after sunset to one-half hour before sunrise.

((~~(11)~~)) (10) No processing of sea urchins is permitted aboard the harvest vessel.

((~~(12)~~)) (11) It shall be unlawful to take, fish for, or possess sea urchins for commercial purposes except for use as human food unless a written permit is obtained from the director of fisheries.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-074 SEA URCHIN—AREAS AND SEASONS. It shall be unlawful to take, fish for or possess sea urchins for commercial purposes except during the following times and in the following areas:

(1) September ((~~15~~)) 1 through ((~~March 1~~)) September 30:

((~~(a)~~)) That portion of Puget Sound marine fish-shellfish area ((~~20B located within one-quarter nautical mile of the shoreline of Stuart and Satellite Islands~~)) 22A lying northerly of a line projected true west from Lime Kiln Light on the west shore of San Juan Island and southerly of a line running true east and west and passing through the northern tip of Low Island except for those portions closed in WAC 220-52-073(7).

((~~(b) That portion of Puget Sound marine fish-shellfish area 22A that lies southerly of a line from Lime Kiln light on the west shore of San Juan Island and northerly of a line projected true west from a point one-fourth mile north of Pile Point on the west shore of San Juan Island except for those areas closed in WAC 220-52-073(7).~~))

(2) ((~~September~~)) October 1 of even-numbered years through April 30 of the following year:

((~~(a)~~)) That portion of Puget Sound marine fish-shellfish area 23 ((~~that lies east of a line projected true north from the state highway 112 bridge over the West Twin River~~)) lying west of a line projected true north and south from the navigation bell buoy Number One in central Clallam Bay, except for those portions closed in WAC 220-52-073(7).

(3) October 1 of odd-numbered years through April 30 of the following year:

That portion of Puget Sound marine fish-shellfish area 23 lying east of a line projected true north and south from the navigation bell buoy Number One in central Clallam Bay, except for those portions closed in WAC 220-52-073(7).

((~~(3)~~)) (4) Coastal marine fish-shellfish areas 58 and 59, except those portions closed in WAC 220-52-073, open the entire year.

NEW SECTION

WAC 220-52-075 SHELLFISH HARVEST LOGS. It shall be unlawful for any vessel operator engaged in commercial crawfish, geoduck, sea cucumber, sea urchin, shrimp and Puget Sound crab fisheries and operators of mechanical clam digging devices to fail to obtain and accurately maintain the appropriate harvest log available from the Washington department of fisheries. The harvest log must be kept aboard the vessel while the vessel is engaged in harvest or has crawfish, geoducks, sea cucumbers, sea urchins, shrimp, Puget Sound crab, or clams aboard. The vessel operator must submit the log book for inspection upon request by authorized

department of fisheries representatives. The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. State copies must be received within ten days following any calendar month in which fishing occurred and by the tenth day following the termination of commercial fishing activity, whichever occurs first. Vessel operators engaged in commercial harvest of:

(1) Shrimp, crawfish and Puget Sound crab with shellfish pot or ring net gear must record the vessel identity, number of pots or ring nets pulled, date pulled, soak times and gear location before leaving the catch area where taken and weights must be recorded upon landing or sale.

(2) Shrimp with beam trawl or shrimp trawl gear must record the vessel identity, date, location, duration and estimated weight of shrimp caught for each tow before leaving the catch area where taken.

(3) Sea urchins, or sea cucumbers must record the vessel identity, date, location and approximate number of geoducks, sea urchins or sea cucumbers before leaving the catch area where taken and the exact weight must be recorded upon landing or sale.

(4) Clams with mechanical digging devices must record the vessel identity, location and date of harvest before the end of each days' fishing and the weights by clam species must be recorded upon landing or sale.

(5) Geoducks must record the vessel identity date, location, and approximate number of geoducks before leaving the department of natural resources geoduck tract from which the catch was taken, and the exact weight must be recorded upon landing or sale.

WSR 79-02-054
PROPOSED RULES
DEPARTMENT OF FISHERIES
[Filed January 30, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 75.08.080 that the Washington State Department of Fisheries intends to adopt, amend, or repeal rules concerning personal use shellfish regulations;

that such agency will at 10:00 a.m., Tuesday, March 13, 1979, in the Large Conference Room, General Administration, Olympia, Washington conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:30 a.m., Tuesday, March 20, 1979, in the Small Conference Room, General Administration, Olympia, Washington.

The authority under which these rules are proposed is RCW 75.08.080.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 13, 1979, and/or orally at 10:00 a.m., Tuesday, March 13, 1979, Large Conference Room, General Administration, Olympia, Washington.

Dated: January 30, 1979
By: Gordon Sandison
Director

AMENDATORY SECTION (Amending Order 1106, filed 1/10/74)

WAC 220-56-050 GENERAL PROVISIONS. (1) The personal use possession limit of food fish shall include all fresh, frozen, canned and other processed fish in the immediate possession of an individual, together with fish held for him by a custom canner or processor, and fish consigned for him for processing, preserving, storing or transporting to a place other than where such food fish were taken.

(2) The possession limit for processed food fish shall not exceed the equivalent catch or possession limits of fresh fish.

(3) It shall be unlawful for any custom canner, or any person operating as a canner or processor of personal-use catches of food fish to accept, process or hold in the name of any individual more than his lawful possession limit.

(4) Custom canners or processors of personal-use food fish or shellfish, resort operators and others who hold fish on their premises for sport fishermen, shall maintain accurate written accounts of such fish. These records shall be made available for inspection by the Department of Fisheries, and shall contain the name, signature and permanent address of the taker, the date and area of catch; the number, weight, species and date submitted for processing or holding and the final quantities processed by numbers of units.

(5) It shall be unlawful for any commercial fish dealer, cold storage plant operator, restaurant or hotel to store or have in possession any food fish or shellfish taken by any person for personal use, unless it is identified by tags attached bearing the names and addresses of the persons taking such food fish or shellfish.

(6) It shall be unlawful for any person taking food fish or shellfish for personal use to intermingle his catch or part of his catch with that of any duly licensed person taking food fish or shellfish for commercial purposes.

(7) Any species or quantity of food fish or shellfish taken for commercial purposes, when possessed by any person taking food fish or shellfish for personal use, or otherwise engaging in a personal-use fishery, shall be considered a part of the personal-use possession limit of the latter.

(8) It shall be unlawful for any person to catch, dig or possess the daily personal-use catch or bag limit of another person: PROVIDED, That it shall be lawful to dig the personal-use possession limit of razor clams for another person if that person has in possession a physical disability permit signed by the director and is physically present with the digger on the site where such digging occurs. Such permit may be obtained by providing to the director written certification from a licensed physician that said person is physically unable to dig razor clams.

Such digging shall take place only in areas designated for permit holders. Such areas shall be designated by the department at the beginning of each season and each person who has a permit issued pursuant to this section shall be notified of the areas which will be open.

(9) It shall be unlawful to take, fish for or possess food fish or shellfish taken for personal use with the intent of wasting or destroying such food fish or shellfish, or to remove eggs from any salmon for the purpose of using or preserving them for bait without retaining the carcass of the fish from which they were removed.

(10) It shall be unlawful to return any razor clams to the ocean beaches in a mutilated condition, and all razor clams taken for personal use shall be retained by the digger as a part of his possession limit; provided, it shall be unlawful for any person to destroy oysters or hardshell clams taken from their natural beds by sorting and culling them on land or shore and leaving the culled oysters or hardshell clams there to die; but in all cases the culled oysters or hardshell clams must be returned to their beds.

(11) It shall be unlawful to possess in the field or transport for personal use any sturgeon from which either the head or tail or both have been removed.

(12) It shall be unlawful for any person taking smelt for personal use to fail to retain the first twenty pounds of smelt caught.

(13) The lawful total cumulative number of salmon or amounts of other food fish and shellfish possessed when taken from more than one area shall not exceed the daily catch or possession limit for a single area.

WSR 79-02-055
ADOPTED RULES
STATE BOARD OF HEALTH
[Order 172—Filed January 31, 1979]

Be it resolved by the Washington State Board of Health acting at Spokane, Washington, that it does promulgate and adopt the annexed rules relating to State Board of Health exemptions, waivers and variances, amending WAC 248-08-595.

This action is taken pursuant to Notice No. WSR 78-12-093 filed with the code reviser on December 6, 1978. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Board of Health as authorized in RCW 43.20.050.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

This order after being first recorded in the order register of this governing body is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED January 10, 1979.

BY Irma Goertzen

Chairman

Robert H. Barnes, M.D.

Fred Quarnstrom

Ramon Esparza, Jr.

John B. Conway

John A. Beare, M.D.

Secretary

AMENDATORY SECTION (Amending Order 151, filed 12/5/77)

WAC 248-08-595 EXEMPTIONS, WAIVERS, AND VARIANCES. (1) With the sole exception of the public water system regulations appearing in chapter 248-54 WAC, in all those rules and regulations of the Washington state board of health wherein the board of health may grant exemptions to the requirements of the regulations, the board of health hereby delegates to the director of the health services division of the department of social and health services the authority to grant said exemptions pursuant to the standards contained in the regulations relating to the subject matter for which the exemption is requested, subject to the provisions contained herein. If an application for an exemption is ((~~denied~~)) recommended for denial by the director of the health services division, the ((~~denial~~)) recommendation shall be reviewed by the board of health at its next meeting. If an application is recommended to be granted by the director, it shall be reviewed in accordance with subsection (3) of this section.

(2) Such reviews shall not be considered contested cases as that term is defined in chapter 34.04 RCW. Statements and written material regarding the application may be presented to the board at or before its meeting wherein the application for exemption will be considered. Allowing cross-examination of witnesses in such matters shall be within the discretion of the board.

(3) Written summaries of all exemptions proposed to be granted by the director of the health services division shall be sent to all members of the board of health and shall include written forms upon which the members may indicate approval or disapproval of the exemption request. No exemption granted by the director of the health services division shall take effect for thirty days following notice of the tentative exemption approval being sent to the members of the board of health. If ((~~two~~)) any member((s)) of the board of health ((~~request, orally or in writing, within the above thirty day period that the exemption be reviewed by the entire board~~)) shall fail to respond, or shall disagree with the proposed exemption request, within the above thirty day period, the exemption shall not take effect until reviewed and approved by the entire board at its next regular meeting.

(4) The board of health does not delegate to the director of the health services division the powers of the board of health under chapter 248-54 WAC to grant exemptions or variances from the requirements of chapter 248-54 WAC. However, the board of health does hereby delegate to the director of the health services division the power of the board under WAC 248-54-790 to grant waivers from the requirements of chapter 248-54 WAC. In exercising this delegated power to grant or deny waivers, the director of the health services division shall follow the same procedures as are outline in this section for the granting or denial of exemptions.

WSR 79-02-056
ADOPTED RULES
PUBLIC DISCLOSURE COMMISSION
[Order 79-01—Filed January 31, 1979]

Be it resolved by the Public Disclosure Commission, acting at 403 Evergreen Plaza Building, Olympia, Washington, that it does promulgate and adopt the annexed rules relating to:

New	WAC 390-05-271	General applications of RCW 42.17.130.
New	WAC 390-05-273	Definition of normal and regular conduct.
Rep	WAC 390-05-270	Definition—Use of facilities.

This action is taken pursuant to Notice No. WSR 78-12-061 filed with the code reviser on 12/1/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 42.17.370(1) which directs that the Public Disclosure

Commission has authority to implement the provisions of the Washington State Open Government Act.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 16, 1979.

By Graham E. Johnson
Administrator

NEW SECTION

WAC 390-05-271 GENERAL APPLICATIONS OF RCW 42.17.130. (1) RCW 42.17.130 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW 42.17.130 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

(3) For purposes of RCW 42.17.130, use of the facilities of a public office or agency includes but is not limited to a collective decision made, or an actual vote, upon a motion, proposal, resolution, order, or ordinance, by the members of a governing body (as that term is defined in RCW 42.30.020) sitting as a body or entity.

NEW SECTION

WAC 390-05-273 DEFINITION OF NORMAL AND REGULAR CONDUCT. Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

REPEALER

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

WAC 390-05-270 DEFINITION—USE OF FACILITIES.

WSR 79-02-057
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed February 1, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules relating to winterizing homes, amending WAC 388-29-230.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart
Executive Assistant
Department of Social and Health Services
Mail Stop OB-44 C
Olympia, WA 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

The authority under which these rules are proposed is RCW 74.08.090.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 21, 1979, and/or orally at 10:00 a.m., Wednesday, March 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

Dated: January 30, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1241, filed 9/23/77)

WAC 388-29-230 WINTERIZING HOMES. (1) Repairs of homes owned or being purchased by AFDC recipients, to a maximum of $500 for any one home, are an additional requirement under the following circumstances:

(a) The primary purpose of the repairs is to minimize heat loss or otherwise increase the efficiency of the home heating system,

(b) The repairs are necessary to render the home habitable,

(c) Lack of repairs would require the assistance unit to move to rental quarters,

(d) The rental costs expended by the assistance unit over a period of two years would exceed the costs, including repairs, attributable to continued occupancy of the home, and

(e) No expenditures for repair of the home have been made previously under the policies outlined in ((~~subsections (1)~~)) subdivisions (a) through (((~~1~~)))(d) ((~~above~~)) of this subsection.

(2) All expenditures for repairs shall be paid by vendor payments when there is sufficient recorded evidence that the home repair was performed.

WSR 79-02-058
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed February 1, 1979]

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

Amd WAC 388-96-010 relating to terms.
New WAC 388-96-750 relating to return on investment.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart
Executive Assistant
Department of Social and Health Services
Mail Stop OB-44 C
Olympia, WA 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

The authority under which these rules are proposed is RCW 74.09.120.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 21, 1979, and/or orally at 10:00 a.m., Wednesday, January 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

Dated: January 30, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1300, filed 6/1/78)

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

"Accrual method of accounting" - A method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Allowable costs" - See WAC 388-96-501.

"Arms-length transaction" - A transaction resulting from good-faith bargaining between a buyer and seller who are unrelated and have adverse bargaining positions in the market place.

"Assets" - Economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. They also include certain deferred charges which are not resources but which are recognized and measured in accordance with generally accepted accounting principles.

"Bad debts" - Amounts considered to be uncollectable from accounts and notes receivable.

"Beds" - Unless otherwise specified, the number of set-up beds in the nursing home.

"Capitalization" - The process of recording and carrying forward into one or more future periods an expenditure the benefits or proceeds from which will then be enjoyed.

"Capitalized lease" - A lease which is required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

"Cash method of accounting" - 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 them.

"Change of ownership" - A change in the individual or legal organization which is responsible for the daily operation of a nursing home.

(1) Events which change ownership include but are not limited to the following:

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

(b) Title to the nursing home enterprise is transferred by the operating entity to another party;

(c) The nursing home enterprise is leased, or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation which is the survivor, or consolidates with one or more other corporations to form a new corporation.

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

(a) A party contracts with the owner to manage the enterprise as the owner's agent, i.e., subject to the owner's general approval of daily operating decisions;

(b) If the owner is a corporation, some or all of its stock is transferred.

"Charity allowances" - Reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

"Contract" - A contract between the department and a contractor for the delivery of SNF, ICF and/or IMR services to medical care recipients.

"Contractor" - An entity which contracts with the department to deliver SNF, ICF and/or IMR services to medical care recipients.

"Courtesy allowances" - 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.

"Department" - The department of social and health services (DSHS).

"Depreciation" - The systematic distribution of the cost or other base of a depreciable asset over its estimated useful life.

"Donated asset" - An asset which the contractor acquired without making any payment for it in the form of cash, property, or services. An asset is not a donated asset if the contractor made even a nominal payment in acquiring it. An asset purchased using donated funds is not a donated asset.

"Entity" - An individual or legal organization capable of entering enforceable contracts (e.g., corporation, partnership).

"Equity capital" - Total fixed assets related to patient care from page 13 of the most recent provider cost report minus total long-term debt from page 18 of the most recent provider cost report plus working capital as defined in this section.

"ESSO" - The local economic and social service office of the department.

"Exceptional care recipient" - A medical care recipient determined by the department to require exceptionally heavy care.

"Fair market value" - The price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

"Fiscal year" - 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.

"Fixed asset" - A tangible asset with an historical cost in excess of one hundred fifty dollars and a useful life of more than one year.

"Generally accepted accounting principles" - Accounting principles currently approved by the American Institute of Certified Public Accountants.

"Goodwill" - The excess of the price paid for a business over the fair market value of all other identifiable, tangible and intangible assets acquired. Also, the excess of the price paid for an asset over its fair market value.

"Historical cost" - The actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees, and engineering studies. It

does not include "start-up costs" as defined in this section or construction interest (see WAC 388-96-543).

"ICF" - When referring to a nursing home, an intermediate care facility. When referring to a level of care, intermediate care. When referring to a patient, a patient requiring intermediate care.

"Imprest fund" - A fund which is regularly replenished in exactly the amount expended from it.

"IMR - When referring to a facility, one certified to provide services to the mentally retarded or persons with related conditions. When referring to a level of care, services for the mentally retarded or persons with related conditions. When referring to a recipient, a recipient requiring IMR services.

"Interest" - The cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Intermediate care facility" - A licensed facility certified to deliver intermediate care services to medical care recipients.

"Levels of care" - The classification of types of services provided to patients by a contractor, e.g., skilled nursing care or intermediate care.

"Medical care recipient" - A recipient of medical assistance under Title XIX of the Social Security Act or of state funded medical care services.

"Multiservice facility" - A facility at which two or more types of health or related care are delivered, e.g., a hospital and SNF and/or ICF, or a boarding home and SNF and/or ICF. A combined SNF/ICF or ICF/IMR is not considered a multiservice facility.

"Nonallowable costs" - Costs which do not meet every test of an allowable cost.

"Nonrestricted funds" - Funds which are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing home" - A home, place or institution, licensed in accordance with chapter 18.51 RCW, in which skilled nursing, intermediate care and/or IMR services are delivered.

"Operating lease" - A lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Owner" - The individual or legal organization which is responsible for the daily operation of a nursing home. This party is legally responsible for operational decisions and liabilities.

"Patient day" - A calendar day of patient care. 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 he or she is assigned a bed and a patient medical record is opened.

"Per diem (per patient day) costs" - Total allowable costs for a fiscal period divided by total patient days for the same period.

"Prospective daily payment rate" - 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.

"Recipient" - A medical care recipient.

"Related organization" - An entity which, to a significant extent, is under common ownership and/or control with, or has control of or is controlled by, the contractor. An entity is deemed to "control" another entity if it has a five percent or greater ownership interest in the other, or if it has capacity, derived from any financial or other relationship, and whether or not exercised, to influence directly or indirectly the activities of the other.

"Relative" - Spouse; natural parent, child, or sibling; adopted child or adoptive parent; step-parent, step-child, step-brother, step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law; grandparent or grandchild; uncle, aunt, nephew, niece or cousin.

"Restricted fund" - A fund the use of the principal and/or income of which is restricted by agreement with or direction by the donor to a specific purpose, in contrast to a fund over which the owner has complete control. These generally fall into three categories:

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

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

(3) Endowment funds.

"Skilled nursing facility" - A licensed facility certified to deliver skilled nursing care services to medical care recipients.

"SNF" - When referring to a facility, a skilled nursing facility. When referring to a level of care, skilled nursing care. When referring to a patient, a patient requiring skilled nursing care.

"Start-up costs" - 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 administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, training costs, etc. They do not include such costs as feasibility studies, engineering studies and architects' fees which are part of the historical cost of the facility.

"Uniform chart of accounts" - A list of account titles identified by code numbers established by the department for contractors to use in reporting their costs.

"Vendor number" - A number assigned to each contractor delivering SNF, ICF and/or IMR services to medical care recipients.

"Working capital" - Total current assets from page 13 of the most recent cost report minus total current liabilities from page 18 of the most recent cost report.

NEW SECTION

WAC 388-96-750 RETURN ON INVESTMENT. (1) Beginning January 1, 1979, the department will pay a return on investment based on a contractor's equity capital as defined in WAC 388-96-010.

(2) The rate of return used to calculate this return on investment will be eleven percent or one and one-half times the most recent twelve-month average of rates of interest on special issues of public debt obligations issued to the federal hospital insurance trust fund (the Medicare rate of return on equity capital) whichever is lower.

(3) The calculation of a contractors' return on investment will consist of multiplying equity capital as defined in WAC 388-96-010 by the current rate of return.

(4) This return on investment will be paid as an add-on to the property and related cost area and will not be subject to the upper limit of the cost area. This return on investment based on equity capital is applicable to proprietary contractors only.

(5) For the period January 1, 1978, through December 31, 1978, a contractor may choose to retain savings in the administrative and operations and property and related cost centers in lieu of receiving a return based on equity capital.

WSR 79-02-059
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Vocational Education)
[Filed February 1, 1979]

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

Amd	WAC 490-500-145	Criteria for selection of services.
Amd	WAC 490-500-190	Economic need—Standards for determining.
Rep	WAC 490-500-140	Accepted for regular services.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart
Executive Assistant
Department of Social and Health Services
Mail Stop OB-44 C
Olympia, WA 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

The authority under which these rules are proposed is RCW 28A.10.025.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 21, 1979, and/or orally at 10:00 a.m., Wednesday, March 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, WA.

Dated: January 31, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1050, Filed 8/29/75)

WAC 490-500-145 CRITERIA FOR SELECTION OF SERVICES. In selecting handicapped individuals to be provided vocational rehabilitation services when such services cannot be provided to all persons who apply and who have been determined to be eligible or who have been determined to be in need of an extended evaluation of rehabilitation potential to determine eligibility, use the following order: ((~~clients are to be accepted for services in order of priorities listed:~~)) Those clients who are most severely disabled will be accepted for service first, to be followed by clients of the Department of Social and Health Services second, and then

((~~(1) The most severely handicapped;~~
~~(2) The disabled public assistance recipients;~~
~~(3) The disabled public offenders;~~
~~(4)~~)) all other clients ((~~will be accepted~~)) in order of precedence by date of application with earliest date of application having first priority.

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

AMENDATORY SECTION (Amending Order 1050, Filed 8/29/75)

WAC 490-500-190 ECONOMIC NEED - STANDARDS FOR DETERMINING. (1) A client shall be eligible on the basis of economic need to receive vocational rehabilitation services or extended evaluation services from the division when the total of his/her obligations, debts, and expenses is equal to or exceeds the total of his/her income and nonexempt assets or resources. When the value of his/her income and nonexempt assets is greater than the value of his/her obligations, debts, and expenses, the excess of the former over the latter shall be taken into account in planning for payment of the cost of those services which are conditioned upon economic need.

(2) Determination of a client's economic need involves an evaluation of the income, assets, debts, obligations, and expenses of his/her entire family unit, including his/her dependents or, if the client is an unemancipated minor, his/her parents.

(3) The following shall be considered income for the purpose of determining the economic need of a client:

(a) Wages paid to the client and to any dependent family members living in the home. For purposes of this section wages shall be equal to gross wages less deductions for income taxes, social security, taxes, retirement deductions, and other involvuntary deductions,

(b) Contributions from relatives or others, in cash or in kind, on a regular and predictable basis;

(c) Net profit from roomers or boarders,

(d) Net profit from property rentals,

(e) Net profit from farm products,

(f) Net profit from business enterprises,

(g) Scholarship or fellowship funds,

(h) Income from public or private welfare agencies,

(i) Any other income received on a regular and predictable basis, including but not limited to alimony, dividends from stocks, annuity payment, unemployment compensation, insurance, pensions, etc.

(4) The following types of property shall be considered exempt assets and may not be considered in determining the client's economic need:

(a) The home occupied by the client or his/her family, including any contiguous real property. A house trailer is an exempt asset when it is being regularly occupied by the client or his/her family as the principle place of residence or when it will be so occupied in the predictable future.

(b) Household furniture, clothing, life insurance, and other personal effects,

(c) An automobile when one or more of the following conditions are met:

(i) The client and his/her family have only one automobile, or

(ii) All automobiles used by the family are for the purpose of transportation to work or school, or

(iii) The automobile has been furnished in whole or in part to the client or to one of his/her dependents by the veteran's administration, or

(iv) The automobile is essential to the client's vocational rehabilitation objective.

(d) Vocational equipment and machinery owned by the client is an exempt asset if it is being used to provide part or all of the living expenses of the client and his/her dependents or if it may be so used after completion of the vocational rehabilitation plan;

(d) Livestock is an exempt asset to the extent that it produces income or otherwise helps the client to meet normal living requirements.

(5) All types of tangible and intangible property, including but not limited to real property, personal property, stocks, bonds, savings accounts, and checking accounts, which are not exempt under subsection (4) shall constitute the client's nonexempt assets and shall be considered in determining the client's economic need. The value of a nonexempt asset shall be equal to its fair market value less unpaid encumbrances of record.

(6) The following obligations, debts, and expenses shall be deducted from the client's income and nonexempt assets in determining the client's economic need:

(a) The client's actual shelter and living expenses. ((~~not to exceed the normal living requirement as established by the division.~~))

(b) Shelter and living expenses for the client's dependents. ((~~not to exceed the normal living requirement as established by the division.~~))

(c) Payments which the client is required to make under court order,

(d) Outstanding taxes on earnings or personal or real property,

(e) Insurance premium payments,

(f) Contractual payments on real or personal property if such obligations were incurred prior to the client's application for vocational rehabilitation services.

((~~(7) The normal living requirements shall be the dollar amount of funds which the division has determined to be necessary to maintain a client and his dependents, if any, on a normal standard of living.~~))

(7) When maintenance is to be paid by the Division of Vocational Rehabilitation to a client, it shall be in the amount the Division has determined to be necessary to maintain the client and dependents up to a maximum of:

((~~(a) The maximum amounts allowed for the support of an individual client and his dependents shall be:~~))

(a) $230.25 for self;

((~~(i) $99.80 for self, plus cost of shelter, $100.00 maximum = $199.80 total maximum;~~

~~(ii) $136.25 for self and one dependent, plus cost of shelter, $140.00 maximum = $276.25 total maximum;~~

~~(iii) $196.90 for self and two dependents, plus cost of shelter, $150.00 maximum = $346.90 total maximum;~~

~~(iv) $225.55 for self and three dependents, plus cost of shelter, $160.00 maximum = $385.55 total maximum;~~

~~(v) $266.75 for self and four dependents, plus cost of shelter, $165.00 maximum = $431.75 total maximum;~~

~~(vi) $308.35 for self and five dependents, plus cost of shelter, $170.00 maximum = $478.35 total maximum;~~

~~(vii) For each dependent over five, add $39.80.~~

~~(b) Shelter for purposes of determining normal living requirements shall include the actual cost to the client of rent, house payments, taxes, assessments and insurance not to exceed the maximum amounts listed in subsection (7)(a).~~))

(b) $64.00 additional for each dependent.

Reviser's Note: Errors of punctuation or spelling in the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 490-500-140 ACCEPTED FOR REGULAR SERVICES

WSR 79-02-060
ADOPTED RULES
BOARD OF PHARMACY
[Order 146, Resolution 2-79—Filed February 1, 1979]

Be it resolved by the Washington State Board of Pharmacy, acting at Burien Public Library, 14700 Sixth Avenue S. W., Burien, WA, that it does promulgate and adopt the annexed rules relating to pharmacy grading and inspection, and scheduling controlled substances.

This action is taken pursuant to Notice No. WSR 78-12-059 filed with the code reviser on 12/1/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 69.50.201 which directs that the Board of Pharmacy has authority to implement the provisions of the Controlled Substances Act.

This rule is promulgated under the general rule-making authority of the Board of Pharmacy as authorized in RCW 18.64.005(9).

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 26, 1979.

David C. Campbell, Jr.
Executive Secretary

AMENDATORY SECTION (Order 131, filed 2/4/77)

WAC 360-16-240 GENERAL. (1) A list of antidotes for poisoning shall be posted or otherwise readily available for reference. The telephone number of the nearest poison control center shall be readily available.

(2) The Washington state board of pharmacy shall set standards for the grading of pharmacies in the state of Washington. There shall be three classifications: A, ((~~80-100~~)) 100-90; B, ((~~65-79~~)) 89-80; and C, below ((~~65~~)) 80. Each pharmacy being inspected shall receive either a Class A, Class B, or Class C certificate, depending on the extent of compliance with the set standards.

(3) Any pharmacy receiving a Class C rating will have 60 days to raise its standards to a Class B or better. If after 60 days the pharmacy has failed to raise its standards to a Class B or better, a hearing will be conducted to consider disciplinary action.

(4) Any pharmacy receiving two consecutive B grades will be subject to a hearing to consider disciplinary action.

(5) The certificate of inspection must be posted on the front of the prescription case in conspicuous view of the general public and shall not be removed or defaced.

(6) Forms and instructions for a self inspection program shall be mailed to all pharmacies. Up to five points may be granted on the inspection conducted by the investigator for pharmacy compliance with this program.

(7) Noncompliance with the provisions of RCW 18-.64A.010 - 900 (Pharmacy Assistants) and WAC 360-52-010 - 100 (Pharmacy Assistants) shall result in an automatic "C" grade regardless of point score as found in (2) above. Refer to (3) above for specific information on "C" grades.

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

AMENDATORY SECTION (Order 142, filed 12/9/77)

WAC 360-36-110 ADDITIONAL SCHEDULE II SUBSTANCES. The board finds that the following substances meet the schedule II tests and are hereby placed in schedule II in addition to those set forth in chapter 69.50 RCW. The placement in schedule II includes any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers and salts of isomers is possible within the specific designation:

(1) Methaqualone
(2) Concentrate of poppy straw
(3) Etorphine Hydrochloride
(4) Amphetamine
(5) Methamphetamine
(6) Fetamin
(7) Biphetamine
(8) Biphetamine-T
(9) Eskatrol
(10) Methylphenidate
(11) Phenmetrazine
(12) Amobarbital
(13) Pentobarbital
(14) Secobarbital
(15) Phencyclidine
(16) 1-Phenylcyclohexylamine
(17) 1-Piperidinocyclohexanecarbonitrile

AMENDATORY SECTION (Order 142, filed 12/9/77)

WAC 360-36-120 ADDITIONAL SCHEDULE III SUBSTANCES. The board finds that the following substances meet the schedule III tests and are hereby placed in schedule III in addition to those set forth in chapter 69.50 RCW. The placement in schedule III includes any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers and salts of isomers is possible within the specific designation:

(1) Benzphetemine
(2) Chlorphentermine
(3) Phendimetrazine

(4) Mazindol
(5) Clortemine
(6) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures or preparations are referred to in schedule III as published in 21 CFR #1308.13 as of April 1, 1977.

AMENDATORY SECTION (Order 142, filed 12/9/77)

WAC 360-36-130 ADDITIONAL SCHEDULE IV SUBSTANCES. The board finds that the following substances meet the schedule IV tests and are hereby placed in schedule IV in addition to those set forth in chapter 69.50 RCW. The placement in schedule IV includes any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers and salts of isomers is possible within the specific designation:
(1) Fenfluramine
(2) Diethylpropion
(3) Phentermine
(4) Pemoline
(5) Mebutamate
(6) Chlordiazepoxide (Librium)
(7) Diazepam (Valium)
(8) Oxazepam (Serax)
(9) Chlorazepate (Tranxene)
(10) Flurazepam (Dalmane)
(11) Clonazepam (Clonopin)
(12) Prazepam (Verstran)
(13) Dextropropoxyphene (Darvon).
(14) Lorazepam (Ativan)
(15) Not more than 1 milligram Difenoxin in combination with not less than 25 micrograms of Atropine Sulfate per dosage unit (Motofen).

AMENDATORY SECTION (Order 142, filed 12/9/77)

WAC 360-36-140 ADDITIONAL SCHEDULE V SUBSTANCES. The board finds that the following substances meet the schedule V tests and are hereby placed in schedule V in addition to those set forth in chapter 69.50 RCW. The placement in schedule V includes any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers and salts of isomers is possible within the specific designation:
(1) Loperamide (Imodium)
(2) Not more than .5 milligram Difenoxin in combination with not less than 25 micrograms of Atropine Sulfate per dosage unit (Motofen Half-Strength).

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 360-36-150 RESCHEDULE SUBSTANCES
(2) WAC 360-36-160 PLACEMENT OF PHENCYCLIDINE IN SCHEDULE II
(3) WAC 360-36-170 PLACEMENT OF LORAZEPAM IN SCHEDULE IV

WSR 79-02-061
ADOPTED RULES
BOARD OF PHARMACY
[Order 145, Resolution 1-79—Filed February 1, 1979]

Be it resolved by the Washington State Board of Pharmacy, acting at Burien Public Library, 14700 Sixth Avenue S.W., Burien WA, that it does promulgate and adopt the annexed rules relating to nuclear pharmacies and pharmacists.

This action is taken pursuant to Notice No. WSR 78-12-013 filed with the code reviser on 11/13/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Board of Pharmacy as authorized in RCW 18.64.005(9).

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 26, 1979.
By David C. Campbell, Jr.
Executive Secretary

Chapter 360-54

NUCLEAR PHARMACIES AND PHARMACISTS

WAC

NEW SECTION

WAC 360-54-010 PURPOSE AND SCOPE. (1) No person may lawfully provide radiopharmaceutical services unless he or she is a nuclear pharmacist, or is performing radiopharmaceutical services under the supervision of a nuclear pharmacist, and is acting in accordance with the state board of pharmacy and state radiation control agency regulations.

(2) These regulations shall not apply to anyone who is an "authorized practitioner" as that term is defined in section 2 of these regulations.

(3) The requirements imposed by these nuclear pharmacy regulations shall apply in addition to, and not in place of, any other requirements contained in regulations of the state board of pharmacy, the state radiation control agency, or any other state or federal agency.

NEW SECTION

WAC 360-54-020 DEFINITIONS. (1) A "nuclear pharmacy" is a class A pharmacy providing radiopharmaceutical services.

(2) "Nuclear pharmacist" means a licensed pharmacist who has submitted evidence to the board of pharmacy that he or she meets the requirements of WAC 360-54-040 of these regulations regarding training, education, and experience, and who has received notification by letter from the board of pharmacy that, based on the evidence submitted, he or she is recognized by the board of pharmacy as qualified to provide radiopharmaceutical services.

(3) "Radiopharmaceutical service" shall mean, but shall not be limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation management and control of a nuclear pharmacy.

(4) A "radiopharmaceutical" is any substance defined as a drug in section 201 (g) (1) of the federal food, drug and cosmetic act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes non-radioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

(5) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

(6) "Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to insure the integrity of the test.

(7) "Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and intermediate handling of any component of a radiopharmaceutical.

(8) "Authorized practitioner" means a practitioner duly authorized by law to possess, use, and administer radiopharmaceuticals.

NEW SECTION

WAC 360-54-030 NUCLEAR PHARMACIES. (1) A permit to operate a nuclear pharmacy providing radiopharmaceutical services shall only be issued to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the supervision of a nuclear pharmacist. The nuclear pharmacist shall be responsible for all operations of the licensed area. In emergency situations, in the nuclear pharmacist's absence, he or she may designate one or more qualified, registered or certified health care personnel to have access to the licensed area. These individuals may obtain radiopharmaceuticals for the immediate emergency and must document such withdrawals in the control system.

(2) Nuclear pharmacies shall have adequate space, commensurate with the scope of services to be provided. The nuclear pharmacy area shall be separate from the pharmacy areas for non-radiopharmaceuticals and shall be secured from access by unauthorized personnel. A nuclear pharmacy handling radiopharmaceuticals exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the state board of pharmacy. Detailed floor plans shall be submitted to the state board of pharmacy and the state radiation control agency before approval of the license.

(3) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with accepted professional standards of radiopharmaceutical quality assurance.

(4) Nuclear pharmacies shall maintain records of acquisition and disposition of all radiopharmaceuticals in accordance with applicable regulations of the state board of pharmacy, the state radiation control agency and other state and federal agencies.

(5) For nuclear pharmacies handling radiopharmaceuticals exclusively, the state board of pharmacy may waive regulations pertaining to the pharmacy permits for non-radiopharmaceuticals for requirements that do not pertain to the practice of nuclear pharmacy.

(6) Radiopharmaceuticals are to be dispensed only upon a prescription from a practitioner authorized to possess, use and administer radiopharmaceuticals. A nuclear pharmacy may also furnish radiopharmaceuticals for office use to these practitioners.

(7) A nuclear pharmacist may transfer to authorized persons radioactive materials not intended for drug use, in accordance with regulations of the state radiation control agency.

(8) In addition to any labeling requirements of the state board of pharmacy for non-radiopharmaceuticals, the immediate outer container of the radiopharmaceutical to be dispensed shall also be labeled with: 1) standard radiation symbol; 2) the words "caution-radioactive material"; 3) the name of the radiopharmaceutical; 4) the amount of radioactive material contained, in millicuries or microcuries; 5) if a liquid, the volume in milliliters; 6) the requested calibration time for the amount of radioactivity contained; 7) expiration data, if applicable; and 8) specific concentration of radioactivity.

(9) The immediate container shall be labeled with: 1) the standard radiation symbol; 2) the words "caution-radioactive material"; 3) the name of the nuclear pharmacy; 4) the prescription number; 5) the name of the radiopharmaceutical; (6) the date; and (7) the amount of radioactive material contained in millicuries or microcuries.

(10) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately prior to dispensing.

(11) Nuclear pharmacies may redistribute NDA approved radiopharmaceuticals if the pharmacy does not process the radiopharmaceuticals in any manner or violate the product packaging.

(12) The nuclear pharmacy shall have the current revisions of state laws and regulations of the state board of pharmacy and state radiation control agency.

(13) The nuclear pharmacy shall maintain a library commensurate with the level of radiopharmaceutical service to be provided. A detailed library listing shall be submitted to the state board of pharmacy and state radiation control agency before approval of the license.

NEW SECTION

WAC 360-54-040 NUCLEAR PHARMACISTS. In order for a pharmacist to qualify under these regulations as a nuclear pharmacist, he or she must:

(1) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the state radiation control agency; and,

(2) be a pharmacist licensed to practice in Washington; and,

(3) submit to the board of pharmacy either:

(a) certification that he or she has completed a minimum of 6 months on-the-job training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing radiopharmaceutical services, or

(b) certification that he or she has completed a nuclear pharmacy training program in an accredited college of pharmacy or

(c) that upon application to the board in affidavit form, and upon the furnishing of such other information as the board may require, the board may grant partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy, if, in the opinion of the board, the education and experience gained by participants in these programs would provide the same level of competence as participation in a program at an accredited college of pharmacy; and

(4) receive a letter of notification from the board of pharmacy that the evidence submitted that the pharmacist meets the requirements of subsections 1, 2, and 3 above has been accepted by the board and that, based thereon, the pharmacist is recognized by the board as a nuclear pharmacist.

NEW SECTION

WAC 360-54-050 MINIMUM EQUIPMENT REQUIREMENTS. (1) Nuclear pharmacies shall have adequate equipment commensurate with the scope of radiopharmaceutical services to be provided. A detailed list of equipment and description of use must be submitted to the state board of pharmacy and radiation control agency before approval of the license.

(2) The state board of pharmacy may, for good cause shown, waive regulations pertaining to the equipment and supplies required for nuclear pharmacies handling radiopharmaceuticals exclusively.

WSR 79-02-062
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 2, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Transportation intends to adopt, amend, or repeal rules concerning new section WAC 468-42-308, and amending WAC 468-42-303, prohibiting parking along State Route 308 in Keyport, formerly called State Route 303, just west of the Naval Station gate;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Monday, March 19, 1979, in Room 1D9, Highway Administration Building, Olympia, Washington 98504.

The authority under which these rules are proposed is RCW 46.61.570.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 19, 1979, and/or orally at 10:00 a.m., Monday, March 19, 1979, Room 1D9, Highway Administration Building, Olympia, Washington 98504.

Dated: February 2, 1979
By: V. W. Korf
Deputy Secretary

NEW SECTION

WAC 468-42-308 STATE ROUTE 308. Keyport. Parking is prohibited on the south side of State Route 308 from Washington Street at Mile Post 2.23 to the end of the route at Mile Post 2.29, a distance of 0.06 mile, and on the north side of State Route 308 from Mile Post 2.27 to the route end at Mile Post 2.29, a distance of 0.02 mile.

AMENDATORY SECTION (Amending DOT Order 10 & Comm. Order 1, Resolution 13, filed 12/20/78)

WAC 468-42-303 STATE ROUTE 303. (Spur) (((~~1~~))) Keyport vicinity. Parking is prohibited for a distance of 0.20 mile on the northwest and southeast sides of State Route 303, northeasterly of the intersection of SR 303 and SR 303 Spur, Mile Post 10.04 to Mile Post 10.24, a distance of 0.20 mile.

(((~~(2) Keyport Naval Station vicinity. Parking is prohibited on both sides of State Route 303 Spur from Mile Post 10.43 northerly to Mile Post 10.45 in the vicinity of the entrance gate to the Keyport Naval Station, a distance of 0.02 mile.~~)))

WSR 79-02-063
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 2, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Transportation intends to adopt, amend, or repeal rules concerning the amending of WAC 468-42-004, prohibiting parking at some intersections along SR 4, west of Longview to improve sight distance;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Monday, March 19, 1979, in Room 1D9, Highway Administration Building, Olympia, Washington 98504.

The authority under which these rules are proposed is RCW 46.61.570.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 19, 1979, and/or orally at 10:00 a.m., Monday, March 19, 1979, Room 1D9, Highway Administration Building, Olympia, Washington 98504.

Dated: February 2, 1979
By: V. W. Korf
Deputy Secretary

AMENDATORY SECTION (Amending DOT Order 10 & Comm. Order 1, Resolution 13, filed 12/20/78)

WAC 468-42-004 STATE ROUTE 4. (1) Coal Creek Slough bridge vicinity, Cowlitz county. Parking of all vehicles is prohibited on both sides of State Route 4 from Mile Post 54.94 easterly to the west pavement seat of the Coal Creek Slough bridge, a distance of 250 feet.

(2) Longview vicinity. Parking is prohibited along State Route 4 in the vicinity of Mt. Solo Road from Mile Post 55.78 to Mile Post 55.89 on the south side, a distance of 0.11 mile; in the vicinity of 44th Avenue from Mile Post 56.95 to Mile Post 57.03 on the south side, a distance of 0.08 mile, and from Mile Post 56.96 to Mile Post 57.05 on the north side, a distance of 0.09 mile; in the vicinity of 42nd Avenue from Mile Post 57.20 to Mile Post 57.29 on the south side, a distance of 0.09 mile, and from Mile Post 57.22 to Mile Post 57.30 on the north side, a distance of 0.08 mile; and in the vicinity of 40th Avenue from Mile Post 57.43 to Mile Post 57.53 on the south side, a distance of 0.10 mile, and from Mile Post 57.46 to Mile Post 57.56 on the north side, a distance of 0.10 mile.

WSR 79-02-064
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 2, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Transportation intends to adopt, amend, or repeal rules concerning the amending of WAC 468-42-002, prohibiting parking near the southwest corner of State Route 2 and Kelsey Street near Monroe;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Monday, March 19, 1979, in Room 1D9, Highway Administration Building, Olympia, Washington 98504.

The authority under which these rules are proposed is RCW 46.61.570.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 19, 1979, and/or orally at 10:00 a.m., Monday, March 19, 1979, Room 1D9, Highway Administration Building, Olympia, Washington 98504.

Dated: February 2, 1979
By: V. W. Korf
Deputy Secretary

AMENDATORY SECTION (Amending DOT Order 10 & Comm. Order 1, Resolution 13, filed 12/20/78)

WAC 468-42-002 STATE ROUTE 2. (1) Monroe vicinity. Parking is prohibited on the south side of State Route 2 from Mile Post 14.52 to Mile Post 14.57, a distance of 0.05 mile.

(2) Sunset Falls vicinity. Parking is prohibited on the south side of SR 2 from 1.69 miles east of the Burlington Northern Railroad Undercrossing, Mile Post 36.61, to 1.79 miles east of the Burlington Northern Railroad Undercrossing, Mile Post 36.71, a distance of 0.10 mile.

((~~(2)~~)) (3) Barclay Creek vicinity. Parking is prohibited on the north side of SR 2 from 1.12 miles west of the west pavement seat of the Barclay Creek Bridge, Mile Post 38.84, to 1.01 miles west of the west pavement seat of the Barclay Creek Bridge, Mile Post 38.95, a distance of 0.11 mile.

Parking is prohibited on both sides of State Route 2, from 7:00 a.m. to 5:00 p.m. on school days only, for 50 feet on each side of Mile Post 39.73.

((~~(3)~~)) (4) Grotto vicinity. Parking is prohibited on the north side of SR 2 from 0.62 mile east of the east pavement seat of the Bridge No. 2-107, Mile Post 45.05, to 0.71 mile east of the east pavement seat of Bridge No. 2-107, Mile Post 45.14, a distance of 0.09 mile.

Parking is prohibited on the south side of SR 2 from 0.71 mile east of the east pavement seat of Bridge No. 2-107, Mile Post 45.14, to 0.79 mile east of the east pavement seat of Bridge No. 2-107, Mile Post 45.22, a distance of 0.08 mile.

((~~(4)~~)) (5) Skykomish vicinity. Parking is prohibited on the south side of SR 2 from 0.33 mile east of the east pavement seat of the south fork of the Skykomish River Bridge, Mile Post 50.05, to 0.48 mile east of the east pavement seat of the south fork of the Skykomish River Bridge, Mile Post 50.22, a distance of 0.17 mile.

Parking is prohibited on the north side of SR 2 from 0.35 mile east of the east pavement seat of the south fork of the Skykomish River Bridge, Mile Post 50.07, to 0.48 mile east of the east pavement seat of the south fork of the Skykomish River Bridge, Mile Post 50.22, a distance of 0.15 mile.

((~~(5)~~)) (6) Alpine Chainup Areas. Parking is prohibited on both sides of SR 2 from 0.11 mile east of the west pavement seat of Bridge No. 2-120, Mile Post 54.11, to 0.44 mile east of the west pavement seat of Bridge No. 2-120, Mile Post 54.44, a distance of 0.33 mile.

Parking is prohibited on both sides of SR 2 from 0.22 mile west of the Tye River Rd., Mile Post 54.79, to 0.15 mile east of the Tye River Rd., Mile Post 55.16, a distance of 0.37 mile.

((~~(6)~~)) (7) Scenic vicinity. Fifteen minute parking to be applied only when road and/or weather conditions warrant, from Mile Post 57.76 to Mile Post 57.86, a distance of 0.10 mile.

((~~(7)~~)) (8) Stevens Pass Summit and vicinity. Parking is prohibited on the following sections of SR 2 as weather and/or road conditions warrant.

(a) On both sides from 0.52 mile west of the King-Chelan County Line, Mile Post 64.11, to 0.02 mile west of the Chelan-King County Line, Mile Post 64.61, a distance of 0.50 mile.

(b) On both sides from 0.19 mile east of the King-Chelan County Line, Mile Post 64.82, to 0.44 mile east of the King-Chelan County Line, Mile Post 65.07, a distance of 0.25 mile.

(c) On the westbound shoulder from 1.40 miles east of the King-Chelan County Line, Mile Post 66.03, to 1.90 miles east of the King-Chelan County Line, Mile Post 66.53, a distance of 0.50 mile.

(d) On the eastbound shoulder from 6:00 p.m. to 7:00 p.m., from 1.40 miles east of the King-Chelan County Line, Mile Post 66.03, to 1.90 miles east of the King-Chelan County Line, Mile Post 66.53, a distance of 0.50 mile.

((~~(8)~~)) (9) Stevens Pass vicinity. Parking is prohibited for that portion of the Upper Mill Creek Road, between the east and westbound lanes, starting at Mile Post 70.33 and extending to the east for 0.17 mile.

((~~(9)~~)) (10) Dryden to Cashmere. Parking is prohibited on the north side of SR 2 from Mile Post 110.48, easterly for a distance of 1,100 feet to Mile Post 110.69, a distance of 0.21 mile.

((~~(10)~~)) (11) Wenatchee vicinity. Parking is prohibited on the east and west sides of SR 2 from approximately 490 feet north of Maple Street, Mile Post 120.68, northerly to the south pavement seat of the Wenatchee River Bridge, No. 2/402S, Mile Post 119.58, a distance of 1.10 miles.

((~~(11)~~)) (12) West Spokane vicinity. Parking is prohibited on the south side of State Route 2 from Spotted Road, Mile Post 281.22, westerly for 1,000 feet to Mile Post 281.03.

((~~(12)~~)) (13) Vicinity Junction State Route 206. No parking any time from a point 0.10 mile south of Junction State Route 206 at Mile Post 297.15, to a point 0.03 mile north of Junction Walter Avenue, at Mile Post 297.65, a distance of 0.50 mile on both east and west sides of the road.

WSR 79-02-065
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 2, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Transportation intends to adopt, amend, or repeal rules concerning the amending of WAC 468-42-012 by repealing subsection 7, a parking prohibition formerly on State Route 12 near Walla Walla, but no longer on the state highway system;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Monday, March 19, 1979, in Room 1D9, Highway Administration Building, Olympia, Washington 98504.

The authority under which these rules are proposed is RCW 46.61.570.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 19, 1979, and/or orally at 10:00 a.m., Monday, March 19, 1979, Room 1D9, Highway Administration Building, Olympia, Washington 98504.

Dated: February 2, 1979
By: V. W. Korf
Deputy Secretary

AMENDATORY SECTION (Amending DOT Order 10 & Comm. Order 1, Resolution 13, filed 12/20/78)

WAC 468-42-012 STATE ROUTE 12. (1) State Route 5 vicinity. Parking of all vehicles is prohibited along both shoulders of State Route 12 in Lewis county, State Route 5 vicinity, from Mile Post 66.62 to Mile Post 66.72, a distance of 0.10 mile.

(2) Intersection with Brim and Leonard roads. Parking of all vehicles is prohibited on both sides of State Route 12 in Lewis county from a point 0.05 mile west of the intersection with Brim and Leonard roads, Mile Post 74.12, easterly to a point 0.05 mile east of said intersection, Mile Post 74.22, a distance of 0.10 mile.

(3) Mayfield Dam road vicinity. Parking of all vehicles is prohibited along both shoulders of State Route 12 in Lewis County, Mayfield Dam road vicinity, from Mile Post 80.61 to Mile Post 80.71, a distance of 0.10 mile.

(4) White Pass Summit and vicinity. Prohibiting the parking of all vehicles annually from November 1 through April 30 between the hours of 12:00 midnight and 7:00 a.m. on the north side of State Route 12 from Mile Post 151.34 easterly to Mile Post 151.99 and on the south side of said highway from Mile Post 151.27 easterly to Mile Post 151.99; and also prohibiting the parking of all vehicles at any time on the north side of State Route 12 from Mile Post 151.28 easterly to Mile Post 151.31, a distance of 0.03 mile.

(5) Community of Sawyer. No parking any time from a point 0.06 mile west of the Junction Lombard Loop Road, at Mile Post 217.85, to a point 0.17 mile east of the Junction Lombard Loop Road at Mile Post 218.08, a distance of 0.23 mile on the south side of the road.

(6) Vicinity Humorist Road. No parking any time from a point 0.09 mile west of Junction Humorist Road, at Mile Post 296.43 to a point 0.11 mile east of Junction Humorist Road at Mile Post 296.63, a distance of 0.20 mile on both the north and south sides of the road.

(7) ((~~East of Walla Walla. Parking is prohibited on the north and south sides of State Route 12 from Wilbur Avenue, at Mile Post 339.06, the east city limits of Walla Walla, easterly to the forest service headquarters, Mile Post 339.63, a distance of 0.57 mile.~~

~~(8)~~)) Clarkston vicinity. Parking is prohibited on the north and south sides of State Route 12 (Bridge Street) from the intersection of State Route 128 (15th Street) at Mile Post 432.62, easterly to the west corporate limits of the city of Clarkston at 13th Street, Mile Post 433.12, a distance of 0.50 mile.

WSR 79-02-066
ADOPTED RULES
COUNCIL FOR POSTSECONDARY EDUCATION
[Order 1-79—Filed February 5, 1979]

Be it resolved by the Council for Postsecondary Education, acting at Greenwood Inn, Olympia, Washington, that it does promulgate and adopt the annexed rules relating to State of Washington State Need Grant Program.

This action is taken pursuant to Notice No. WSR 78-12-055 filed with the code reviser on 11/29/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Council for Postsecondary Education as authorized in RCW 28B.10.806.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 25, 1979.
By Chalmers Gail Norris
Executive Coordinator

AMENDATORY SECTION (Amending Order 2-77, filed 4/13/77)

WAC 250-20-061 PROGRAM ADMINISTRATION AND AUDITS. (1) The staff of the Council for Postsecondary Education, under the direction of the Executive Coordinator, will manage the administrative functions relative to this program.

(2) ((~~The Council for Postsecondary Education will conduct annual audits of institutions and student financial aid applicants selected by random sample in order to determine compliance with state Rules and Regulations.~~)) As a precedent to participating in the State Need Grant program, each institution must acknowledge its responsibility to administer the program according to prescribed rules and regulations and guidelines.

(3) The Council for Postsecondary Education will review institutional administrative practices to determine institutional compliance with rules and regulations and program guidelines. If such a review determines that an institution has failed to comply with program rules and regulations or guidelines, the institution will reimburse the program in the appropriate amount.

WSR 79-02-067
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed February 5, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 43.24.085, that the Director, State Department of Licensing intends to adopt, amend, or repeal rules concerning application and renewal fees for architect examination candidates and registered architects. A copy of the proposed rule changes is attached; however, changes may be made at the hearing;

that such agency will at 10:00 a.m., Tuesday, March 13, 1979, in the 4th Floor Conference Room, #4-A, Highways-Licenses Building, Olympia, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Tuesday, March 13, 1979, in the 4th Floor Conference Room, #4-A, Highways-Licenses Building, Olympia, Washington.

The authority under which these rules are proposed is RCW 43.24.085.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 13, 1979, and/or orally at 10:00 a.m., Tuesday, March 13, 1979, 4th Floor Conference Room,#4-A, Highways Licenses Building, Olympia , Washington.

Dated: February 5, 1979
By: R. Y. Woodhouse
Director

NEW SECTION

WAC 308-12-311 FEES. The following fees shall be charged by the professional licensing division of the department of licensing:

TITLE OF FEE	FEE
Examination	$45.00
Re-examination	$20.00
Initial Application	$25.00
Reciprocity	$65.00
License Renewal	$25.00
License Renewal Penalty	$25.00
Replacement Certificate	$ 3.00

WSR 79-02-068
PROPOSED RULES
BOARD OF PHARMACY
[Filed February 5, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Pharmacy intends to adopt, amend, or repeal rules concerning continuing education WAC 360-11-010, reciprocity applicants WAC 360-12-050, foreign-trained applicants WAC 360-12-065, reinstatement WAC 360-12-130, additional Schedule IV substances WAC 360-36-130, Level B pharmacy assistants utilization WAC 360-52-060, and new section WAC 360-12-015 examinations;

that such agency will at 9:00 a.m., Friday, March 16, 1979, in the large meeting room of the Burien Public Library, 14700 6th Avenue, S.W., Burien, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Friday, March 16, 1979, in the large meeting room of the Burien Public Library, 14700 6th Avenue, S.W., Burien, WA.

The authority under which these rules are proposed is RCW 18.64.005(9) and 69.50.201.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 16, 1979, and/or orally at 9:00 a.m., Friday, March 16, 1979, large meeting room of the Burien Public Library, 14700 6th Avenue, S.W., Burien, WA.

Dated: February 5, 1979
By: David C. Campbell, Jr.
Executive Secretary

AMENDATORY SECTION (Order 116, filed 11/9/73.)

WAC 360-11-010 CONTINUING EDUCATION. (1) Commencing July 1, 1975, no renewal certificate of registration shall be issued by the board of pharmacy until the applicant submits satisfactory proof to the board that during the calendar year preceding his application for renewal he has participated in courses of continuing professional pharmaceutical education of the types and number of continuing education credits specified by the board. Such continuing education is hereby declared to be a mandatory requirement for license renewal, except that pharmacists applying for the first annual renewal of their certificate of registration shall be exempt from the provisions of this regulation.

(2) A pharmacist who desires to reinstate his or her license after having been unlicensed for over one year shall, as a condition to reinstatement of his or her license, complete such continuing education credits as may be specified by the board in each individual case.

AMENDATORY SECTION (Order 121, filed 8/8/74)

WAC 360-12-050 RECIPROCITY APPLICANTS. (1) Applicants for license by reciprocity whose applications have been approved for the purpose of taking the examination may appear before the board at the time designated for examination.

(2) An applicant for reciprocity licensing who has taken and failed the full board examination given by the state of Washington shall not be licensed by reciprocity for a period of five years from the date he took the full board examination in Washington.

(3) An applicant for reciprocity licensing shall be required to take and pass the jurisprudence examination given by the board prior to being issued his or her license. The jurisprudence examination, for reciprocity applicants, shall be given at least once in every two months.

(4) An applicant for reciprocity licensing who has been out of the active practice of pharmacy in the state from which he intends to reciprocate for between three and five years must take and pass the jurisprudence examination and additionally must either serve an internship of 300 hours or take and pass such additional practical examinations as may be specified by the board in each individual case.

(5) An applicant for reciprocity licensing who has been out of the active practice of pharmacy in the state from which he intends to reciprocate for over five years must take and pass the full board examination and serve an internship of 300 hours.

AMENDATORY SECTION (Order 122, filed 9/30/74)

WAC 360-12-065 FOREIGN - TRAINED APPLICANTS. (1) Applicants whose academic training has been obtained from institutions in foreign countries who wish to register as pharmacists in the state of Washington shall complete such additional academic work, if necessary, so as to be qualified to receive a B.S. degree from an accredited college or school of pharmacy recognized by the state board of pharmacy.

(2) In addition, before registration can be extended to them, they shall pass successfully the Washington state board of pharmacy examination and meet its internship requirements.

(3) Applicants whose academic training has been obtained from institutions in foreign countries and whose credentials are such that no further education is necessary must earn a total of 1500 intern hours before licensure. The applicant must earn at least 1200 intern hours before taking the full board examination and at least 300 intern hours after taking the examination.

AMENDATORY SECTION (Reg. 2, filed 2/23/60)

WAC 360-12-130 REINSTATEMENT. ((~~Any person who has not practiced pharmacy for a period of three years shall be subject to an examination before reinstatement if the board so directs.~~))

(1) A pharmacist who desires to reinstate his or her license after having been out of the active practice of pharmacy must meet the following requirements, as applicable, in addition to paying the fee required by RCW 18.64.140:

(a) If the pharmacist has been unlicensed for three years or less, he or she must take and pass the jurisprudence examination given by the board.

(b) If the pharmacist has been unlicensed for between three and five years, he or she must take and pass the jurisprudence examination given by the board and either serve an internship of 300 hours or take and pass such further practical examinations as are specified by the board in each individual case.

(c) If the pharmacist has been unlicensed for over five years, he or she must take and pass the full board examination and serve an internship of 300 hours.

(2) A pharmacist desiring to reinstate his or her license must complete such continuing education credits as the board may specify in each individual case.

AMENDATORY SECTION (Order 146, filed 2/1/79)

WAC 360-36-130 ADDITIONAL SCHEDULE IV SUBSTANCES. The board finds that the following substances meet the schedule IV tests and are hereby placed in schedule IV in addition to those set forth in chapter 69.50 RCW. The placement in schedule IV includes any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers and salts of isomers is possible within the specific designation:

(1) Fenfluramine
(2) Diethylpropion
(3) Phentermine
(4) Pemoline
(5) Mebutamate
(6) Chlordiazepoxide (Librium)
(7) Diazepam (Valium)
(8) Oxazepam (Serax)
(9) Chlorazepate (Tranxene)
(10) Flurazepam (Dalmane)
(11) Clonazepam (Clonopin)
(12) Prazepam (Verstran)
(13) Dextropropoxyphene (Darvon).
(14) Lorazepam (Ativan)
(15) Not more than 1 milligram Difenoxin in combination with not less than 25 micrograms of Atropine Sulfate per dosage unit (Motofen).
(16) Pentazocine

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

AMENDATORY SECTION (Order 141, filed 12/9/77)

WAC 360-52-060 LEVEL B PHARMACY ASSISTANTS UTILIZATION. (1) Level B pharmacy assistants may perform, under the general supervision of a licensed pharmacist, duties including but not limited to typing of prescription labels, filing, refiling, bookkeeping, pricing or determination of cost or charge, stocking, delivery, non-professional phone inquiries, and documentation of third party reimbursements.

(2) The term "non-professional phone inquiry" as used in subsection 1 shall include only those phone inquiries which are not related to any aspect of the "practice of pharmacy" as that term is defined in RCW 18.64.011(11).

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

NEW SECTION

WAC 360-12-015 EXAMINATIONS. (1) The examination for licensure as a pharmacist shall be known as the full board examination and shall consist of both theoretical and practical sections in such form as may be determined by the board.

(2) The score required to pass the overall examination shall be 75% correct answers. In addition, the scores achieved in the jurisprudence and written practice of pharmacy sections of the exam shall be no lower than 75% and the scores achieved on the other sections of the exam shall be no lower than 60% correct answers.

(3) An examinee failing any portion of the examination other than the jurisprudence section shall remain on intern status until the next regularly scheduled full board examination.

(4) An examinee failing the jurisprudence portion of the full board examination shall be allowed one retake of the jurisprudence portion at a time and place to be specified by the board.

(5) An examinee failing the retake of the jurisprudence examination shall be required to retake the full board examination at the next regularly scheduled time the full board examination is offered.

WSR 79-02-069
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed February 5, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning payment of foster care, amending WAC 388-70-022;

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart, Executive Assistant
Department of Social and Health Services
Mailstop OB-44 C
Olympia, Washington 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, Washington conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, Washington.

The authority under which these rules are proposed is RCW 74.08.090.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 21, 1979, and/or orally at 10:00 a.m., Wednesday, March 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, Washington.

Dated: February 5, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1335, filed 9/1/78)

WAC 388-70-022 PAYMENT OF FOSTER CARE. (1) Payment is made for foster care upon:

(a) Documentation of the need for the type and level foster care as determined by the department and

(b) Documentation of authority for the placement of a child in foster care as required by WAC 388-70-013 and

(c) Receipt of a request for payment of the care to be provided.

(2) All persons and agencies to whom the department makes payment must be appropriately licensed and approved, or, if not subject to licensing, be certified or otherwise approved as meeting licensing or other appropriate requirements of the department.

(3) Payment is made for out-of-state foster care placements only after approval from the two state offices involved.

(4) ((~~In all instances,~~)) Authorization of payment is the responsibility of ((~~financial~~)) social services ((~~and~~)). The determination of the amount of parental support, except when stated in a superior court order, is the responsibility of the office of support enforcement.

WSR 79-02-070
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed February 5, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Board of Education intends to adopt, amend, or repeal rules concerning chapter 180-30 WAC, school building construction, to incorporate qualification criteria for providing state assistance to school districts in school building projects.

On March 16, 1979, subsequent to the hearing scheduled by this notice, the state board may revise the proposed rules filed with this notice by amending or deleting provisions thereof or by adding additional qualification criteria;

that such agency will at 9:00 a.m., Thursday, March 15, 1979, in the DSHS Auditorium, OB 2, 12th and Franklin Streets, Olympia, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Friday, March 16, 1979, in the DSHS Auditorium, OB 2, 12th and Franklin Streets, Olympia, Washington.

The authority under which these rules are proposed is RCW 28A.47.801 through 28A.47.811.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 15, 1979, and/or orally at 9:00 a.m., Thursday, March 15, 1979, in the DSHS Auditorium, OB 2, 12th and Franklin Streets, Olympia, Washington.

Dated: February 5, 1979
By: Wm. Ray Broadhead
Secretary

AMENDATORY SECTION (Amending Order 5-75, filed 5/27/75)

WAC 180-30-110 BASIC STATE SUPPORT LEVEL—SPACE ALLOCATIONS. (1) Space allowance for state matching purposes. State assistance in the construction of school plant facilities for grades kindergarten through twelve, vocational-technical institute facilities and facilities for the handicapped based on space allowance for state matching purposes shall be computed in accordance with the following table:

GRADE OR FACILITY	MAXIMUM MATCHABLE AREA PER FULL-TIME EQUIVALENT STUDENT
((~~Kindergarten~~))	((~~45 sq. ft. per student~~))
Grades ((one)) kindergarten through six	((~~90 sq. ft. per student~~)) 80 square feet
Grades seven ((~~through twelve~~)) and eight	((~~130 sq. ft. per student~~)) 110 square feet
Grades nine through twelve	120 square feet
Vocational-technical institutes	((~~150 sq. ft. per student~~)) 140 square feet
Facilities for the handicapped	((~~150 sq. ft. per student~~)) 140 square feet

((~~Additional footage may be granted to~~)) Senior or four-year high schools with fewer than 400 students may be given consideration for approval of additional footage, the total area not to exceed ((~~52,000~~)) 48,000 square feet.

(2) Enrollment project provisions. In planning for construction of all facilities for grades kindergarten through twelve, vocational-technical institute facilities and facilities for the handicapped, a school district may estimate capacity needs on the basis of (a) a two((~~-year~~)) or five-year cohort survival or adjusted cohort survival enrollment projection for elementary schools, whichever is the lesser, and (b) a three((~~-year~~)) or five-year cohort survival or adjusted cohort survival enrollment projection for secondary schools and vocational-technical institutes, whichever is the lesser: PROVIDED FURTHER, That such limitations may be waived as shall be determined by the state board of education in its discretion.

(3) Determination of existing capacity. In order to determine the net total square foot area eligible for state matching purposes, the capacity of existing facilities shall be computed in accordance with the table set forth in subsection (1) above: PROVIDED, That in facilities judged by the state board of education to contain an inordinate footage unusable for instruction purposes, the computation may be adjusted to reflect a reasonable estimate of existing capacity: PROVIDED FURTHER, That grades kindergarten through eight facilities for which preliminary project applications were approved by the state board of education subsequent to July 1, 1973, maximum matchable area shall be computed using 90 square feet per full-time equivalent student and for vocational-technical institute and handicapped facilities receiving such preliminary project approval subsequent to July 1, 1973, the factor used shall be 150 square feet per full-time equivalent student; for grades seven through twelve facilities receiving such preliminary project approval subsequent to July 1, 1975, the factor shall be 130 square feet per full-time equivalent student. Maximum matchable area per full-time equivalent student for all facilities receiving preliminary project approval subsequent to July 1, 1979, shall be computed in accordance with the table set forth in WAC 180-30-110(1).

AMENDATORY SECTION (Amending Order 5-75, filed 5/27/75)

WAC 180-30-250 ADDITIONAL ALLOTMENT TO MEET SCHOOL HOUSING EMERGENCY. (1) General provisions. A school district which is eligible for an allotment of funds for school building construction under prevailing statutory provisions and rules and regulations of the state board of education and is found by the state board to have a school housing emergency requiring an allotment of state funds in excess of the amount allocable under the statutory formula may be considered for an additional allotment of funds: PROVIDED, That the total amount allotted shall not exceed ninety percent of the total project cost determined eligible for state matching purposes: PROVIDED FURTHER, That such additional allotment of funds shall be subject to the following provision:

At any time thereafter when the state board of education finds that the financial position of such school district has improved through an increase in its taxable valuation (value of its taxable property) or through retirement of bonded indebtedness or through a reduction in school housing requirement, or for any combination of these reasons, the amount of such additional allotment, or any part of such amount as the state board of education determines, shall be deducted, under terms and conditions prescribed by the board, from any state school building construction funds which might otherwise be provided to such district.

(2) Definition of school housing emergency. For the purpose of this section, a school housing emergency shall be deemed to exist when a school district eligible for state assistance cannot provide the necessary

school housing for the children of its district after first applying to the cost of the needed construction the funds from sources as follows:

(((~~(a) All of the remaining uncommitted moneys in the building fund of the school district;~~

~~(b) School district local funds derived through the authorization of bonds and/or excess tax levies for the building fund equivalent to its remaining bond capacity to two and one-half percent of the value of its taxable property plus such further amount as shall be determined by the state board of education will not result in an excessive local effort; and~~

~~(c)~~)) State funds and local funds computed in accordance with the statutory formula plus any other funds required in addition to the basic state support level.

(3) Regulations governing. In addition to the regulations herein prescribed, the regulations governing the basic state assistance program shall be applied to an application for additional state assistance to meet a school housing emergency.

(a) A school district must have authorized indebtedness, exclusive of bond redemption levies, equivalent to three and one-half percent or more of the value of its taxable property, and must provide a sum equivalent to two and one-half percent of its assessed valuation to matchable program costs plus any uncommitted moneys in its building fund; or

(b) A school district must have authorized indebtedness to the statutory limit of five percent and place all uncommitted moneys in its building fund toward matchable costs of the proposed emergency program; and

(c) A school district must have experienced an enrollment growth of at least twenty percent during a consecutive three-year period which shall include the latest October 1 for which enrollment data are available.

(4) Application for additional allotment of funds. Applications for additional allotments of funds to meet school housing emergencies shall be judged on the basis of (a) past and projected enrollment increases, (b) capacity of existing facilities and (c) past and current effort by the school district to provide capital funds and the disposition thereof.

(((~~(4)~~))) (5) Determination of amount of additional allotment. The amount of an additional allotment of funds to a school district judged by the state board of education to have a school housing emergency shall be determined by the state board on the basis of the need for school housing, the financial resources available to the school district through the authorization of bonds and/or excess tax levies and the total funds available to the state board of education for the biennial period to meet state-wide needs for state assistance in providing school facilities.

WSR 79-02-071
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 15.13 RCW, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning consolidating into a new order, orders numbered 1229, 1230, 1320, 1321, 1322 and amending some Washington state standards for nursery stock and adopting some additional standards for nursery stock, adopting WAC 16-432-010, 16-432-020, 16-432-030, 16-432-040, 16,432-050, 16-432-060, 16-432-070, 16-432-080, 16-432-090, 16-432-100, 16-432-110, 16-432-120 and 16-432-130; repealing WAC 16-427-001, 16-427-010, 16-427-015, 16-427-020, 16-427-025, 16-427-030, 16-427-040, 16-427-050, 16-427-060, 16-427-070, 16-428-001 , 16-428-010, 16-428-020, 16-428-030, 16-428-040, 16-428-050, 16-428-060, 16-428-070, 16-429-001, 16-429-010, 16-429-020, 16-429-030, 16-429-040, 16-429-050, 16-429-060, 16-429-070, 16-429-080, 16-429-090, 16-429-100, 16-430-001, 16-430-010, 16-430-015, 16-430-020, 16-430-025, 16-430-040, 16-430-050, 16-430-060, 16-430-070, 16-430-100, 16-430-110, 16-454-050, 16-454-055, 16-454-060, 16-454-065, 16-454-070, 16-454-075, 16-454-080, 16-454-085, 16-454-090 and 16-454-095;

that such agency will at 10:00 a.m., Wednesday, March 14, 1979, in the 1st Floor Conference Room, General Administration Building, Olympia, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:15 a.m., Wednesday, March 21, 1979, in the 4th Floor Conference Room, General Administration Building, Olympia.

The authority under which these rules are proposed is chapter 15.13 RCW.

Interested persons may submit data, views, or arguments to this agency orally at 10:00 a.m., Wednesday, March 14, 1979, 1st Floor Conference Room, General Administration Building, Olympia.

Dated: February 6, 1979
By: Arthur R. Hurd
Assistant Supervisor
Plant Industry Division

Chapter 16-432 WAC
WASHINGTON STATE STANDARDS FOR NURSERY STOCK

NEW SECTION

WAC 16-432-010 GENERAL. (1) Grades and standards. Use of Washington grades is optional. If these grades are used, however, the plants must meet the grade specification.

(2) Nursery stock. Shall be true to name, and of the size or grade stated.

(3) Names. Usage shall conform to the rules of the "International Code of Nomenclature for Cultivated Plants".

(4) Quality. Shall be normal for the species when grown under proper cultural practices. Fertile soil, ample spacing, regular cultivation, weed control, spraying, adequate moisture, pruning and shearing, transplanting or root pruning not less than once in four years, depending on species, are all necessary requirements for normal quality nursery stock. All nursery stock shall be viable, substantially free from pests and disease, and undamaged. Roots shall not be subject to long exposure to drying winds, sun, or frost between digging and delivery. Root balls shall be free from pernicious perennial weeds.

(5) Packing or wrapping. Shall be adequate for the protection of the stock and sufficient to prevent heating or drying out during storage and/or transport.

(6) Grading.

(a) A uniform grading system for height and/or spread or caliper is recommended for, and is described, under each specific classification of nursery stock.

(b) In all cases, for purposes of simplicity, only one size per "grade" will be listed. That size will be the minimum size allowable for that "grade" and shall include plants from that size up to, but not including, the larger size. (Example: Taxus C. Brownii 30"; Betula papyrifera 8")

(7) Compliance with federal and state law. Plants regardless of certification as to grade, must comply with requirements and regulations of the United States department of agriculture, agricultural research service, plant quarantine division, and state laws.

NEW SECTION

WAC 16-432-020 MARKING REQUIREMENTS. All plants shall be plainly and legibly marked with stamped, mechanically printed, typewritten letters not less than one-fourth inch in height.

(1) Labeling.

(a) All collected plants shall be labeled "collected".

(b) When plants are on display for retail sales, one plant per block shall be labeled with correct name.

(c) On mixed blocks, each plant shall be properly labeled.

(d) Wholesale lots sold or shipped with two or more plants must have each variety and size segregated and tagged when requested by purchaser.

(e) Any substitution as to variety or grade shall be clearly indicated on the packing slip and on the pertinent labels.

(2) Advertising. All advertising of nursery stock shall include size of material advertised when the ad includes prices.

NEW SECTION

WAC 16-432-030 TOLERANCE. In order to allow for variations incident to proper grading and handling, not more than two percent, by count, of any lot may be below the requirements of this grade: PROVIDED, That a lower tolerance may be established by written contract between the parties concerned.

NEW SECTION

WAC 16-432-040 CONTAINER SPECIFICATIONS. (1) A container is a rigid self-supporting unit used to grow plant material.

(2) All standards and specifications of nursery stock shall be applicable to container grown stock.

(3) Container grown nursery stock shall be established in the container with branched root system to the extremity of the container (side walls) EXCEPT in the case of plants that are repotted in sterile media to meet export requirements.

(4) Plants in pots or other containers shall be in a container of adequate size for the size of the plant and shall have been acclimated to outside conditions, should be equal to and acceptable for field grown stock.

(5) Size of container shall be specified in addition to size of plant.

(6) A container is not a size grade.

NEW SECTION

WAC 16-432-050 TERMINOLOGY. CANE - Shall be considered a primary stem which starts from the ground at a point not higher than one-fourth the height of the plant.

STEM - Is a major structural portion of a plant originating in the lower one-third of the plant; the main axis of a plant: Leaf bearing and flower bearing as distinguished from the root bearing axis.

LEADER - The main stem or trunk that forms the apex of a tree.

CLUMP - Plant with two or more main stems at the ground line with the number of stems to be specified.

MULTI-STEM - Plant with two or more main stems starting near the ground from a primary stem.

ABBREVIATIONS:

"C" means cutting;

"Div" means division;

"G" means grafted;

"L" means layered;

"R.P." means root pruned;

"S." means seedling;

"T." means transplanted. Use one T. for each time transplanted;

"2-0" means seedling two years old and not transplanted;

"2-1" means seedling three years old and once transplanted.

Definitions not specified above used in this order will be found in "A Technical Glossary of Horticultural and Landscape Terminology," Library of Congress Card Catalog Number 78-165521.

NEW SECTION

WAC 16-432-060 PLANT SPECIFICATIONS. (1) BALLED PLANTS.

(a) Definitions.

(i) Balled and burlapped. Plants prepared for transplanting by digging them so that the soil immediately around the roots remains undisturbed. The ball of earth is then bound up in burlap or similar mesh fabrics. Abbreviated: B & B.

(ii) Balled and potted plants. Field grown plants dug with the ball of earth still intact in which they are growing and in lieu of burlapping are placed in a container to retain the ball unbroken. Abbreviated: B & P.

(iii) Balled wire container. A wire container may be used in lieu of burlap on large plants. None of above three are container grown.

(b) Ball sizes.

(i) Ball sizes shall always be of a diameter and depth to encompass the fibrous and feeding root system necessary for the full recovery of the plant named.

(ii) Minimum ball size specifications for balled and potted plants shall be the same as for balled and burlapped plants.

(2) BARE ROOT PLANTS. All normal quality nursery stock shall have adequate fibrous root system that has been developed by proper cultivating practices, particularly transplanting or root pruning. Pertinent facts as to when larger nursery stock was transplanted or root pruned should be available to the buyer.

(3) COLLECTED PLANTS.

(a) Collected plants shall be graded in the same manner as nursery grown ornamental evergreen plants.

(b) Native collected plant material shall be considered as nursery stock if it is grown in a nursery for a minimum of six months including at least three-month initiation of top growth.

NEW SECTION

WAC 16-432-070 YOUNG PLANTS SPECIFICATIONS. (1) GENERAL SPECIFICATIONS.

(a) Definition. This section is to cover small plants not covered in other sections of the standard. (Example: Seedling, ground covers, vines and lining out stock.)

(b) Quality. The quality of all young plants offered is assumed to be normal for the species or variety unless otherwise designated.

(c) Height measurement. Height measurement is from the ground level except on grafted stock.

(d) Trimming. Tops or roots will not be trimmed unless specified by grower or requested by purchaser. (See understock for grafting for general grading by caliper.)

(2) MEASUREMENT DESIGNATION.

(a) Dwarf and semi-dwarf.

Use two-inch intervals up to twelve inches (4" - 6" - 8" - 10" - 12")

Use three-inch intervals from twelve inches up (12" - 15" - 18")

(Examples: Berberis atropurpureum 'Crimson Pigmy'
Picea abies 'Nidiformis'
Sedums)

(b) Medium grower. Use three-inch intervals up.

(Examples: Azalea mollis
Prunus laurocerasus 'Zabeliana'
Hedera helix)

(c) Fast grower. Use six-inch intervals up.

(Examples: Acer rubrum
Betula alba
Cytisus 'Burkwoodi'
Forsythia
Pinus, except dwarf type)

(3) TYPES OF PLANTS.

(a) Type 1 - No stems. Measurement designates spread or age.

(Examples: Ajuga reptans
Festuca ovina glauca
Sagina subulata
Sedums)

(b) Type 2 - Single stem.

(i) Spreading. Measurement designates spread, height not considered.

(Examples: Ceanothus gloriosus
Cotoneaster dammeri
Erica carnea
Juniperus horizontalis 'Wiltonii'
Mahonia nervosa)

(ii) Semi-spreading. Measurement by spread at least twice height.

(Examples: Ilex crenata 'Helleri'
Juniperus chinensis pfitzeriana)

(iii) Globe. Measurement spread equal to height.

(Examples: Berberis thunbergi 'Crimson Pygmy'
Deutzia gracilis
Thuja oc. 'Little Gem')

(iv) Medium upright. Measurement designates height. Height spread ratio of two to one.

(Examples: Ilex crenata 'Rotundifolia'
Pieris Japonica
Rhododendron obtusum 'Hinodegiri')

(v) Upright. Measurement designates height or age.

(Examples: Acer palmatum
Betula papyrifera

Mahonia aquifolium
Myrica californica
Pseudotsuga menzeisii)

(c) Type 3 – Stoloniferous. Measurement – fullness or number of stolons.

(Examples: Gaultheria procumbens
Pachysandra terminalis
Vinca minor)

(d) Type 4 – Vining. Measurement designates lengths and/or numbers, runners and/or age.

(Examples: Hedera helix
Clematis
Wisteria)

NEW SECTION

WAC 16-432-080 DECIDUOUS SHRUBS. TYPES. Deciduous shrubs are considered under four groups, according to their habit, number of stems and root spread.

(1) Type 1 – Dwarf shrubs.

Measurement designation
2" intervals to 12"
3" intervals to 18"
6" intervals to 36"

6"shrubs shall have no less than 2 stems,
9" shrubs shall have no less than 3 stems,
12" shrubs shall have no less than 4 stems,
15" shrubs shall have no less than 4 stems,
18" shrubs shall have no less than 5 stems,
21" shrubs shall have no less than 5 stems,
2' shrubs shall have no less than 6 stems,
2-1/2' shrubs shall have no less than 7 stems,

Examples: Berberis thunbergi 'Crimson Pygmy'
Deutzia (dwarf forms)
Potentilla fruticosa
Spirea 'Anthony Waterer'

(2) Type 2 – Semi-dwarf.

Measurement designation
3" intervals to 18"
6" intervals to 36"

6" shrubs shall have no less than 2 stems,
9" shrubs shall have no less than 3 stems,
12" shrubs shall have no less than 3 stems,
15" shrubs shall have no less than 3 stems,
18" shrubs shall have no less than 3 stems,
21" Shrubs shall have no less than 3 stems,
2' shrubs shall have no less than 4 stems,
2-1/2' shrubs shall have no less than 4 stems,

Examples: Azalea (deciduous)
Berberis thunbergi
Cornus alba 'Sibirica'
Rosa multiflora setigera
Ligustrum
Potentilla

(3) Type 3 – Strong growing.

Measurement designation
6" intervals to 36"
1' intervals to 5'

6" shrubs shall have no less than 2 stems,
12" shrubs shall have no less than 3 stems,
18" shrubs shall have no less than 3 stems,
2' shrubs shall have no less than 3 stems,
3' shrubs shall have no less than 4 stems,
4' shrubs shall have no less than 5 stems,

Examples: Chaenomeles
Forsythia (all varieties)
Hydrangea
Philadelphus virginalis
Prunus (bush forms)
Symphoricarpos albus
Syringa chinesis
Viburnum tomentosum

(4) Type 4 – Strong growing, light structure.

Measurement designation
Same as Type 3

6" shrubs shall have no less than 1 stem,
12" shrubs shall have no less than 2 stems,
18" shrubs shall have no less than 2 stems,
2' shrubs shall have no less than 2 stems,
3' shrubs shall have no less than 3 stems,
4' shrubs shall have no less than 4 stems,

Examples: Cotinus coggygria
Syringa vulgaris
Tamarix

NEW SECTION

WAC 16-432-090 CONIFEROUS EVERGREENS. (1) Definition. Needle-bearing plants. A plant which bears seeds in a cone; with the exception of the larches and the bald cypress, practically all conifers are evergreen.

(2) Grade terms. (Growth patterns)

(a) Dwarf or slow grower – Use 2-inch intervals up to 12 inches.

(b) Medium grower – Use 3-inch intervals up to 24 inches.

(c) Fast grower – Use 6-inch intervals up to 5 feet.

(3) Measurement of types.

(a) Type 1 – Spreading. Measurement designates spread (height not considered).

Example: Juniperus horizontalis (and varieties)
Pinus mugho
Taxus baccata 'Repandens'

(b) Type 2 – Globe or dwarf. Measurement designates height. Spread should not be less than two-thirds of the height.

Example: Chamaecyparis obtusa 'Nana'
Picea abies 'Nidiformis'
Thuja occidentalis 'Little Gem'

(c) Type 3 – Cone (Pyramidal). Measurement designates height. Spread should not be less than one-half the height.

Example: Chamaecyparis obtusa Gracilis
Cedrus deodara
Taxus cuspidata capitata

Thuja occidentalis

(d) Type 4 – Broad upright. Measurement designates height. Spread should not be less than one-third the height.

Example: Cham. L. 'Allumii'
Juniperus chinensis 'Keteleeri'
Picea abies
Pinus nigra

(e) Type 5 – Columnar. Measurement designates height. Spread should not be less than one-fifth the height.

Example: Cupressus sempervirens (Italian Cypress)
Thuja occidentalis, orientalis (columnar type varieties)
Taxus media 'Hicksii'
Taxus baccata 'Fastigiata'

NEW SECTION

WAC 16-432-100 BROADLEAF EVERGREEN SHRUBS. (1) GENERAL SPECIFICATIONS.

(a) Definition. Plants which maintain live foliage throughout the year.

(b) Measurement of height should begin at the ground line and should continue up to where the main part of the plant ends and not to the tip of a thin shoot.

(c) Measurement at spread should be average fill of plant and not the greatest diameter.

(d) All unbranched plants shall be so designated when spread is involved in the measurement.

(e) For tree forms, see shade and flowering trees.

(2) GRADE TERMS (Growth patterns).

(a) Dwarf or slow grower – Use 2-inch intervals up to 12 inches.

(b) Medium grower – Use 3-inch intervals up to 24 inches.

(c) Fast grower – Use 6-inch intervals up to 5 feet.

(3) MEASUREMENT OF TYPES.

(a) Type 1 – Spreading or semi-spreading. Measurement designates spread (height not considered).

Example: Cotoneaster dammeri
Mahonia nervosa
Azalea 'Gumpo'
Rhododendron 'Elisabeth'
Erica in variety

(b) Type 2 – Globe or dwarf. Measurement designates height. Spread should not be less than two-thirds of the height.

Example: Buxus sempervirens 'Truedwarf'
Ilex crenata 'Convexa'
Berberis Verruculosa
Rhododendron 'Unique'
Pieris japonica

(c) Type 3 – Cone pyramidal. Measurement designates height. Spread should not be less than one-half the width.

Example: Chamaecyparis obtusa Gracilis
Cedrus deodara
Taxus cuspidata capitata
Thuja occidentalis

(d) Type 4 – Broad upright. Measurement designates height. The spread should not be less than one-third of the height.

Example: Camellia japonica
Mahonia aquifolium
Pyracantha (tall type)
Virburnum tinus
Rhododendron 'Arthur Bedford'
Ilex aquifolium
Ilex opaca

(e) Type 5 – Columnar cone. Measurement designates height. Spread should not be less than one-fifth of the height.

Example: Rhododendron 'Yellow Hammer'
Ilex crenata 'Mariesii'
Cotoneaster 'Hybridus Pendulus'

NEW SECTION

WAC 16-432-110 FRUIT TREES. (1) GENERAL.
Caliper should be taken two inches above bud.
Height should be taken from the ground level or collar.
Caliper shall govern.
All trees should have reasonably straight trunks.

(2) MEASUREMENT DESIGNATIONS.

(a) Branched trees.

5/16" and larger should be branched except one year Sweet Cherry.
5/8" and larger should have three or more side branches.

Caliper (in inches)	Recommended Metric Equivalent	Minimum Heights unless otherwise specified Feet	Metric
Standard Apple, Cherry-Sweet, Peach, Almond, Nectarine, Pear, Apricot, Prune and Plum (1 and 2 years)			
1"	25 mm	6'	1.75m
7/8"	22 mm	5'	1.5 m
3/4"	20 mm	5'	1.5 m
5/8"	16 mm	4'	1.25 m
1/2"	13 mm	3-1/2'	1.0 m
3/8"	10 mm	3'	90 cm
5/16"	8 mm	2-1/2'	80 cm
1/4"	6 mm	2'	60 cm
Standard Cherry-Sour and Dwarf Peach, Pear, Nectarine, Apricot, Prune and Plum (on clonal rootstock only)			
1"	25 mm	5'	1.5 m
7/8"	22 mm	4-1/2'	1.4 m
3/4"	20 mm	4-1/2'	1.4 m
5/8"	16 mm	4'	1.25 m
1/2"	13 mm	3-1/2	1.0 m
3/8"	10 mm	3'	90 cm
5/16"	8 mm	2-1/2'	80 cm
1/4"	6 mm	2'	60 cm
Dwarf apple (including clonal rootstocks and interstem trees)			
1"	25 mm	5-1/2'	1.6 m
7/8"	22 mm	5'	1.5 m
3/4"	20 mm	5'	1.5 m
5/8"	16 mm	4-1/2'	1.4 m
1/2"	13 mm	4'	1.25 m
3/8"	10 mm	3-1/2'	1.0 m
5/16"	8 mm	3'	90 cm
1/4"	6 mm	2'	60 cm

(b) Partially branched or one-year whips. Measured by caliper only.

1" — 7/8" — 3/4" — 5/8" — 1/2" — 3/8" — 1/4"

(c) For small tree seedlings and dwarf understock see "Understock for grafting and budding."

NEW SECTION

WAC 116-432-120 UNDERSTOCK FOR GRAFTING AND BUDDING. Measurement designations.

(1) FRUIT AND TREE SEEDLINGS.

(a) Caliper measurement. Caliper shall be taken at the collar or ground line. Grades should be designated as follows:

Caliper (in inches)	Recommended Metric Equivalent	Minimum Height (in inches)
1/2"	12 mm	12"
3/8"	9 mm	9"
1/4"	7 mm	7"
3/16"	5 mm	5"
2/16"	4 mm	4"
1/16"	3 mm	4"

Exception: Grade No. 1 "straight" of apple seedlings should be graded from 3/16-inch caliper (optional metric range should be from 5 mm to 8 mm).

(b) Seedlings with limbs. In case of seedlings with limbs, there should be at least two inches (5 cm) above the collar free of limbs for a minimum of one-half of the circumference of the seedling.

(c) Root descriptions. In case of apple and pear seedlings, where the root description is given as branched or straight, the following shall apply:

(i) Branched root: Not less than three root branches must be present within five inches (12.5 cm) from the collar.

(ii) Straight root: The root shall carry the minimum caliper of the grade for not less than six inches (15 cm) from the collar.

(2) Vegetatively propagated fruit stock.

(a) In the case of fruit understock grown from "cuttings" or from layerage, the caliper shall be taken on the original cutting or layer at a point ten inches (25 cm) above the collar.

(b) All forms of vegetatively propagated fruit tree rootstock should have a minimum of four rootlets on each cutting or layer.

(i) Examples: Merton Malling Nos. 111, 106, M-7A, M-9, M-26, M-27 apple, Prunus marriana and Prunus myrobolan.

(ii) Exception: Any rootstocks not meeting the above specifications for root systems should be labeled as "unclassified" grade and the minimum numbers of rootlets specified.

(3) Conifers – Evergreens.

Height	Minimum Caliper	
6"	1/4"	7 mm
5"	3/16"	5 mm
4"	1/8"	4 mm
4"	1/16"	3 mm

NEW SECTION

WAC 16-432-130 NURSERY STOCK STANDARD FOR ROSES. (1) GENERAL SPECIFICATIONS. (a) Washington grades No. 1, No. 1-1/2 and No. 2 should meet the specified size requirements in the table under size terms.

(b) Classification of roses will be based on the latest publication of Modern Roses.

(2) MEASUREMENT DESIGNATIONS.

(a) Maximum branching height shall be three inches above bud union.

(b) The specifications outlined for length of canes is applicable before pruning in preparation for sale.

Tea, Hybrid Tea, Grandiflora, Rugosa Hybrids, Perpetuals, and Moss Roses and miscellaneous Bush Roses.

	Strong Growing Number of Canes	Ht.	Light Growing Number of Canes	Ht.
No. 1	3 (2 of which are	16")	3 (2 of which are	16")
No. 1-1/2	2	15"	2	13"
No. 2	2	12"	2	10"
Floribunda				
No. 1	3 (2 of which are	15")		
No. 1-1/2	2	14"		
No. 2	2	12"		
Polyantha and Low Growing Floribunda				
No. 1	4	10"		
No. 1-1/2	3	8"		
No. 2	2	8"		
Climbing				
No. 1	3	16"		
No. 1-1/2	2	13"		
No. 2	2	12"		
Wichuriana and Wachuriana Types				
No. 1	4	16"		
No. 1-1/2	3	13"		
No. 2	3	10"		

REPEALER

Chapter 16-427 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 16-427-001 PROMULGATION.
(2) WAC 16-427-010 GRADES AND STANDARDS.
(3) WAC 16-427-015 TOLERANCE.
(4) WAC 16-427-020 SIZE TERMS.
(5) WAC 16-427-025 BALLED AND BURLAPPED AND CONTAINER GROWN.
(6) WAC 16-427-030 MARKING REQUIREMENTS.
(7) WAC 16-427-040 DEFINITION OF TERMS.
(8) WAC 16-427-050 COMPLIANCE WITH FEDERAL AND STATE LAW.
(9) WAC 16-427-060 COLLECTED PLANTS.
(10) WAC 16-427-070 EFFECTIVE DATE.

REPEALER

Chapter 16-428 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 16-428-001 PROMULGATION.
(2) WAC 16-428-010 GRADES AND STANDARDS.
(3) WAC 16-428-020 MEASUREMENT.
(4) WAC 16-428-030 MARKING.
(5) WAC 16-428-040 COMPLIANCE WITH FEDERAL AND STATE LAW.
(6) WAC 16-428-050 CONTAINER GROWN.
(7) WAC 16-428-060 SIZE TERMS.
(8) WAC 16-428-070 EFFECTIVE DATE.

REPEALER

Chapter 16-429 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 16-429-001 PROMULGATION.
(2) WAC 16-429-010 GRADES AND STANDARDS.
(3) WAC 16-429-020 TOLERANCE.
(4) WAC 16-429-030 MARKING REQUIREMENTS.
(5) WAC 16-429-040 COMPLIANCE WITH FEDERAL AND STATE LAW.
(6) WAC 16-429-050 COLLECTED PLANTS.
(7) WAC 16-429-060 SIZE TERMS.
(8) WAC 16-429-070 CONDITION OF ROOT SYSTEM.
(9) WAC 16-429-080 DEFINITION OF TERMS.
(10) WAC 16-429-090 MEASUREMENT OF TYPES.
(11) WAC 16-429-100 EFFECTIVE DATE.

REPEALER

Chapter 16-430 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 16-430-001 PROMULGATION.
(2) WAC 16-430-010 GRADES AND STANDARDS.
(3) WAC 16-430-015 TOLERANCE.
(4) WAC 16-430-020 SIZE TERMS.
(5) WAC 16-430-025 BALLED AND BURLAPPED AND CONTAINER GROWN.
(6) WAC 16-430-040 MARKING REQUIREMENTS.
(7) WAC 16-430-050 DEFINITION OF TERMS.
(8) WAC 16-430-060 MEASUREMENT OF TYPES.
(9) WAC 16-430-070 COMPLIANCE WITH FEDERAL AND STATE LAW.
(10) WAC 16-430-100 COLLECTED PLANTS.
(11) WAC 16-430-110 EFFECTIVE DATE.

REPEALER

Chapter 16-454 of the Washington Administrative Code is repealed in its entirety as follows:

(1) WAC 16-454-050 PROMULGATION.
(2) WAC 16-454-055 GRADES AND STANDARDS.
(3) WAC 16-454-060 TOLERANCE.
(4) WAC 16-454-065 MARKING REQUIREMENTS.
(5) WAC 16-454-070 COMPLIANCE WITH FEDERAL AND STATE LAW.
(6) WAC 16-454-075 COLLECTED PLANTS.
(7) WAC 16-454-080 MEASUREMENT.
(8) WAC 16-454-085 SIZE TERMS.
(9) WAC 16-454-090 CONTAINER GROWN ROSES.
(10) WAC 16-454-095 EFFECTIVE DATE.

WSR 79-02-072
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 15.13 RCW, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning the amending of WAC 16-401-025 and 16-401-030 to change nursery fee structure and repealing WAC 16-401-003 (Promulgation) and WAC 16-401-035 (effective date);

that such agency will at 10:30 a.m., Wednesday, March 14, 1979, in the 1st Floor Conference Room, General Administration Building, Olympia, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 21, 1979, in the 4th Floor Conference Room, General Administration Building, Olympia.

The authority under which these rules are proposed is chapter 15.13 RCW.

Interested persons may submit data, views, or arguments to this agency orally at 10:30 a.m., Wednesday, March 14, 1979, 1st Floor Conference Room, General Administration Building, Olympia.

Dated: February 6, 1979
By: Arthur R. Hurd
Assistant Supervisor
Plant Industry Division

AMENDATORY SECTION (Amending Order 1315, filed 5/30/73)

WAC 16-401-025 REQUESTED INSPECTIONS. Requested inspections shall be at the rate of $((~~8.25~~))12.00 per hour, except as listed below, and shall include, but not be limited to:

Third Party inspections, travel time
Minimum charge ..... $ ((~~8.25~~))12.00/hr.
Phytosanitary Certificate((~~, S.F. 9030~~))
Minimum charge each inspection ..... ((~~3.50 ea.~~))
First Phytosanitary $6.00
Each additional Phytosanitary 2.00
Nursery Stock Inspection Certificate((~~; S.F. 574;~~)) Minimum charge ..... ((~~3.50 ea.~~)) $6.00
Fumigation Certificate((~~, S.F. 6809~~))
Minimum charge ..... ((~~15.00~~))18.00 ea.
Field Inspections
Field inspections of flowering bulbs, corms, rhizomes, or other field crops, each year
Per acre or fraction thereof $2.00
Certificate of Inspection of Nursery Stock((~~, S.F. 6708;~~)) Minimum charge:
Licensed Nurseryman ..... No Fee
Unlicensed Nurseryman ..... 1.00 ea.
Nursery Sticker((~~, S.F. 568~~))
In lots of 250 ..... .01 ea.
Less than 250 (Minimum 10) ..... .10 ea.
Nursery Stock Inspection Certificate Tag((~~, S.F. 7788~~))
In lots of 250 ..... .01 ea.
Less than 250 (Minimum 10) ..... .10 ea.

When requested inspections are in combination, the charge will be $((~~8.25~~))12.00 per hour and minimum charges will be waived. EXCEPTION: When combination inspections include fumigation, a minimum charge will be $((~~15.00~~))18.00.

AMENDATORY SECTION (Amending Order 1315, filed 5/30/73)

WAC 16-401-030 EXTRA CHARGES. Extra charges on all requested inspections under WAC 16-401-025 shall be at the rate of $((~~8.25~~))12.00 per hour above the minimum charges listed.

(1) For all inspection services performed after 5:00 p.m. or on Saturdays, Sundays or state legal holidays, an hourly charge equivalent of $((~~12.38~~))18.00 per hour for actual hours spent in performance of duties shall be made. This shall include unit charges, plus, if necessary, overtime charges to equal $((~~12.38~~))18.00 per hour.

(2) The following state legal holidays will be observed: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Veteran's Day, Christmas Day, Lincoln's Birthday, Washington's Birthday, Columbus Day and General Election Day. NO SERVICE will be performed on Thanksgiving, Christmas or New Year's Day, beginning at 5:00 p.m. on the previous day.

(3) All fees due under provisions of WAC 16-401-020, 16-401-025 and 16-401-030 shall be payable at the time the service is completed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 16-401-003 PROMULGATION.
(2) WAC 16-401-035 EFFECTIVE DATE.

WSR 79-02-073
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning schedule of fees for the chemical analysis and physical grading of hops, WAC 16-218-010 and 16-218-02001;

that such agency will at 1:30 p.m., Wednesday, March 14, 1979, in the Conference Room, Agricultural Service Center, Yakima, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 4:00 p.m., Friday, March 30, 1979, in the director's office.

The authority under which these rules are proposed is chapter 22.49 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 14, 1979, and/or orally at 1:30 p.m., Wednesday, March 14, 1979, Conference Room, Agricultural Service Center, Yakima.

Dated: February 6, 1979
Norval G. Johanson
Assistant Supervisor

AMENDATORY SECTION (Amending Order 1580, Filed 6-30-78)

WAC 16-218-010 SCHEDULE OF FEES FOR PHYSICAL GRADING. The schedule of fees, payable to the department for certification of hops pursuant to the standards established by the Federal Grain Inspection Service of the United States department of agriculture as authorized by the Agricultural Marketing Act of 1946, as amended, shall be as follows:

(1) Lot inspection. ((~~Sixty~~)) Seventy cents per bale in each lot, minimum charge shall be fifteen dollars.

(2) Sample inspection. Fifteen dollars per unofficial sample submitted.

(3) Supplemental certificates. Two dollars per certificate.

(4) Appeal inspection. Charges for appeal inspections will be made by the Federal Grain Inspection Service, Portland, Oregon, and payment for appeal inspections shall be made to them.

(5) Extra copies. A charge of fifty cents per set will be made for typing extra copies of a certificate when requested by the original applicant or other financially interested party.

(6) Extra time and mileage charges. If through no fault of the inspection service, lots of hops cannot be sampled at the time such sampling has been requested by the applicant or there is an undue delay in making a lot of hops available for sampling, extra time and mileage charges shall be assessed. Fees for hourly wages and mileage rates will be in accordance with current applicable fees charged by the department.

To be considered available for sampling and certification, it is necessary that each and every bale in the lot of hops be readily accessible so that each bale may be properly stenciled and samples drawn from those bales selected by the inspector.

AMENDATORY SECTION (Amending Order 1580, Filed 6-30-78)

WAC 16-218-02001 SCHEDULE OF CHARGES FOR CHEMICAL ANALYSES OF HOPS, HOP EXTRACT, HOP PELLETS OR HOP POWDER. (1) When samples are submitted to the Yakima Chemical and Hop Laboratory, the charges will be: Twenty-five dollars per certificate for the Wollmer Hop Analysis Method; fifteen dollars per certificate for the ASBC Spectrophotometric or Conductometric Methods; and fifteen dollars per certificate for the EBC Conductometric Method. A Submitted Sample Certificate will be issued.

(2) Official samples of hops drawn by department personnel are composited either from the cores drawn for grade analysis, or from cores specially drawn on federal sampling schedule for brewing value only. Charges for analysis are: ((~~Ten~~)) Fifteen cents per bale, with a minimum of twenty-five dollars for the Wollmer Hop Analysis Method; ((~~ten~~)) fifteen cents per bale, with a minimum of fifteen dollars for the ASBC Spectrophotometric or Conductometric Methods; and ((~~ten~~)) fifteen cents per bale, with a minimum of fifteen dollars for the EBC Conductometric Method. An official Brewing Value Certificate will be used.

(3) Extra time and mileage charges. If through no fault of the inspection service, lots of hops cannot be sampled at the time such sampling has been requested by the applicant or there is an undue delay in making a lot of hops available for sampling, extra time and mileage charges shall be assessed. Fees for hourly wages and mileage

rates will be in accordance with current applicable fees charge by the department.

To be considered available for sampling and certification, it is necessary that each and every bale in the lot of hops be readily accessible so that each bale may be properly stenciled and samples drawn from these bales selected by the inspector.

(4) The fee to be charged by the department for analyses for tannin, isoconversion products from alpha and beta resins, oil analysis and other components, and possible adulterants such as residues, when requested, shall be the actual cost to the department. Such fee shall be based on and include man hour costs, necessary material costs, laboratory equipment use and depreciation costs, and administrative and overhead costs of such tests.

WSR 79-02-074
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
(Noxious Weed Control Board)
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 17.10 RCW, that the Washington State Noxious Weed Control Board intends to adopt, amend, or repeal rules concerning the Proposed Noxious Weed List WAC 16-750-010, which is comprised of the names of those plants which it finds to be injurious to crops, livestock, or other property. Weeds may either be added to or deleted from this list at the hearing;

that such agency will at 1:00 p.m., Tuesday, March 13, 1979, in Conference Room 2F22, Highways Administration Bldg., Olympia, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:00 a.m., Wednesday, March 28, 1979, in the Department of Agriculture, Olympia, Washington.

The authority under which these rules are proposed is chapter 17.10 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 13, 1979, and/or orally at 1:00 p.m., Tuesday, March 13, 1979, Conference Room 2F22, Highways Administration Bldg., Olympia, Washington.

Dated: February 6, 1979
By: G. David Kile
Assistant Director

WAC 16-750-010 PROPOSED NOXIOUS WEED LIST. In accordance with RCW 17.10.080, a proposed noxious weed list comprising the names of those plants which the Noxious Weed Control Board finds to be injurious to crops, livestock, or other property is hereby adopted as follows:

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Perennial weeds	
Baby's Breath	Gypsophila paniculata
Barberry, European	Berberis vulgaris
Bermudagrass	Cynodon dactylon
Bindweed, field	Convolvulus arvensis
Bindweed, hedge	Convolvulus sepium
Blackberry, evergreen	Rubus laciniatus
Blue Lettuce	Lactuca pulchella
Blueweed, Texas	Helianthus ciliaris
Bracken, western	Pteridium aguilinum
Bulrush, spotted	Scirpus validus
Buttercup, creeping	Ranunculus repens
Camelthorn	Alhagi camelorum
Canada Thistle	Cirsium arvense
Chicory	Cichorium intybus
Dalmation Toadflax	Linaria dalmatica
Docks	Rumex spp.
Dogbane, hemp	Apocynum cannabinum
Fieldcress, Austrian	Rorippa austriaca
Foxtail Barley	Hordeum jubatum
Gorse	Ulex europaeus
Groundcherry, longleaf	Physalis longifolia
Henbane, black	Hyoscyamus niger
Hoary Cress or White Top	Cardaria draba
Horsetail, field	Equisetum arvense
Johnsongrass	Sorghum halepense
Knapweed, diffuse	Centaurea diffusa
Knapweed, Russian	Centaurea repens
Larkspur	Delphinium spp.
Leafy Spurge	Euphorbia esula
Lupine	Lupinus spp.
Milkweed, showy	Asclepias speciosa
Nightshade, bitter	Solanum dulcamara
Nutsedge, purple	Cyperus rotundus
Nutsedge, yellow	Cyperus esculentus
Oxeye Daisy	Chrysanthemum leuchanthemum
Pepperweed, perennial	Lepidium latifolium
Plantain	Plantago spp.
Povertyweed	Iva axillaris
Quackgrass	Agropyron repens
Ragweed, western	Ambrosia psilostachya
Reed canarygrass	Phalaris arundinacea
Scotch Broom	Cytisus scoparius
Sorrel, red	Rumex acetosella
Sowthistle, perennial	Sonchus arvensis
Spurge, spotted	Euphorbia maculata
Tansy, common	Tanacetum vulgare
Waterhemlock, western	Cicuta douglasii
Watermilfoil, Eurasian	Myriophyllum spicatum
Whitetop, hairy	Cardaria pubescens
Wormwood, absinth	Artemisia absinthium
Yellow Toadflax	Linaria vulgaris
Biennial Weeds	
Bull Thistle	Cirsium vulgare
Carrot, wild	Daucus carota
Houndstongue	Cynoglossum officinale
Knapweed, spotted	Centaurea maculosa
Poison Hemlock	Conium maculatum
Rush skeletonweed	Chondrilla juncea
Sage, Mediterranean	Salvia aethiopis
Scotch Thistle	Onopordum acanthium
Tansy Ragwort	Senecio jacobaea
Annual Weeds	
Barnyard Grass	Echinochloa crusgalli
Bluegrass, annual	Poa annua
Cocklebur	Xanthium spp.
Dodder	Cuscuta spp.
Field Pennycress	Thlaspi arvense
Goatgrass, jointed	Aegilops cylindrica
Halogeton	Halogeton glomeratus
Hemp (Marijuana)	Canabis sativa
Horsenettle	Solanum carolinense
Horseweed (marestail)	Conyza canadensis
Kochia	Kochia scoparia
Meadowfoxtail, Pacific	Alopecurus myosuroides
Medusahead	Taeniatherum asperum
Mustard, wild	Brassica kaber
Nightshade, silverleaf	Solanum elaeagnifolium
Puncturevine	Tribulus terrestris
Purslane, common	Portulaca oleracea
Rattlebox	Crotalaria sagittalis
St. Johnswort	Hypericum perforatum
Sandbur, longspine	Cenchrus longispinus
Smartweed, swamp	Polygonum coccineum
Sorghum	Sorghum spp.
Wild oat	Avena fatua
Yellow Starthistle	Centaurea solstitialis

Amendments to this section will not be known until the time of the hearing when requests for such amendments are made as provided for in RCW 17.10.080.

WSR 79-02-075
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Psychology)
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Board of Psychology intends to adopt, amend, or repeal rules concerning oral and written examinations of psychologists, amending WAC 308-122-220, 308-122-230 and 308-122-410. Copy of rules are shown below, however, changes may be made at the public hearing;

that such agency will at 9 a.m., Friday, March 16, 1979, in the Cascade Room, Vance Airport Inn, 18220 Pacific Highway South, Seattle, WA, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9 a.m., Friday, March 16, 1979, in the Cascade Room, Vance Airport Inn, 18220 Pacific Highway South, Seattle, WA.

The authority under which these rules are proposed is RCW 18.83.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 16, 1979, and/or orally at 9 a.m., Friday, March 16, 1979, Cascade Room, Vance Airport Inn, 18220 Pacific Highway South, Seattle, WA.

Dated: February 5, 1979
By: Richard A. Finnigan
Assistant Attorney General

AMENDATORY SECTION (Amending Order #PL-245, filed 4-15-76)

WAC 308-122-220 PSYCHOLOGISTS-WRITTEN EXAMINATION. Written examination requirements: The written examination that is used in the state of Washington is the examination of Professional Practice of Psychology. The examination consists of objective multiple choice questions covering the major areas of psychology. Each form of the examination contains between 150 and 200 items in the areas listed below:

(1) Background information, including physiological psychology and comparative psychology, learning, history, theory and systems, sensation and perception, motivation, social psychology, personality, cognitive processes, developmental psychology and psychopharmacology.

(2) Methodology including research design and interpretation, statistics, test construction and ((~~interpretion~~)) interpretation, scaling.

(3) Clinical psychology including test usage and interpretation, diagnosis, psychopathology, therapy, judgment in clinical situations, community mental health.

(4) Behavior modification including learning and applications.

(5) Other specialties including management consulting, industrial and human engineering, social psychology, t-groups, counseling and guidance, communication systems analysis.

(6) Professional conduct and ethics including interdisciplinary relations and knowledge of professional affairs.

((~~The test is not a speed test.~~)) The cutoff score which the Washington state board of examiners ((~~currently~~)) uses is ((~~one-half standard deviation below the cumulative~~)) the current national mean.

AMENDATORY SECTION (Amending Order #PL-245, filed 4-15-76)

WAC 308-122-230 PSYCHOLOGISTS-ORAL EXAMINATION. Oral examination: The oral exam covers the same core issues for all candidates ranging through ((~~three~~)) four major foci:

(1) Professional judgment in areas of stated competence;

(2) Knowledge of state laws pertaining to ((~~psycholgist~~)) psychologist and psychological ethics;

(3) Knowledge and skills in area of stated competence. The candidate must be able to articulate and relate conceptual rationale and methodological interventions;

(4) Adequacy of candidate's professional training, supervision and experience.

AMENDATORY SECTION (Amending Order #PL-202, filed 10-1-75)

WAC 308-122-410 PSYCHOLOGISTS—WRITTEN EXAMINATION. The applicant must satisfactorily pass the written examination developed by the professional testing service of the american association of state psychology boards. The cutting score for the written examination shall be ((~~one-half standard deviation below~~)) the cumulative national mean. Any applicant who fails to make a passing score on the examination fee shall be allowed to take the examination again, subject to the standard examination fee. Written examinations shall be administered at least once a year ((~~by the board secretary~~)).

WSR 79-02-076
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 16.57 RCW, that the Department of Agriculture intends to adopt, amend, or repeal rules relating to custom farm slaughtering and providing additional funds, amending WAC 16-620-240, 16-620-260 and repealing WAC 16-620-007;

that such agency will at 10:00 a.m., Friday, March 16, 1979, in the Yakima Office Conference Room, 2015 South First Street, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 4:00 p.m., Monday, March 26, 1979, in the Director's Office, Department of Agriculture, Olympia, Washington.

The authority under which these rules are proposed is chapter 16.57 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 16, 1979, and/or orally at 10:00 a.m., Friday, March 16, 1979, Yakima Office Conference Room, 2015 South First Street.

Dated: February 6, 1979
By: L. R. Armstrong
Assistant Director

AMENDATORY SECTION (Amending Order 1373, filed 7/2/74)

WAC 16-620-240 SLAUGHTER TAG. In addition to such identification, any licensed slaughterer shall attach the official Washington State Department paper slaughter tag set to each of the four quarters. These tags must remain on the quarters, for identification, until processing. Any person buying hides from custom farm slaughterers or persons slaughtering livestock for their own use shall record the type of hide and make such record available to the Department upon request. In lieu of such recording, such hide buyer shall notify the Department that he has purchased a hide and make the records or hide available for the Department's inspection: PROVIDED, That the Director may inspect hides for brands and other identification and the holder of the hide at the time of the inspection shall make that hide available at the Department's request.

AMENDATORY SECTION (Amending Order 1373, filed 7/2/74)

WAC 16-620-260 FEE. Only the Department of Agriculture will provide such identifying paper tags to any licensed custom slaughterer or custom cutting and wrapping facility upon request and the fee for

each such set of paper tags shall be ((~~thirty-five (35¢) cents~~)) one dollar ($1.00) for beef tags and fifty cents (50¢) for hog and sheep tags.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-620-007 PROMULGATION.

WSR 79-02-077
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 6, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapters 15.58 and 17.21 RCW, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning state restricted use pesticides for use by certified applicators only;

that such agency will at 10:00 a.m., Tuesday, March 20, 1979, in the Large Conference Room, General Administration Building, Olympia, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 4:00 p.m., Tuesday, March 27, 1979, in the Director's Office, Department of Agriculture.

The authority under which these rules are proposed is chapters 15.58 and 17.21 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 20, 1979, and/or orally at 10:00 a.m., Tuesday, March 20, 1979, Large Conference Room, General Administration Building, Olympia.

Dated: February 6, 1979
By: Norval G. Johanson
Assistant Supervisor

AMENDATORY SECTION (amending Order 1538 filed 7/29/77)

WAC 16-228-165 STATE RESTRICTED USE PESTICIDES FOR USE BY CERTIFIED APPLICATORS ONLY — REQUIREMENTS FOR USER PERMITS. (1) The following pesticides are hereby declared to be state restricted use pesticides and shall be distributed only by licensed pesticide dealers to certified applicators or their duly authorized representatives. These pesticides shall be used or applied only by certified applicators or persons under the direct supervision of a certified applicator (refer to definition of "direct supervision"). Any EPA restricted use pesticide not listed shall be distributed and used only under these restrictions:

(a) Azodrin
(b) Bidrin
(c) DDD & DDT (for essential uses determined by law)
(d) DiSyston - Liquid
(e) Endrin - 2.5% and above
(f) Parathion & Methyl Parathion - 1.1% and above
(g) Phosdrin
(h) Schradan (OMPA)
(i) Sodium Arsenite
(j) Systox (Demeton)
(k) Temik
(l) TEPP
(m) Thimet (Phorate) - Liquid
(n) Tordon 22K - For use on rangeland and permanent grass pastures east of the crest of the Cascade Mountains.
(o) 2,4-D - All formulations distributed in packages of 1 gallon and larger to be used in counties located east of the crest of the Cascade Mountains. Pesticide dealers shall be required to furnish the purchaser with a copy of the regulations covering the use of 2,4-D in the area in which the material will be applied.
(p) Zinophos
(q) All pesticide formulations labeled for application onto or into water, except those labeled for use only in:
(i) swimming pools;
(ii) wholly impounded ornamental pools and fountains;
(iii) aquariums;
(iv) closed plumbing and sewage systems;
(v) enclosed food processing systems;
(vi) air conditioners and humidifiers;
(vii) and cooling towers.

(2) User Permits will be furnished by the Washington State Department of Agriculture pesticide branch and may be issued by a licensed pesticide dealer.

(3) A certified private applicator or private-commercial applicator may list on his permit the name or names of authorized agent(s) for the purpose of purchasing or receiving above listed pesticides.

(4) Permits shall be on a form furnished by the director and shall include the following:
(a) Permit number
(b) Date of issuance
(c) Name and address of certified applicator
(d) Crops and acreage to which the pesticides will be applied
(e) Name of authorized agent(s)

(5) A copy of the permit shall be issued to the certified applicator and a duplicate shall be retained by the pesticide dealer. Permits shall expire on December 31 of each year.

(6) Certified applicators may designate authorized agent(s) for the purpose of purchasing or receiving the restricted use pesticide listed in WAC 16-228-165 (1) by making previous arrangements with the pesticide dealer or the authorized agent provides written authorization to the dealer at the time of purchase. At the time of purchase the pesticide dealer shall require the certified applicator's name and license or certification number.

(7) Licensed dealers shall keep records on each sale of these restricted use pesticides which shall include the following:
(a) Name and address of the certified applicator
(b) Applicator or operator certificate or license number
(c) Name of authorized agent
(d) Date of purchase
(e) Brand and specific pesticide name
(f) Percent active ingredient or pounds active ingredient per gallon
(g) For DDT & DDD - rate of formulation to be applied per acre
(h) Amount sold
(i) Crop to which pesticide will be applied

(8) Pesticide dealers shall keep permits and dealer records for a period of one year from the date of issuance and the director shall have access to these records upon request.

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

WSR 79-02-078
PROPOSED RULES
PLANNING AND COMMUNITY AFFAIRS AGENCY
(State Building Code Advisory Council)
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 19.27.030, that the State Building Code Advisory Council intends to adopt, amend, or repeal rules concerning state regulations for barrier-free facilities, modifying section 1302 to clarify the intent of the regulations relative to application to residential dwellings;

that such agency will at 1:30 p.m., Wednesday, March 21, 1979, in the Auditorium, Sea-Tac Airport Terminal Building, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 1:30 p.m., Wednesday, April 18, 1979, in the Carvery Restaurant, Conference Room, Sea-Tac Airport.

The authority under which these rules are proposed is RCW 19.27.030 and 34.04.025.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to April 18, 1979, and/or orally at 1:30 p.m., Wednesday, March 21, 1979, Auditorium, Sea-Tac Airport Terminal Building.

Dated: February 6, 1979
By: Dean Cole
Director

AMENDATORY SECTION Amending Order No. 77-02 filed August 3, 1977

INTRODUCTION

Scope

Sec. 003. All Groups A through H Occupancy buildings, structures, or portions thereof, as defined in the Uniform Building Code, 1973 Edition, as adopted by the Washington State Building Code, RCW 19.27, Chapter 96, Laws of 1974, which are constructed, substantially remodeled, or substantially rehabilitated after October 1, 1976, as established by the State Building Code Advisory Council, June 23, 1975, shall conform to the rules and regulations of this chapter.

EXCEPTIONS:

(1) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impractical.

(2) Buildings or portions thereof not customarily occupied by humans.

(3) ((~~Apartment houses with ten or fewer dwelling units.~~

~~(4)~~)) Buildings or facilities for which contracts for the planning or design have been awarded prior to October 1, 1976.

AMENDATORY SECTION

CHAPTER 13

Requirements For Group H Occupancies

Construction, Height, and Allowable Area

Sec. 1302.(b) Special provisions. Group H Occupancies, more than two stories in height or having more than 3000 square feet of floor area above the first story, shall be not less than one-hour fire-resistive construction throughout.

EXCEPTION. Dwelling units within an apartment house not over two stories in height may have nonbearing walls of unprotected construction, provided the units are separated from each other and from corridors by construction having a fire-resistance rating of not less than one hour. Openings to such corridors shall be equipped with doors conforming to Section 3304 (h) or other equivalent protection.

Every apartment house three stories or more in height and containing more than 15 apartments and every hotel three stories or more in height containing 20 or more guest rooms, shall have an approved fire alarm system as specified in the Fire Code.

For Group H Occupancies with a Group F, Division 1 parking garage in the basement or first floor, see Section 1102 (a).

For attic space partitions and draft stops see Section 3206.

Every ((~~apartment house~~)) building or group of buildings on a single site containing a total of more than ten dwelling units shall have accessible dwelling units provided with a kitchen and a bathroom for use by disabled persons, at the rate of one for every 20 units or fractional part thereof. For other requirements for accessible dwelling units, see Chapters 17, 33, 51 and 55.

EXCEPTION: In lieu of accessible dwelling units, adaptable dwelling units may be provided as shown on the approved plans. An adaptable dwelling unit is one that shall conform to all the requirements for an accessible dwelling unit, including space and structural provisions, except that the installation of the facilities in the following Sections is not required: Sec. 1305(b) (kitchen counter unit only), Sections 1308(c), 1711(c)4, 1711(c)5, 1711(c)7, 1711(c)8, 1711(c)10, 1711(h), 5501(d), and 5501(g).

Hotel guest rooms with their appurtenant rooms, designated as accessible spaces, shall be provided in every hotel at the rate of one for every 20 guest rooms or fractional part thereof. Such facilities shall conform to the provisions of Sections 1711(c), 1711(h), 5501 and 5504.

WSR 79-02-079
NOTICE OF PUBLIC MEETINGS
PLANNING AND COMMUNITY AFFAIRS AGENCY
[Memorandum, Director—February 6, 1979]

State Head Start Advisory Council

The State Head Start Advisory Council will meet on March 9, 1979, at 9:00 a.m. at the Sea-Tac Hyatt House. For additional information, contact Cindy Pollman, Office of Economic Opportunity, Planning and Community Affairs Agency, 400 Capitol Center Building FN-41, Olympia, Washington 98504, telephone (206) 753-4923.

Office of Economic Opportunity Advisory Council

The Office of Economic Opportunity Advisory Council will meet on February 27, 1979, in the PCAA conference room on the fourth floor of the Capitol Center Building, 410 West 5th Street, Olympia, Washington, at 10:00 a.m. For further information contact Art Cantrall, Office of Economic Opportunity, Planning and Community Affairs Agency, 400 Capitol Center Building FN-41, Olympia, Washington 98504, telephone (206) 753-4944.

State Building Code Advisory Council

The time and location of the State Building Code Advisory Council meeting scheduled for March 21, 1979, have been revised. The Council will meet on March 21, 1979, at 10:00 a.m. in the Sea-Tac Airport Terminal Building Auditorium.

The State Building Code Advisory Council will also meet on April 18, 1979, from 10:00 a.m. to 3:30 p.m. in the Sea-Tac Airport Carvery Restaurant conference room.

For additional information on the above meetings, contact Christopher Woodsum, Local Government Services Division, Planning and Community Affairs Agency, 400 Capitol Center Building FN-41, Olympia, Washington 98504, telephone (206) 754-1243.

Community Services/Continuing Education Council (Title I Higher Education Act)

The Community Services/Continuing Education Council will meet on March 29-30, 1979, in the Rose Room of

the Mayflower Park Hotel, 4th and Olive, Seattle, Washington. For additional information, contact Doris Coates, Local Government Services Division, Planning and Community Affairs Agency, 400 Capitol Center Building FN-41, Olympia, Washington 98504, telephone (206) 753-4940.

WSR 79-02-080
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030 and 42.30.060, that the University of Washington intends to adopt, amend, or repeal rules concerning governing disclosure of student records, amending chapter 478-140 WAC;

that such institution will at 2:30, Wednesday, March 14, 1979, in the 142 Administration Building, UW Campus, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 1:00 p.m., Monday, March 19, 1979 in the 301 Administration Building, University of Washington, Seattle, Washington.

The authority under which these rules are proposed is RCW 28B.20.130(1).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution in writing to be received by this institution prior to March 14, 1979, and/or orally at 2:30, Wednesday, March 14, 1979, 142 Administration Building, UW Campus.

Dated: February 6, 1979
By: Elsa Kircher Cole
Assistant Attorney General

AMENDATORY SECTION (Amending Order 75-1, filed 3/5/75)

WAC 478-140-015 DEFINITION OF A STUDENT. A student is defined as any person who is or has been officially registered at the University of Washington and with respect to whom the University maintains education records or personally-identifiable information; except that a person who has applied for admission to, but has never been in attendance at, a component unit of the University (i.e., college, school, or department; undergraduate, graduate, or professional program), even if that person is or has been in attendance at another component unit of the University, is not considered to be a student with respect to the component unit to which an application for admission has been made but to which admittance was denied.

AMENDATORY SECTION (Amending Order 75-3, filed 5/22/75)

WAC 478-140-018 EDUCATION RECORDS—STUDENT'S RIGHT TO INSPECT. (1) A student has the right to inspect and review his education records. ((~~A list of the types of education records maintained by the University and the record locations may be obtained by the student at the University Visitors Information Center, 4014 University Way N.E., or at the Transcript Department of the Registrar's Office, 260 Schmitz Hall, 1400 N.E. Campus Parkway.~~))

(a) ((~~For purposes of this section~~)) The term "education records" means those records, files, documents and other materials which contain information directly related to a student. Types of educational records, and the University officials responsible for those records include:

(i) Official transcripts of courses taken and grades received; records relating to prior educational experience and admission records. The Executive Director of Admissions and Records, located in 320 Schmitz Hall, is the official responsible for the maintenance of such records. In addition, the Graduate Admissions Officer, located in 201 Administration Building, is the official responsible for the maintenance of certain admissions and current educational status records for graduate students.

(ii) Tuition and Fee Payment Records. The manager of the Student Accounts Office, 129 Schmitz Hall, is the official responsible for the maintenance of such records.

(iii) Student disciplinary records are the responsibility of the Vice President for Student Affairs, located in 459 Schmitz Hall.

(iv) Individual education records may be maintained by the departments and/or colleges throughout the University. Where such educational records are so maintained, the respective chairperson or dean of the department or college is the University official responsible for maintenance of the records.

(b) The term "education records" does not include:

(i) Working papers concerning students that are maintained by faculty and graduate student service appointees, such as informal notes, memory aids or other temporary records of a similar nature which are in the sole possession of the maker thereof and not accessible or revealed to any other person except a substitute. A substitute ((~~is~~)) may be defined as:

(A) A person who is providing instruction in place of the regularly assigned faculty member in a course in which knowledge of the performance of individual students is essential to the provision of instruction, or

(B) A person who is supervising a student's thesis or research progress in place of the regularly assigned faculty member during a prolonged absence.

(ii) If the personnel of the University Police Department do not have access to education records under WAC 478-140-024(1), the records and documents of the Police Department which

((~~(1)~~)) (A) are kept apart from records described in WAC 478-140-018(1)(a),

((~~(2)~~)) (B) are maintained solely for law enforcement purposes, and

((~~(3)~~)) (C) are not made available to persons other than law enforcement officials of the same jurisdiction.

(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes; provided, however, that records concerning Graduate Student Service Appointments shall not be considered to relate exclusively to a student's capacity as an employee.

(iv) Records on a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or para-professional acting in his professional or para-professional capacity, or assisting in that capacity and which are created, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(2)(a) Recommendations, evaluations or comments concerning a student, whether or not provided in confidence, either expressed or implied, as between the author and the recipient, shall nonetheless be made available to the student, except as provided in paragraphs (b), (c) and (d) of this subsection.

(b) The student may specifically release his right to review where the information consists only of confidential recommendations respecting:

(i) Admission to any educational institution, or component part thereof, or

(ii) An application for employment, or

(iii) Receipt of an honor or honorary recognition.

(c) A student's waiver of his or her right of access to confidential statement shall apply only if:

(i) The student is, upon request, notified of the names of all persons making confidential statements concerning him, the dates of such confidential statements and the purpose for which the statements were provided, and

(ii) Such confidential statements are used solely for the purpose for which they were originally intended, and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from or receipt of any other services or benefits from the University.

(d) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release under WAC 478-140-018(2)(a);

provided, however, that upon request the student is notified of the names of the authors of all such confidential records, the dates appearing on such confidential records and the purpose for which each such confidential record was provided. Such records shall remain confidential and shall be released only with the consent of the author. Such records shall be used by the institution only for the purpose for which they were originally intended.

(3) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to the student.

(4) Students have the right to obtain copies of their education records. Charges for the copies shall not exceed the cost normally charged by a University of Washington copy center (except in cases where charges have previously been approved by Regential action for certain specified services, such as transcripts and grade sheets).

(5) The Registrar is the official custodian of academic records and therefore is the only official who may issue a transcript of the student's official academic record.

(6) Student education records may be destroyed in accordance with a department's routine retention schedule. In no case will any record which is requested by a student for review in accordance with WAC 478-140-018 and WAC 478-140-021 be removed or destroyed prior to providing the student access.

AMENDATORY SECTION (Amending Order 75-1, filed 3/5/75)

WAC 478-140-021 REQUESTS AND APPEAL PROCEDURES. (1) A request by a student for review of information should be made in writing to the University individual(s) or office(s) having custody of the particular record.

(2) An individual(s) or office(s) must respond to a request for education records within a reasonable period of time, but in no case more than 45 days after the request has been made.

(3)(a) After reviewing his or her records, a student may challenge the content of the records if they are felt to be inaccurate, misleading or otherwise in violation of the privacy or other rights of the student. In such cases the student should contact the appropriate dean or director responsible for custody of the record.

(b) In cases where a student has been unable to correct or delete such inaccurate, misleading or otherwise inappropriate data, he or she may request a hearing by the University's Student Records Committee. The Student Records Committee will render its decision within a reasonable period of time following the hearing. The decision of the Student Records Committee shall be final.

(i) If, as a result of the hearing, the University Student Records Committee decides that the information the student complained of is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the students, it shall amend the education records of the student accordingly and shall inform the student in writing of the action taken.

(ii) If, as a result of the hearing, the University Student Records Committee decides that the information the student complained of is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the student shall be given the right to place in the educational record a statement commenting upon the information in the educational record and/or setting forth any reasons for disagreeing with the decision of the University Student Records Committee.

(c) In no case shall any request for review by a student be considered by the University's Student Records Committee which has not been filed with that body in writing within 90 days from the date of the initial request to the custodian of the record.

(d) The Student Records Committee shall not review any matter regarding the appropriateness of official academic grades, in that each school or college within the University provides appropriate review procedures in this area.

AMENDATORY SECTION (Amending Order 75-1, filed 3/5/75)

WAC 478-140-024 RELEASE OF PERSONALLY-IDENTIFIABLE RECORDS. (1) The University shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," (as defined in section (5) hereof), without the written consent of the student, to any party other than the following:

(a) University staff, faculty, and students when officially appointed to a faculty council or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the University, with the understanding that its use will be strictly limited to the performance of those responsibilities.

(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally- or state-supported education program or in connection with the enforcement of the federal or state legal requirements which relate to such program. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials, and such personally-identifiable data shall be destroyed when no longer needed for such audit, evaluation or enforcement of legal requirements.

(c) Agencies or organizations requesting information in connection with a student's application for, or receipt of, financial aid.

(d) Organizations conducting studies for or on behalf of the University for purposes of developing, validating or administrating predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.

(e) Accrediting organizations in order to carry out their accrediting functions.

(f) Any person or entity designated by judicial order or lawfully-issued subpoena, upon condition that the student is notified of all such orders or subpoenas in advance of the compliance therewith. Any University individual(s) or office(s) receiving a subpoena or judicial order for education records should immediately notify the Attorney General's Division.

(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released,

(b) The reasons for such release, and

(c) The names of the parties to whom such records will be released.

(3) In cases where records are made available without student release as permitted by WAC 478-140-024(1)(b), (c), (d), (e) and (f), the University shall maintain a record kept with the education record released, which will indicate the parties which have requested or obtained access to a student's records maintained by the University and which will indicate the legitimate interest of the investigating party. Releases in accordance with WAC 478-140-024(1)(a) need not be recorded. The records of disclosure may be inspected by the student, the University official responsible for the custody of the records, and other authorized parties.

(4) Personally-identifiable education records released to third parties, with or without student consent, shall be accompanied by a written statement indicating that the information cannot be subsequently released in a personally-identifiable form to any other parties without obtaining consent of the student.

(5) The term "directory information" used in WAC 478-140-024(1) is defined as student's name, address, telephone number, date and place of birth, major field of studies, participation in officially-recognized sports activities, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. Students may request that the University not release directory information by so indicating on their registration form or through written notice to the Registration Department of the Registrar's Office, 225 Schmitz Hall, Window 3, 1400 N.E. Campus Parkway.

(6) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s).

NEW SECTION

WAC 478-140-070 NOTICE OF UNIVERSITY RECORDS POLICY. Each year during Fall Quarter, the University publishes a notice of students' rights under the Family Educational Rights and Privacy Act of 1974, and the regulations interpreting that Act, and the University Rules and Regulations governing disclosure of student records implementing the Act, in the University of Washington Daily Newspaper. Copies of the University Rules are printed and available through the Washington Administrative Code located in the reference stations throughout campus. In addition, the University of Washington

Bulletin, distributed to all new students upon entrance to the University, contains references to the University Rules and Regulations governing Disclosure of Student Records.

WSR 79-02-081
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning nursing home accounting and reimbursement system, amending chapter 388-96 WAC.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Michael Stewart
Executive Assistant
Department of Social and Health Services
Mail Stop OB-44 C
Olympia, WA 98504;

that such agency will at 10:00 a.m., Wednesday, March 21, 1979, in the Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Wednesday, March 28, 1979, in William B. Pope's office, 3-D-14, State Office Bldg #2, 12th and Jefferson, Olympia, Washington.

The authority under which these rules are proposed is RCW 74.09.120.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 21, 1979, and/or orally at 10:00 a.m., Wednesday, March 21, 1979, Auditorium, State Office Bldg #2, 12th and Jefferson, Olympia, Washington.

Dated: February 6, 1979
By: Michael S. Stewart
Executive Assistant

AMENDATORY SECTION (Amending Order 1262, filed 12/30/77)

WAC 388-96-125 REPORTING FOR AN ABBREVIATED PERIOD. (1) Reports shall be filed as required by the department when a contractor or nursing home enters the prospective cost-related reimbursement system.

(2) Reports shall be filed as required by the department when the fiscal year of a contractor is changed. When a fiscal year is changed, the department shall be informed in writing at least thirty days before the effective date of the change.

(3) If the contractor changes during a fiscal year, the old contractor shall submit a final annual report covering the period during which its contract was in effect during the fiscal year. The new contractor shall submit a quarterly report covering the calendar quarter in which its contract becomes effective, and an annual report covering the period during which its contract is in effect during the fiscal year.

(4) A quarterly report covering an abbreviated period shall be submitted within thirty days after the end of the abbreviated period. An annual ((~~or semiannual~~)) report shall be submitted within sixty days after the end of the abbreviated period.

AMENDATORY SECTION (Amending Order 1300, filed 6/1/78)

WAC 388-96-585 NONALLOWABLE COSTS. (1) Costs will be nonallowable if they are not documented, necessary, ordinary, and related to the provision of SNF, ICF or IMR services to nursing home patients.

(2) Nonallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the Title XIX program, including costs of unnecessary care. Costs of nonprogram items or services will be nonallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution.

(b) Costs of services and items provided to SNF, ICF or IMR recipients which are covered by the department's medical care program but not included in SNF, ICF or IMR services respectively. Items and services covered by the medical care program are listed in chapter 388-86 WAC.

(c) Costs associated with a capital expenditure subject to Section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be nonallowable as of the date they are determined not to be ((~~reimbursable~~)) 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 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 which circumvent 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.

(k) Charity and courtesy allowances.

(l) Cash or other contributions to charitable organizations or political parties, and costs incurred to improve community relations.

(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 those used in patient activity programs or in IMR programs where clothing is a part of routine care.

(r) Fund-raising expenses, except those 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, such as private duty nurses, except where authorized by the department for exceptional care recipients.

(w) Expenses of key-man insurance and other insurance or retirement plans not in fact made available to all employees.

(x) Expenses of profit-sharing plans.

(y) Costs of training programs for nonemployees other than volunteers.

(z) Personal expenses and allowances of owners or relatives, except those allowable as compensation.

(aa) All expenses of maintaining professional licenses or membership in professional organizations not related to operation of the facility.

(bb) Costs related to agreements not to compete.

(cc) Goodwill.

(dd) Organization costs, start-up costs, and construction interest not amortized over at least sixty months after opening.

(ee) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the

department or where otherwise the determination of the department stands. Legal and consultant fees in connection with a lawsuit against the department are nonallowable.

(ff) Lease acquisition costs, costs associated with agreements not to compete, and other intangibles not related to patient care.

AMENDATORY SECTION (Amending Order 1353, filed 10/20/78)

WAC 388-96-719 METHOD OF RATE DETERMINATION. (1) Data used in determining rates will be taken from the most recent complete, desk-reviewed annual cost report submitted by each contractor. ((~~If no annual report is available, the most recent desk-reviewed semiannual report will be used.~~)) Data from reports covering a period of less than six full months will not be used in determining rates, except for such reports which are submitted in accordance with WAC 388-96-101(2). Data from these reports will be combined with data from the report period immediately preceding the abbreviated period for purposes of determining rates.

(2) Data containing obvious errors, data for facilities which are out of compliance with any standard or condition at any time during the reporting period, and data for facilities with average occupancy ratios of less than eighty-five percent for the report period, will be excluded from the determination of predicted costs and rate ranges under subsections (4) and (6) of this section.

(3) Each contractor's reported cost data, except, after December 31, 1978, for depreciation, interest and lease costs, will be adjusted for economic trends based on component indices of the consumer price index issued by the United States department of labor, bureau of labor statistics. The national averages for the most recent twelve-month period will be applied in rate computations for the cost areas in subdivisions (a), (b) and (c) of subsection (3):

(a) Patient care—"health and recreation" index;

(b) Administration and operations—Average of the "all items less food" and "services less care services" indices;

(c) Property—"shelter" index; and

(d) Beginning July 1, 1978, for the food cost area, the Seattle consumer price index for food at home over the most recent twelve month period will be used.

(4) A predicted cost per patient day (excluding cost data and patient days relating to exceptional care recipients) in each of ((~~the four~~)) three cost areas will be determined for each facility through multiple regression analysis, which allows the assessment of the joint impact of a set of factors on cost. The formula for the linear multiple regression function is:

$Y_c = A + B_1X_1 + B_2X_2 + \ldots + B_kX_k$

where:

Y_c is the predicted cost per patient day for an individual facility;

A is the base cost for a hypothetical facility where the factors all are zero;

$B_1, B_2 \ldots B_k$ are the regression coefficients for the factors; and

$X_1, X_2 \ldots X_k$ are the independent variables or factors measuring the relevant characteristics of a facility.

A and $B_1, B_2 \ldots B_k$ are determined statistically by the method of least squares. In order to be included in a regression formula, factors must show statistical predictability by being significant at the twenty percent level.

(5) After all predicted costs per patient day have been computed, the difference between each facility's reported costs, adjusted to take into account economic trends, and the predicted cost will be computed. The standard deviation of the difference will also be calculated.

(6) To determine an individual contractor's prospective rate, its predicted cost for the patient care((~~, food,~~)) and administration and operations cost areas is revised using the most current factor values that have been determined for the individual facility and the base cost and weights derived in the regression analysis described above. Beginning July 1, 1978, to determine an individual contractor's prospective rate in the property cost area, its predicted cost is revised using the most current factor values that have been determined for the individual facility and the base cost and weights derived within the last twelve month period in the regression analysis described above. A rate range, defined as this predicted cost plus and minus one standard deviation of the difference calculated, in accordance with subsection (5) of this section, for the ((~~food,~~)) administration and operations((~~,~~)) and property cost areas will then be determined. Beginning July 1, 1978, the rate range for the patient care cost area will be plus 1.75 standard deviations and minus one standard deviation from the predicted cost. If the contractor's reported costs (adjusted for economic trends) are lower than the lower limit of the rate range, the lower limit will be the contractor's reimbursement rate. If these adjusted reported costs are higher than the upper limit of the rate range, the upper limit will be the contractor's reimbursement rate. If these adjusted reported costs fall within the standard rate range, the contractor's reimbursement rate will equal the adjusted reported costs. Beginning July 1, 1979, the individual contractor's prospective rate for food will be the average of all facilities' reported cost, adjusted to take into account economic trends.

(7) Where new standards are imposed, or the department wishes to encourage additional services or otherwise change the program, a cost-related adjustment will be made to the appropriate cost area rates of each contractor affected by the program change. Adjustments will be made until reported costs used in setting rates reflect the new standards or program changes.

AMENDATORY SECTION (Amending Order 1264, filed 1/9/78)

WAC 388-96-727 FOOD COST AREA RATE. ((~~(1)~~)) The food cost area rate will be computed to cover the necessary and ordinary costs of procuring food, dietary supplements and beverages for meals and between-meal nourishment for recipients.

((~~(2) The regression equation used in the food cost area will contain weights for the following four factors:~~

~~(a) Location of the facility—King county.~~

~~(b) Location of the facility—Clark county.~~

~~(c) Location of the facility—Spokane county.~~

~~These factors adjust the base cost to provide for local market conditions in these three urban counties.~~

~~(d) Type of facility. This factor adjusts the base cost to provide for the effect institutional requirements have on food costs. Facilities such as hospitals and other institutions which are certified providers but not licensed as nursing homes will be distinguished from those facilities whose primary mission is the delivery of nursing home care.~~)) Beginning July 1, 1979, the individual contractor's prospective rate for food will be the average of all facilities' reported cost, adjusted to take into account economic trends.

WSR 79-02-082
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Utilities and Transportation Commission intends to adopt, amend, or repeal rules concerning the amending of WAC 480-12-190, relating to motor carrier drivers' hours of service.

Written and/or oral submissions may also contain data, views and arguments concerning the effect of the proposed amendment on economic values, pursuant to chapter 43.21H RCW and WAC 480-08-050(17);

and that the adoption, amendment, or repeal of such rules will take place at 8:00 a.m., Wednesday, March 21, 1979, in the Commission's Conference Room, Seventh Floor, Highways-Licenses Building, Olympia, Washington.

The authority under which these rules are proposed is RCW 81.80.040, 81.80.211 and 81.80.290

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 16, 1979, and/or orally at 8:00

a.m., Wednesday, March 21, 1979, Commission's Conference Room, Seventh Floor, Highways-Licenses Building, Olympia, Washington.

Dated: February 7, 1979
By: David Rees
Secretary

AMENDATORY SECTION (Amending Order R-5, filed 6/6/69)

WAC 480-12-190 HOURS OF SERVICE—ON DUTY—ADOPTION OF FEDERAL SAFETY REGULATIONS. (((~~(1) Every motor freight common and contract carrier and officers, agents, employees, and representatives of any motor common or contract carrier shall comply with the following regulations, and every such motor carrier shall be conversant with the rule and require that officers, agents, employees, and representatives be conversant with this rule.~~

~~(2) Definitions.~~

~~(a) On duty. A driver is "on duty" from the time he begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work.~~

~~(b) Driving Time. The terms "drive or operate" and "driving time" include all time spent on a moving vehicle and any interval not in excess of 10 minutes in which a driver is on duty but not on a moving vehicle. For the purpose of computing an interval in excess of 10 minutes, all stops made in any one village, town or city for the delivery of freight originating in said village, town or city may be computed as one, and all stops made in any one village, town or city for delivery of freight originating elsewhere may be computed as one if the driver has not driven or operated the motor vehicle more than 10 miles in such village, town or city.~~

~~(c) Week. The term "week" means any period of 168 consecutive hours beginning at the time the driver reports for duty.~~

~~(d) 24 Consecutive Hours. The term "24 consecutive hours" means any such period starting at the time the driver reports for duty.~~

~~(3) No carrier subject to these regulations shall permit or require any driver employed or used by it to remain on duty for a total of more than 60 hours in any week. PROVIDED, That carriers operating vehicles on every day of the week may permit drivers to remain on duty for a total of not more than 70 hours in any period of 192 consecutive hours. PROVIDED, FURTHER, That this section shall not apply with respect to drivers of motor vehicles engaged solely in making deliveries for retail stores during the period from December 10 to December 25, both inclusive, of each year.~~

~~(4) Except under conditions set forth in Section (6), no carrier subject to these rules shall permit or require a driver employed or used by it to drive or operate for more than 10 hours in the aggregate in any period of 24 consecutive hours, unless such driver be off duty for 8 consecutive hours during or immediately following the 10 hours aggregate driving and within said period of 24 consecutive hours.~~

~~(5) No carrier subject to these rules, if himself a driver, shall remain on duty or drive for longer periods than those prescribed in Section (3) and (4).~~

~~(6) In case of snow, sleet, fog, or other adverse weather conditions, or in case the highways are covered with snow or ice, or presence of unusual adverse road and traffic conditions, a driver may be permitted and required to drive or operate a motor vehicle for not more than 12 hours in the aggregate in any period of 24 consecutive hours in order to complete his run, without being off duty for a period of 8 consecutive hours.~~

~~(7) In case of any emergency, a driver may complete his run without being in violation of the provisions of these regulations, if such run could reasonably have been completed without such violation.~~)) The rules and regulations adopted by the United States department of transportation in Title 49, Code of Federal Regulations, Part 395, as well as and including all appendices and amendments thereto in effect on January 30, 1978 are adopted and prescribed by the commission to be observed by all common, contract, and registered carriers operating under chapter 81.80 RCW, except:

(1) During the seasonal period from May 1 to September 30, inclusive, of each year, a driver who is driving a motor vehicle in the hauling of logs from the point of production or in dump truck operations, exclusively in intrastate commerce, shall not drive nor be permitted to drive more than twelve hours following eight consecutive hours off duty. Such driver shall not be on duty nor be permitted to be on duty more than ninety hours in any period of seven consecutive days.

(2) During the seasonal period from July 1 to November 30, inclusive, of each year, a driver who is driving a motor vehicle in the hauling of agricultural products from the point of production on farms, exclusively in intrastate commerce, shall not drive nor be permitted to drive more than twelve hours following eight consecutive hours off duty. Such driver shall not be on duty nor be permitted to be on duty more than ninety hours in any period of seven consecutive days.

(3) The rules and regulations governing driver's daily logs prescribed in Title 49, Code of Federal Regulations, section 395.8 and adopted in this section, do not apply for those operations described in subsections (1) and (2) of this section to a regularly employed driver who drives wholly within a radius of one hundred miles of the terminal or garage at which he or she reports for work, if the motor carrier who employs the driver maintains and retains for a period of one year accurate and true records showing the total number of hours of driving time and the time that the driver is on duty each day and the time at which the driver reports for, and is released from, duty each day. A tacograph showing the required driver hourly information may be substituted for the required records.

WSR 79-02-083
PROPOSED RULES
DEPARTMENT OF FISHERIES
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and 75.08.080, that the Washington State Department of Fisheries intends to adopt, amend, or repeal rules concerning commercial fishing regulations;

that such agency will at 10 a.m., Wednesday, March 14, 1979, in Conference Room H, Food Circus, Seattle Center, Seattle, Washington, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 10:30 a.m., Monday, March 19, 1979, in the Small Conference Room, General Administration Bldg., Olympia, Washington.

The authority under which these rules are proposed is RCW 75.08.080.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 14, 1979, and/or orally at 10 a.m., Wednesday, March 14, 1979, Conference Room H, Food Circus, Seattle Center, Seattle, Washington.

Dated: February 7, 1979
By: Gordon Sandison
Director

AMENDATORY SECTION (Amending Order 810, filed 5/17/69)

WAC 220-16-070 GENERAL DEFINITIONS—OTTER TRAWL. "Otter trawl" gear shall be defined as a tapered, funnel-shaped net consisting of a forward, intermediate and codend section with floats along the upper edge of the mouth (headrope) and a weighted line (footrope) forming the lower edge thereof. Otter doors or boards are used to spread the mouth of the net horizontally as it is towed. Roller and bobbin gear on a rope attached to the footrope are used as aids to fishing rocky grounds. Telemetry gear consists of a precision net-depth indicating device attached to the door or footrope of the net giving a continuous indication of the position of the net in relation to the bottom or surface. Double layer codends shall be tied together in such a manner that the knots and meshes coincide the full length of the double layer. The codend section shall be defined as the last 60 meshes of the posterior end of the net capable of retaining fish while the net is in the water. Meshes of hog-ring and rope-type chafing gear shall measure not less than seven inches. ((~~Chafing gear made of hides or canvas shall be of a size not greater than one half the circumference of the codend.~~))

AMENDATORY SECTION (Amending Order 77-147 filed 1/16/78)

WAC 220-16-340 GENERAL DEFINITIONS—BOTTOMFISH. The term "Bottom fish", unless otherwise provided, is defined as including Pacific cod, Pacific tomcod, Pacific hake, walleye pollock, ((~~Pacific halibut and~~)) all ((~~other~~)) species of dabs, sole and flounders, except Pacific Halibut, lingcod and all other species of greenling, ratfish, sablefish, cabezon, spiny dogfish, six gill shark, soupfin shark, and all species of skate, rockfish and sea perches.

AMENDATORY SECTION (Amending Order 77-147, filed 12/16/77)

WAC 220-20-020 GENERAL PROVISIONS—LAWFUL AND UNLAWFUL ACTS—FOOD FISH OTHER THAN SALMON. (1) It shall be unlawful to use, operate or carry aboard any fishing vessel, bottomfish otter trawl gear having meshes measuring less than 3 inches, except that:

It shall be lawful to use otter trawl nets having a minimum mesh size of 2 inches for Pacific hake in Puget Sound Marine Fish Shellfish Areas 24A, 24B, 26A, 26B, 26C, and 26D, and having a minimum mesh size of 2-1/2 inches for Pacific hake in the Pacific Ocean and coastal waters.

(2) It shall be unlawful to take, fish for or possess for commercial purposes any round, undressed sturgeon less than 48 inches or greater than 72 inches in length or any dressed sturgeon less than 33 inches or greater than 53 inches in length.

(3) ((~~It shall be unlawful to take, fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (Hippoglossus) unless permitted by the current regulations of the International Pacific Halibut Commission.~~

(4))) It shall be unlawful to take, fish for or possess sturgeon in any of the waters of Puget Sound or tributaries thereof for commercial purposes with any type of commercial gear, and any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(((~~5~~))) (4) It shall be unlawful to take or fish for food fish for commercial purposes with any type of commercial gear in the waters of Shilshole Bay inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(((~~6~~))) (5) It shall be unlawful to take, fish for, or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(((~~7~~))) (6) It shall be unlawful to harvest for commercial purposes herring eggs naturally deposited on marine vegetation or other substrate.

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

AMENDATORY SECTION (Amending order 77-14, filed 5/15/77)

WAC 220-36-03001 SEASONS AND LAWFUL GEARS—OTHER VARIETIES (1) It shall be lawful to take and fish for any other species of food fish, except sturgeon and salmon, with purse seine or lampara gear not exceeding 900 feet in length and having meshes of not less than one-half inch stretch measure, and with drag seine gear not exceeding 700 feet in length and having meshes of not less than 4-1/2 inches stretch measure, except as provided in WAC 220-36-030(6).

(2) It shall be lawful to take, fish for and possess sturgeon in Grays Harbor Salmon Management and Catch Reporting Areas 2B, 2C, and 2D, and bottomfish ((~~or perch~~)) in Marine Fish-Shellfish Management and Catch Reporting Area 60B, at any time with set line and hand line jig gear.

(3) It shall be lawful to retain for commercial purposes sturgeon and species of bottom fish defined as such in WAC 220-16-340 taken incidental to any lawful commercial salmon fishery in Grays Harbor Salmon Management and Catch Reporting Areas 2A, 2B, 2C, and 2D.

(4) It shall be lawful to take, fish for and possess smelt taken for commercial purposes in all waters of Grays Harbor except during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.

(5) It shall be lawful to take, fish for and possess herring, anchovies, or pilchards taken for commercial purposes with dip bag net gear at any time in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B.

(6)(a) June 1 through October 31 - It shall be lawful to fish for, take and possess herring, anchovies, or pilchards with purse seine or lampara in the waters of Grays Harbor, provided such gear shall not exceed 1,400 feet in length or contain meshes of less than 1/2-inch stretch measure. All species of fish other than herring, pilchard, and anchovy taken in operation of such purse seine or lampara gear must be immediately, with care, returned to the water.

(b) March 1 through April 15 - Closed to all commercial herring, anchovy, or pilchard fishing except dip bag net.

(7) It shall be lawful to take, fish for and possess herring, candlefish, pilchards, or anchovies taken for commercial purposes with a herring weir from April 1 through September 30 in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B, provided that the lead shall not exceed 300 feet in length or extend into any navigation channel or customary gill net drifting lane. It shall be unlawful for any person to install or operate a herring weir without obtaining written permission from the Director of Fisheries.

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

AMENDATORY SECTION (Amending Order 77-14, filed 5/15/77)

WAC 220-40-030 SEASONS AND LAWFUL GEAR—OTHER VARIETIES (1) It shall be lawful to take and fish for any other species of food fish, except sturgeon and salmon, with purse seine or lampara gear not exceeding 900 feet in length and having meshes of not less than one-half inch stretch measure, and with drag seine gear not exceeding 700 feet in length and having meshes of not less than 4-1/2 inches stretch measure, except as provided in WAC 220-40-030(3).

(2) It shall be lawful to take, fish for and possess sturgeon for commercial purposes ((~~taken with set line and hand line gear~~)) in Willapa Harbor Salmon Management and Catch Reporting Areas 2G and 2J, and bottomfish in Marine Fish-Shellfish Management and Catch Reporting Areas 60C, at any time with set line and hand line jig gears.

(3)(a) June 1 through October 31 - It shall be lawful to fish for, take and possess herring, anchovy, candlefish, or pilchards with purse seine or lampara in the waters of Willapa Bay, provided such gear shall not exceed 1,400 feet in length or contain meshes less than one-half inch stretch measure. All species of fish other than herring, anchovy, and pilchard taken in operation with such purse seine or lampara gear must be immediately, with care, returned to the water.

(b) February 1 through March 15 - Closed to all commercial herring, anchovy, or pilchard fishing except dip bag net.

(c) It shall be lawful to fish for, take and possess herring, anchovy, candlefish, or pilchards with dip bag net gear at any time in the waters of Willapa Bay.

(4) It shall be lawful to retain for commercial purposes sturgeon and species of bottomfish defined as such in WAC 220-16-340 taken incidental to any lawful commercial salmon fishery in Willapa Harbor Management and Catch Reporting Areas 2G, 2H, 2J, and 2K.

(5) It shall be lawful to take, fish for and possess smelt taken with hand dip nets in any of the waters of Willapa Harbor except during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.

(6) It shall be lawful to take bottom fish with drag seine in Marine Fish-Shellfish Management and Catch Reporting Area 60C from March 1 through June 30.

Chapter 220-50
Pacific Halibut

NEW SECTION

WAC 220-50-010 PACIFIC HALIBUT—LAWFUL GEAR It shall be unlawful to take, fish for, or possess Pacific halibut for commercial purposes except by set line, troll, or hand line jig gears, unless otherwise provided.

NEW SECTION

WAC 220-50-020 PACIFIC HALIBUT—UNLAWFUL GEAR It shall be unlawful to take, fish for, or possess Pacific halibut for commercial purposes, when any commercial fishing gear other than

those provided for in WAC 220-50-010 or nets used solely for the capture of bait, are on board.

NEW SECTION

WAC 220-50-030 PACIFIC HALIBUT—SIZE LIMITS It shall be unlawful to take, or possess for commercial purposes any Pacific halibut that with head on is less than 32 inches (81.3 centimeters) as measured in a straight line, passing over the pectoral fin, from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail. If the head has been removed, a size limit of not less than 24 inches (61.0 centimeters) as measured from the base of the pectoral fin, at its most anterior point, to the extreme end of the middle of the tail shall apply.

NEW SECTION

WAC 220-50-040 PACIFIC HALIBUT—UNLAWFUL POSSESSION It shall be unlawful to possess Pacific halibut for commercial purposes of any origin in any area closed to halibut fishing except while in actual transit to or within a port of sale.

NEW SECTION

WAC 220-50-050 PACIFIC HALIBUT—LOG RECORDS The captain or operator of any vessel over 5 gross tons fishing for Pacific halibut for commercial purposes under these regulations shall keep an accurate and correct log of all fishing operations, including date, locality, amount of gear used, and amount of halibut taken daily in each such locality. This log record shall be retained for the period of two years and shall be open to inspection by authorized state and federal representatives.

NEW SECTION

WAC 220-50-060 PACIFIC HALIBUT—I.P.H.C. TAGS Nothing contained in these regulations shall prohibit any vessel at any time from retaining and landing a halibut which bears an International Pacific Halibut Commission tag at the time of capture, provided that the halibut with the tag still attached is reported at the time of landing and made available for examination by enforcement officers of the State or Federal Governments.

NEW SECTION

WAC 220-50-080 PACIFIC HALIBUT—PACIFIC OCEAN (1) It shall be unlawful to possess or transport through the waters of the state, or land in any Washington State ports, any Pacific halibut taken for commercial purposes, except when taken from the following coastal Marine Fish-Shellfish Management and Catch Reporting Areas during the times and seasons provided herein in each respective area:

(a) That portion of Area 50 east of the meridian of 175°W, excluding those waters of Area 50 that are east of a line from Cape Sarichef Light to a point northeast of St. Paul Island (latitude 57°15'00"N, longitude 170°00'00"W); and south of a line from the latter point to Cape Newenham (latitude 58°39'00"N, longitude 162°10'25"W); the first fishing period shall begin at 1500 hours on April 10 and terminate at 0600 hours on April 30. The second period shall begin at 1500 hours 12 days after the last closure as provided in subsection (c) and terminate at 0600 hours 19 days later.

(b) That portion of Areas 50 and 51 west of the meridian of 175°W; the fishing season shall begin at 1500 hours on April 10 and terminate at 0600 hours in November 15.

(c) Areas 52 through 57, inclusive, and that portion of Area 51 east of the meridian of 175°W; the first period shall begin on May 25 and terminate on June 10. The second period shall begin on June 26 and terminate on July 12. The third period shall being on July 28 and terminate on August 13. The fourth period shall begin on August 29 and terminate on September 14. Each fishing period shall begin at 1500 hours and terminate 0600 hours on the designated dates.

(d) Areas 61 through 63, inclusive; the season shall begin at 1500 hours on May 20 and end at 0600 hours on November 15.

(2) It shall be unlawful to take, fish for, or possess Pacific halibut for commercial purposes in coastal Marine Fish Shellfish Management and Catch Reporting Areas 58, 59, 60A, 60B, 60C and 60D, except between 1500 hours on May 20 through 0600 hours on November 15.

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

NEW SECTION

WAC 220-50-100 PACIFIC HALIBUT—PUGET SOUND—SEASONS It shall be unlawful to take, fish for, or possess Pacific halibut for commercial purposes in all Puget Sound Marine Fish – Shellfish Management and Catch Reporting Areas, except between 1500 hours on May 20 through 0600 hours on November 15.

WSR 79-02-084
ADOPTED RULES
COMMISSION ON EQUIPMENT
[Order 7503A—Filed February 7,1979]

Be it resolved by the Washington State Commission on Equipment, acting at General Administration Building, Olympia, Washington 98504, that it does promulgate and adopt the annexed rules relating to motorcyclists' eye protection, chapter 204-52 WAC.

This action is taken pursuant to Notice No. WSR 78-12-081 filed with the code reviser on 12/5/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 46.37.005 and 46.37.530 which directs that the Washington State Commission on Equipment has authority to implement the provisions of RCW 46.37.530.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 19, 1979.

By R. W. Landon
Chairman

Chapter 204-52 WAC
MOTORCYCLISTS' EYE PROTECTION

NEW SECTION

WAC 204-52-010 PROMULGATION. By authority of RCW 46.37.005 and 46.37.530(b), the state commission on equipment hereby adopts the following rules and regulations pertaining to the requirements of motorcyclists' eye protection.

NEW SECTION

WAC 204-52-020 DEFINITIONS. (1) Eye glasses – The term "eye glasses" shall include spectacles, sunglasses, or goggles having two separately mounted lenses, but shall exclude contact lenses.

(2) Goggles – The term "goggles" is an optical device worn before the eyes, the predominant function of which is to protect the eyes without obstructing peripheral vision. They provide protection from the front and sides and may or may not form a complete seal with the face.

(3) Face shield – The term "face shield" is an eye protector attached to a helmet or headband(s) and

which covers the wearer's eyes and face at least to a point approximately to the tip of the nose and whose predominant function is protection of the eyes.

(4) Headband – The term "headband" is that part of the device consisting of a supporting band or other structure that either encircles the head or protective helmet, or can be attached thereto.

(5) Frame – The term "frame" is those parts of eye glasses or goggles containing the lens housings. The frame may be associated with padding.

NEW SECTION

WAC 204-52-030 EYE PROTECTIVE DEVICES. (1) To be considered an eye protective device, or EPD, under this regulation, a device must be one of the following:

(a) Goggles

(b) Face shield

(c) Eye glasses

(i) Each lens shall have a convex frontal surface, or be an ophthalmic corrective lens.

(ii) Each lens shall have a minimum area of three square inches or 19.356 square centimeters. The horizontal diameter (or side-to-side measurement) shall be no less than two inches or 50 millimeters. The vertical diameter (or top-to-bottom measurement) shall be no less than 1 1/2 inches or 38 millimeters. A diameter shall pass through a point on the lens that is intended to be directly in front of the pupil of the eye when the wearer is looking straight ahead.

(2) Optical correction of a person's vision, where required or desired, may be provided either:

(a) By an EPD that provides the proper optical correction, or

(b) By personal corrective lenses worn under an EPD that does not disturb the adjustment of those lenses.

NEW SECTION

WAC 204-52-040 MATERIALS. (1) All parts of an EPD shall be free from sharp edges or projections that could cause harm or discomfort to the wearer.

(2) Material(s) utilized in any portion of an EPD shall be of durable quality; i.e.: Material characteristics shall not undergo appreciable alterations under the influence of aging or of the circumstances of use to which the device is normally subjected (exposure to sun, rain, cold, dust, vibrations, contact of the skin, effects of sweat, or of products applied to the hair or skin).

(3) A headband shall be capable of holding the EPD securely under normal operating conditions. It shall be capable of easy adjustment and replacement.

(4) Material(s) commonly known to cause skin irritation or disease shall not be used for those parts of the device which come into contact with the skin.

NEW SECTION

WAC 204-52-050 LENS STRENGTH—TESTING PROCEDURES. (1) Helmet-mounted face shields shall be tested while attached to an appropriate medium-size helmet supplied by the manufacturer of the face shield, which shall be mounted on a standard head form. An EPD not designed to be attached to a helmet shall be tested on a standard human head form. Each EPD shall be located in a position simulating its position in actual use.

(2) A steel projectile 3/8 inches in diameter, weighing 1.56 ounces approximately 2 1/2 inches long with a conical point of 90 degrees included angle, the point having a spherical radius no greater than .020 inches and a hardness of 60(± 10) on the Rockwell "C" scale, shall be freely dropped from a height of 14 feet above the EPD. The projectile may be guided, but not restricted in its vertical fall by dropping it through a tube extending to within approximately 4 inches of the impact area. The impact area must be on the forward optical surface and within 1-inch diameter circle centered over the eye opening. The impact point shall be perpendicular to a plane tangent to the impact area.

(3) The EPD shall not allow penetration of the projectile through the EPD. Cracking or piercing of the EPD is permissible provided that the projectile does not pass through or remain lodged in the EPD lens, but is repulsed by the EPD, and that no particles of the EPD shall break loose from any eyeward surface of the EPD.

(4) Tests shall be performed at room temperature (65 degrees to 85 degrees F) under normal humidity conditions.

NEW SECTION

WAC 204-52-060 FLAMMABILITY TEST—PLASTICS ONLY. (1) Where plastic materials are used in an EPD, such materials shall be noncombustible or slow burning. Such plastic items shall be exposed to a test to determine the flame-propagation rate. The specimen shall be ignited by holding one end of the specimen horizontally at the top of a luminous 3/4-inch Bunsen burner flame in a draft-free room. The rate of propagation of burning, after removing the flame from the specimen, determined by a stop watch, shall be one inch or less per 24 seconds. A faster rate of propagation shall be cause for rejection.

(2) Cellulose nitrate, or materials having flammability characteristics approximately those of cellulose nitrate, shall not be used.

NEW SECTION

WAC 204-52-070 OPTICAL PROPERTIES OF EYE PROTECTIVE DEVICES. (1) Lenses of EPD's shall comply with the following requirements:

(a) Lenses shall be made of material suitable for ophthalmic use, and shall be free from striae, waves, bubbles, or any other defects which may impair their optical quality.

(b) The prismatic effect of a noncorrective lens shall not exceed 1/8 diopter at any point with the specified minimum field of vision. In the case of eye glasses, each noncorrective lens shall comply with the limitation of prismatic effect.

(c) In any meridian, the refractive power of a noncorrective lens shall not exceed plus or minus 1/8 diopter and the difference between the refractive powers in any two meridians shall not exceed 1/8 diopter.

(d) The definition afforded by a noncorrective lens shall be such that a line pattern with lines separated not more than 24 seconds of angle shall be clearly distinguishable when viewed through the lens.

(e) The compliance of a lens with the prismatic effects, refractive power, and definition requirements of subparagraphs (a), (b), and (c) of this subsection shall be determined in accordance with those test methods described in Sections 6.3.4.1.1, 6.3.4.1.2, and 6.3.4.1.3 of the American National Standards Institute Standard Z87.1-1968, September 18, 1968, "Eye and Face Protection" and explained in Section 10.1 of the National Bureau of Standards Circular 533, May 20, 1953, "Method for Determining the Resolving Power of Photographic Lenses." In order to maintain consistency in the results of tests conducted by various organizations, the following test requirements must be met:

(i) An 8-power telescope with focusing arrangement to accommodate the refractive effects of both positive (converging) and negative (diverging) lenses placed between the telescope and test chart shall be used. The illuminated target and test chart shall be a central dot and a concentric circle one inch in diameter plus one of the high contract ("black and white") NBS Resolution Test Charts, dated 1952, and printed on "Lens Resolution Chart to Accompany NBS Circular 533." The chart shall be perpendicularly aligned 35 feet from the objective lens of the telescope when the telescope is properly focused with no test, sample, or other lens between the objective lens and the chart. The center dot and the periphery of the concentric circle one inch in diameter shall be used when testing for prismatic effect. The test pattern marked "20" shall be used when testing for refractive power and when testing for definition. Standard lenses of plus or minus 1/8 diopter shall be used when testing for refractive power.

(ii) Other standard methods of test or examination that are equivalent or superior, as regards to accuracy, quality, and consistency of results to the above (subparagraph (i)) specified National Bureau of Standards methods, may be used to determine compliance only when such methods are approved by the state official to whom such approving authority has been assigned, or delegated, through due process of applicable state law.

(2) Minimum horizontal field of vision. Except as provided in subparagraph (a) of this subsection, each EPD shall not obstruct a horizontal field of vision to at least 105 degrees to the right side of the plane that passes through the pupil of the right eye looking straight ahead, and at least 105 degrees to the left side of the plane that passes through the pupil of the left eye looking straight ahead, and are parallel to the midsagittal plane.

(a) The specified minimum horizontal field of vision shall be unobstructed except that the horizontal field provided by the spectacles or sunglasses may be obstructed by the frame in a sector no greater than 7 1/2 degrees in horizontal angular width and located between 50 degrees and 80 degrees of the pertinent sagittal plane passing through the eye pupil when looking straight ahead.

(b) When ascertaining the horizontal field of vision afforded by eyeglasses, the pupil of the eye shall be assumed to be located 17 mm behind the point on the rear surface of the lens where the horizontal and vertical diameters intersect. When ascertaining the horizontal field of vision of EPD's other than eyeglasses, the assumed location of the pupil of the eye relative to the structures of the EPD shall be that location which is most likely to occur when the EPD is attached and worn in accordance with its manufacturer's instructions.

(c) No portion of the minimum horizontal field of vision shall be obstructed by a temple piece, headband, helmet, helmet attaching device, or any other supporting or attaching device.

NEW SECTION

WAC 204-52-080 LIGHT TRANSMITTING ABILITY OF EYE PROTECTIVE DEVICES. (1) A "clear" EPD shall transmit not less than eighty-five percent of the incident visible radiation. An EPD transmitting less than eighty-five percent of incident visible radiation shall be considered "tinted".

(a) A "tinted" EPD shall not impair the wearer's ability to discern color.

(b) A "tinted" EPD shall not be used at any time from a half hour after sunset to a half hour before sunrise and at any other time when due to insufficient light or unfavorable atmosphere conditions, persons and vehicles on the highway are not clearly discernible at a distance of 500 feet ahead.

(2) Luminous transmittance test. The standard source of radiant energy used in the measurement of luminous transmittance shall be a projection type lamp No. T-8 (or other high-powered, gas-filled tungsten filament incandescent lamp) operated at the color temperature (2854K) corresponding to CIE Source A. The luminous transmittance shall be determined by one of the following means:

(a) Photemetrically by an observer having normal color vision, as determined by recognized color vision chart tests such as those employing pseudo-isochromatic plates.

(b) With a physical photometer consisting of a thermopile (or other radiometer) and luminosity solution having a special transmittance curve which coincides closely with the luminous efficiency curve of the average eye.

(c) By measuring the special transmittance and calculating the luminous transmittance through the use of published data on the spectral radiant energy of CIE Source A and the relative luminous efficiency of the average eye.

NEW SECTION

WAC 204-52-090 CLEANSING. All EPD materials shall be such as to withstand, without visible deterioration, washing in ordinary household detergents and warm water, and rinsing to remove visible traces of detergents.

NEW SECTION

WAC 204-52-100 IDENTIFICATION AND LABELING. Eye protective devices, manufactured to comply with the requirements of this regulation and approved by the Commission on Equipment, shall be identified and labeled as follows:

(1) The EPD shall be permanently marked in a manner not to interfere with the vision of the wearer.

(2) The manufacturer's or distributor's trade name and model name or number, which shall correspond with the name and number under which the device has been approved or certified.

(3) That the device meets the standard VESC-8. Where space is limited, V-8 may be used in lieu of VESC-8.

The information required under WAC 204-52-100(1), (2) and (3) plus the corporate or business name and address of either the actual manufacturer or the marketer assuming the responsibilities of the manufacturer shall be imprinted on the container in which the EPD is packed and on any instruction sheet(s) pertaining to the EPD.

The following statement shall appear in a prominent location on the container or label accompanying each tinted eye protective device: THIS TINTED EYE PROTECTIVE DEVICE IS FOR DAYTIME USE ONLY.

WSR 79-02-085
ADOPTED RULES
COMMISSION ON EQUIPMENT
[Order 7501A—Filed February 7, 1979]

Be it resolved by the Washington State Commission on Equipment, acting at General Administration Building, Olympia, Washington 98504, that it does promulgate and adopt the annexed rules relating to authorized emergency vehicle permits, chapter 204-36 WAC.

This action is taken pursuant to Notice No. WSR 78-12-080 filed with the code reviser on 12/5/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 46.37.005 and 46.37.194 which directs that the Washington State Commission on Equipment has authority to implement the provisions of RCW 46.37.194.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 19, 1979.

By R. W. Landon
Chairman

Chapter 204-36 WAC
AUTHORIZED EMERGENCY VEHICLE PERMITS

AMENDATORY SECTION (Amending Order 7301, filed 2/5/73)

WAC 204-36-010 PROMULGATION. By authority of RCW 46.((~~08.060~~)) 04.040, RCW 46.37.005, and RCW 46.37.194, ((~~chapter 12, Laws of 1961,~~)) the State Commission on Equipment hereby adopts the following regulations relating to the issuance of an authorized emergency vehicle permit.

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

AMENDATORY SECTION (Amending Order 7301, filed 2/5/73)

WAC 204-36-020 DEFINITIONS. (1) Operator or Driver. The term operator and the term driver, as used herein, means every person who is in actual physical control of an authorized emergency vehicle.

(2) Operation. The term operation, as used herein, is the driving or moving by any operator or driver upon a public highway of any vehicle that is equipped or has attached thereon any equipment, the installation of which requires an authorized emergency vehicle permit, whether or not the emergency equipment is activated.

(3) Commission shall mean the State Commission on Equipment.

AMENDATORY SECTION (Amending Order 7501, filed 11/25/75)

WAC 204-36-030 PERMIT REQUIREMENTS. (1) Any person, firm, corporation or municipal corporation desiring to have a vehicle registered as an authorized emergency vehicle pursuant to RCW 46.((~~08.060~~)) 37.194 shall apply for such classification to the State Commission on Equipment on forms provided by the Commission.

(2) The applicant shall furnish the following information to the Commission:

(a) A description of the specific geographic area in which the vehicle shall be used as an authorized emergency vehicle.

(b) A description of the specific purposes for which the vehicle shall be used as an authorized emergency vehicle.

(c) An explanation of the nature and scope of the duties, responsibilities and authority of the vehicle operator which necessitate the vehicle's registration as an authorized emergency vehicle.

(d) A description of the emergency equipment to be used if the permit is granted.

(e) A listing of the names, addresses, birthdates, operator's license numbers and other identifying data as may be prescribed on the application form by the Commission, of all persons who will use the vehicle as an authorized emergency vehicle, ((~~and for each such operator to be approved by the director of motor vehicles as required by RCW 46.08.060,~~)) and a completed applicant fingerprint card.

(f) Certification by the chief law enforcement officer, or fire chief if the vehicle is to be used for firefighting

purposes, of each jurisdiction in which the vehicle is to be used as an authorized emergency vehicle, that a need exists in such jurisdiction for the vehicle to be used as described in the application and that he knows of no reason why the application should be denied. The Commission on Equipment may issue emergency vehicle permits to vehicles which operate throughout the state, and such permit may be cancelled upon receipt of complaint from any state law enforcement agency as prescribed in WAC 204-36-070.

AMENDATORY SECTION (Amending Order 7301, filed 2/5/73)

WAC 204-36-060 PROCEDURE. If the Commission approves the application, it shall first issue a certificate of approval which shall be valid for thirty days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant shall bring the vehicle to a district or detachment office of the Washington State Patrol to be examined to determine if it is of an approved type. A Washington State Patrol officer shall certify the results of this examination on a form prescribed and provided by the Commission and the applicant shall file the form with the State Commission on Equipment, ((~~Washington State Patrol,~~)) General Administration Building AX-12, Olympia, Washington 98504. Upon receipt of such certification, the Commission shall issue a permit, which shall expire one year from the date of issuance thereof.

(1) The certificate of approval and when issued, the permit, including all endorsements for change of conditions as provided in WAC 204-36-030((~~(3)~~)), shall be carried in the authorized emergency vehicle at all times, and shall be displayed on request to any law enforcement officer.

AMENDATORY SECTION (Amending Order 7301, filed 2/5/73)

WAC 204-36-070 REVOCATION OR SUSPENSION. (1) Violation of any of these regulations shall be grounds for suspension or revocation of the authorized emergency vehicle permit. Notice shall be furnished to the applicant at least ((~~ten~~)) 20 days prior to the effective date of such suspension or revocation. The notice shall describe the grounds for the order and shall furnish the applicant an opportunity to be heard within the ((~~ten~~)) 20-day period. The notice may provide for immediate suspension of the permit prior to any hearing, or the Commission may suspend the permit following the hearing but prior to final determination, if in the commission's opinion it is necessary to do so in the interests of the public health, safety or welfare.

(2) The chief law enforcement officer, or fire chief if the vehicle is to be used for firefighting purposes, of each jurisdiction in which the vehicle is operated as an authorized emergency vehicle may revoke his certification of the vehicle by notifying the commission in writing of such revocation and his reasons therefor. ((~~Thereafter, ten days~~)) Following notice to the applicant and an opportunity to be heard, the permit ((~~shall become invalid within the geographic area of that chief law enforcement officer's primary jurisdiction~~)) may be invalidated by the commission on equipment.

(3) ((~~If any hearing cannot be completed and a final determination made on any proposed suspension or revocation within ten days following service of notice on the applicant by the Commission, such revocation or suspension may be stayed pending said hearing and determination, unless in the Commission's opinion, it is not in the interests of the public health, safety or welfare to do so.~~))

((~~(4)~~)) Mailing by ((regular)) certified mail of any notice or correspondence by the commission to the last address of the applicant shown on his application shall be sufficient service of notice as required by these rules.

WSR 79-02-086
PROPOSED RULES
DEPARTMENT OF GAME
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 34.04.025 and chapter 42.30 RCW, that the State Game Commission intends to adopt, amend, or repeal rules concerning 1978 Mountain Goat, Sheep and Moose Hunting Season, repealing WAC 232-28-800 and 1979 Mountain Goat, Sheep and Moose Hunting Seasons, adopting WAC 232-28-801;

that such agency will at 9:00 a.m., Monday, April 2, 1979, in the Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 9:00 a.m., Monday, April 2, 1979, in the Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA.

The authority under which these rules are proposed is RCW 77.12.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to April 2, 1979, and/or orally at 9:00 a.m., Monday, April 2, 1979, Town and Country Motor Inn, 2009 Riverside Drive, Mt. Vernon, WA.

Dated: February 7, 1979
By: Wallace F. Kramer
Wildlife Enforcement Chief

NEW SECTION

WAC 232-28-801 1979 MOUNTAIN GOAT, SHEEP AND MOOSE HUNTING SEASONS.

Reviser's Note: The text and accompanying map comprising the 1979 Mountain Goat, Sheep, and Moose Hunting Season Rules proposed by the Department of Game have been omitted from publication in the Register under the authority of RCW 34.04.050(3) as being unduly cumbersome to publish. Copies of the proposed rules may be obtained from the main office of the Department of Game, 600 North Capitol Way, Olympia, Washington, 98504, and upon final adoption are available in pamphlet form from the Department, its six regional offices, and at numerous drug and sporting goods stores throughout the state.

REPEALER

The following sections of the Washington Administrative Code is repealed:

(1) WAC 232-28-800 1979 MOUNTAIN GOAT, SHEEP AND MOOSE HUNTING SEASON

WSR 79-02-087

ADOPTED RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Order R-122, Cause No. TV-1199—Filed February 7, 1979]

In the matter of adopting WAC 480-62-080, relating to railroads.

This action is taken pursuant to Notice No. WSR 79-01-082, filed with the Code Reviser January 3, 1979. This rule hereinafter adopted shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 81.28.280 and is intended to administratively implement that statute.

This rulemaking proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), the State Register Act (chapter 34.08 RCW), the State Economic Policy Act (chapter 43.21H RCW), and the State Environmental Policy Act of 1971 (chapter 43-.21C RCW).

Pursuant to Notice No. WSR 79-01-082, the above matter was scheduled for adoption at 8:00 a.m., Wednesday, February 7, 1979, in the Commission's Conference Room, Seventh Floor, Highways-Licenses Building, Olympia, Washington before Chairman Robert C. Bailey and Commissioner Frank W. Foley.

Under the terms of said notices, interested persons were afforded the opportunity to submit data, views, or arguments to the Commission in writing prior to February 2, 1979. Under the terms of said notice, interested persons were also afforded the opportunity to submit data, views, or arguments orally at 8:00 a.m., Wednesday, February 7, 1979, in the Commission's Conference Room, Seventh Floor, Highways-Licenses Building, Olympia, Washington.

Written comments have been submitted to the Commission on this proposed rule amendment by the Union Pacific Railroad Company and Burlington Northern Inc. No oral comments were submitted.

The adoption to WAC 480-62-080 on a permanent basis affects no economic values and has no economic impact.

In reviewing the entire record herein, it has been determined that WAC 480-62-080 should be adopted on a permanent basis as set forth in Appendix "A", attached hereto and made a part hereof by reference. WAC 480-62-080, as adopted, sets forth the circumstances under which railroads are required to report accidents to the Commission, and the manner in which such reports shall be made.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-62-080, relating to reporting requirements for railroad accidents, be and the same is, hereby adopted as set forth in Appendix "A" as a permanent rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after being first recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

IT IS FURTHER ORDERED That there shall be forwarded to the secretary of the senate and the chief clerk of the house of representatives three copies of the statement required by RCW 34.04.045.

DATED at Olympia, Washington, this 7th day of February, 1979.

Washington Utilities and Transportation Commission

Robert C. Bailey, Chairman

Frank W. Foley, Commissioner

NEW SECTION

WAC 480-62-080 ACCIDENT REPORTS. (1) Each railroad must promptly report by telephone to a specific telephone number and/or person to be designated from time to time by the commission whenever the railroad learns of the occurrence of an accident and/or incident arising from the operation of the railroad which results in the:

(a) Death of a railroad employee, rail passenger or any other person;

(b) Death of or injury to any person involved in a railway-highway crossing accident;

(c) Damages of five hundred thousand dollars or more to railroad and/or nonrailroad property.

(2) Each report made by telephone shall be promptly followed by a telegraphic report to the commission.

(3) Each report must state the:

(a) Name of the railroad(s) involved;

(b) Name and position of the reporting individual;

(c) Time and date of the accident and/or incident;

(d) Circumstances of the accident and/or incident;

(e) Identity of casualties, if any; and

(f) Identity of fatalities, if any.

(4) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

WSR 79-02-088

ADOPTED RULES

COUNCIL FOR POSTSECONDARY EDUCATION

[Order 2-79—Filed February 7, 1979]

Be it resolved by the Council for Postsecondary Education, acting at Greenwood Inn, Olympia, Washington,

that it does promulgate and adopt the annexed rules relating to State of Washington college work study program, amending WAC 250-40-070.

This action is taken pursuant to Notice No. WSR 78-12-054 filed with the code reviser on 11/29/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Council for Postsecondary Education as authorized in RCW 28B.10.806.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED January 25, 1979.

By Chalmers Gail Norris
Executive Coordinator

AMENDATORY SECTION (Amending Order 5-77, filed 5/11/77)

WAC 250-40-070 ADMINISTRATION. (1) Administering agency. The Council for Postsecondary Education shall administer the Work-Study Program. The staff of the Council for Postsecondary Education under the direction of the executive coordinator will manage the administrative functions relative to the program and shall be authorized to enter into agreement with:

(a) Eligible public institutions for the placement of students and the reimbursement of employers for the state share of the student's compensation.

(b) Eligible private institutions for the placement of students.

(c) Employers of students attending eligible private institutions for the reimbursement of the state share of the student's compensation. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the Work-Study Program.

(2) Responsibility of eligible public institutions. The institution will:

(a) Enter into contract with eligible organizations for employment of students under the Work-Study Program. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the Work-Study Program.

(b) Determine student eligibility and arrange for placement.

(c) Arrange for payment of the state share of the student's compensation.

(3) Responsibility of eligible private institutions. The institution will:

(a) Assist the council in contracting with eligible employers.

(b) Determine student eligibility, arrange for placement with employers, and notify the council of such placement.

(4) Responsibility of eligible employers. The employer will:

(a) Arrange for payment of the student's compensation and benefits and request reimbursement of the state share from the institution or the Council for Postsecondary Education.

(b) In the case of the federal government as employer, reimburse the institution or the Council for Postsecondary Education for the employer's share of the student's compensation.

(5) Responsibility of the Council for Postsecondary Education. The council will, for those students attending private institutions:

(a) Reimburse the employer for the state share of the student's wages; or

(b) In the case of the federal government as employer, arrange for the payment of the student's compensation and benefits and request reimbursement of the employer's share.

(6) Advisory committee. The council will appoint an advisory committee composed of representatives of eligible institutions, employer organizations having membership in the classified service of the state's institutions of postsecondary education, a student and persons as may be necessary to advise the council staff on matters pertaining to the administration of the Work-Study Program. In addition, representatives from postsecondary educational advisory and governing bodies will be invited to participate in advisory committee meetings when annual institutional allocations are being determined.

(7) Institutional administrative allowance. Contingent upon funds being made available to the Council for Postsecondary Education for the operation of the Work-Study Program, the public institutions will be provided an administrative expense allowance. In order to qualify for the allowance, the institution must demonstrate that financial support for student financial aid administration, exclusive of the administrative allowance, is at least equal to the level of support provided during the previous fiscal year.

(8) Institutional maintenance of effort. State funds provided under this program are not to be used to replace institutional funds which would otherwise be used to support student employment.

(9) Reports. The Council for Postsecondary Education will obtain periodic reports on the balance of each institution's Work-Study funds to ensure a proper distribution of funds among institutions. In addition, information will be gathered subsequent to the end of the academic year, describing the population served and the modes of packaging used.

(10) ((~~Program reviews. Council for Postsecondary Education will conduct program reviews to ensure compliance with rules and regulations and program guidelines.~~)) Agreement to Participate. As a precedent to participating in the State Work Study program, each institution must acknowledge its responsibility to administer the program according to prescribed rules and regulations and guidelines.

(11) Program Reviews. The Council for Postsecondary Education will review institutional administrative practices to determine institutional compliance with rules and regulations and program guidelines. If such a review determines that an institution has failed to comply with program rules and regulations or guidelines the

institution will reimburse the program in the appropriate amount.

WSR 79-02-089
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030 and 42.30.060, that the University of Washington intends to adopt, amend, or repeal rules concerning assignment priority, amending WAC 478-156-017;

that such institution will at 7:30 p.m., Wednesday, March 28, 1979, in the HUB Student Union Building Auditorium, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 1:00 p.m., Friday, April 13, 1979, in the Regent's Room, Administration Bldg., UW, Seattle.

The authority under which these rules are proposed is RCW 28B.20.130(1).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution prior to March 28, 1979, and/or orally at 7:30 p.m., Wednesday, March 28, 1979, HUB Student Union Building Auditorium.

Dated: February 7, 1979
By: James B. Wilson
Senior Assistant Attorney General

AMENDATORY SECTION

WAC 478-156-017 ASSIGNMENT PRIORITY. Applicants for University-owned apartments and family housing are assigned in the following order of priority((:)) if they meet the financial eligibility criteria indicated below:

(1) Students in the University's Educational Opportunity Program.

(2) (((~~(a) Women~~)) Students who are single parents and have dependent children.

((~~(b) Men students who are single parents and have dependent children.~~))

(3) Students who have special housing problems such as the physically handicapped and others with extreme financial or personal hardship.

(4) Other students ((~~within income limits as set forth below:~~)) who meet the financial eligibility criteria.

(5) Other students and staff members ((~~over income limits.~~)) who exceed the financial eligibility criteria.

((~~Those students in priority groups 1 through 4, noted above, must be within the following income limits:~~))

((~~(1) Single persons - $3,750 plus tuition.~~))

((~~(2) Married couples - $4,750 plus tuition.~~))

((~~(3) To the above add:~~))

((~~(a) $750 for the first dependent child and $400 for each~~)) ((~~additional child.~~))

((~~(b) $150 for books and the tuition of the second spouse if both~~)) ((~~spouses are attending school.~~))

((~~(c) $600 for employment expenses if the student's spouse is~~)) ((~~working half time or more. (Order 72-6, § 478-156-017, filed 11/6/72.)~~))

Income eligibility must be verified annually for those students in priority groups (1) through (5). The Office of Student Financial Aid will annually update financial need figures for family housing eligibility and will annually evaluate the resources of each new applicant and each current resident of family housing to determine if their need for financial assistance exceeds the established need figures. Separate financial need figures are established for each unit size. The applicable dollar amounts and deadlines for submission of the Financial Aid Form are published by and available at the Housing and Food Services Office in January of each year. Eligibility will be for the period July 1 through June 30. Any expenses related to the processing of the Financial Aid Form will be borne by the applicant or the current resident.

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

WSR 79-02-090
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed February 7, 1979]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030 and 42.30.060, that the University of Washington intends to adopt, amend, or repeal rules concerning parking and traffic regulations, WAC 478-116-600, fees, fines and penalties;

that such institution will at 9:00 a.m., Friday, March 16, 1979, in the HUB 304F Student Union Building, conduct a hearing relative thereto;

and that the adoption, amendment, or repeal of such rules will take place at 1:00 p.m., Friday, April 13, 1979, in the Regent's Room, Administration Bldg., UW, Seattle.

The authority under which these rules are proposed is RCW 28B.20.130(1).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution prior to March 16, 1979, and/or orally at 9:00 a.m., Friday, March 16, 1979, HUB 304F Student Union Building.

Dated: February 6, 1979
By: Sally G. Tenney
Assistant Attorney General

AMENDATORY SECTION (Amending Order 78-6, filed 9/14/78)

WAC 478-116-600 FEES, FINES AND PENALTIES. (1) For purposes of this section the following lots are in:

(a) Zone A -

(i) Central Campus: C1, C3, C6, C7, C8, C9, C10, C12, C13, C14, C15, C16, C17, C18;

(ii) East Campus: E3, E6, E7, E8;(([~~,~~]))

(iii) North Campus: N2, N3, N4, N6, N7, N8, N9, N10, N11, N12, N13, N14, N15, N16, N18, N20, N21, N22, N23, N24, N26, N27, N28;

(iv) South Campus: S1, S4, S5, S6, S7, S8, S9, S10;

(v) West Campus: W1, W3, W4, W5, W6, W7, W8, W9, W10, W11, W12, W13, W14, W18, W20, W21, W22, W23, W24, W25, W34, W39, W41, W42.

(b) Zone B -

(i) East Campus: E2, E9, E10, E11, E12;

(ii) North Campus: N1, N5, N25;

(iii) South Campus: S13;

(iv) West Campus: W2, W16, W17, W26, W27, W28, W29, W30, W31, W32, W33, W36, W38, W40.

(2) The following schedule of parking fees is hereby established:

	PER	AMOUNT
(a) Type of Permit -		
(i) Annual Permits		
(A) Zone A Permits (not (([~~including~~])) including 24-hour storage)	Year	$84.00
(B) Zone B Permits (not (([~~including~~])) including 24-hour storage)	Year	72.00
(C) Reserved - General	Year	168.00
(D) Reserved - Physically Handicapped	Year	84.00
(E) Motorcycle and Scooter	Year	18.00

	PER	AMOUNT
(F) Drive-through permits (Full-time Faculty and Staff only)	Year	6.00
(G) 24-hour storage, garages	Year	120.00
(H) 24-hour storage, surface lots - Zone A	Year	84.00
(I) 24-hour storage, surface lots - Zone B	Year	72.00
(ii) Quarterly Permits:		
(A) Zone A permits (not ((~~including~~])) including 24-hour storage)	Quarter	21.00
(B) Zone B permits (not ((~~including~~])) including 24-hour storage)	Quarter	18.00
(C) Reserved - General	Quarter	42.00
(D) Reserved - Physically Handicapped	Quarter	21.00
(E) Drive-through permits (Full-time Faculty and Staff only)	Quarter	2.00
(F) Motorcycle and Scooter	Quarter	5.00
(G) 24-hour storage, garages	Quarter	30.00
(H) 24-hour storage, surface lots - Zone A	Quarter	21.00
(I) 24-hour storage, surface lots - Zone B	Quarter	18.00
(iii) Night Permits (5:00 p.m. to 7:30 a.m. and Saturday a.m. only)		
(A) Zone A annual permits	Year	48.00
(B) Zone B annual permits	Year	24.00
(C) Zone A quarterly permits	Quarter	12.00
(D) Zone B quarterly permits	Quarter	6.00
(iv) Conference Permits ((~~Day 1.25~~]))	Day	1.25
	Week	6.25
(b) Hourly Parking Rates for Designated Areas on Main Campus and South Campus (6:45 a.m. to 11:00 p.m. only) -		
(i) 0-15 minutes	No charge	
(ii) 15 minutes to 30 minutes		$ .25
(iii) to 1 hour		.50
(iv) 1 hour to 2 hours		.75
(v) 2 hours to 3 hours		1.00
(vi) over 3 hours		1.25
(b-1) Hourly Parking Rates for Designated Areas on the Periphery of Campus (6:45 a.m. to 11:00 p.m. only) -		
(i) 0-15 minutes	No charge	
(ii) 15 minutes to 30 minutes		.25
(iii) to 1 hour		.50
(iv) over 1 hour		.75
(c) Evening Parking (5:00 p.m. to 11:00 p.m.)		
(i) 0-30 minutes	No charge	
(ii) over 30 minutes		.50
(d) Overnight Parking (to 7:30 a.m.)		
(e) Special Permits -		
(i) Short term (24-hour) Zone A (Faculty, Staff and Students)	Week	2.50
	Month	10.00
(ii) Short term (not including 24-hour storage) Zone A (Faculty, Staff, and Students)	Week	1.75
	Month	7.00
	Day	.25
(iii) Short-term Motorcycle		
(iv) Ticket Books (persons identified in ((~~Sections~~])) sections WAC 478-116-240(6) and ((~~WAC~~])) 478-116-250(1) only)		
(A) 5 ticket book	Book	1.75
(B) 10 ticket book	Book	3.50
(C) 25 ticket book	Book	8.75
(f) Mechanically Controlled Parking Areas as Designated (Parking meters, ticket dispensers, automatic gates, etc.)		.10 -.50
(g) Athletic Events -		
(i) Football		
(A) All campus lots		1.00
(B) Buses		5.00
(ii) All other events - Pavilion and Stadium lots		
(A) When staffed by attendants		.75
(B) When controlled by mechanical equipment		.25
(h) Miscellaneous Fees -		
(i) Transfer from one area to another by request of individual		2.00
(ii) Gate keycard replacement		2.50
(iii) Vehicle Gatekey deposit (Amount of deposit will be set by the Manager of the Parking Division. Deposit will be returned to individual when key is returned to Parking Division.)	Not to exceed	5.00
(iv) Permit Replacement		
(A) With signed certificate of destruction or theft		No charge
(B) Without certificate of destruction		2.00
(v) Impound Fee		At cost

(3) The following schedule of fines for violations of these rules is hereby established:

Offense	Maximum Fine
(a) 01 ((~~Blocking~~])) Obstructing Traffic WAC 478-116-190	$ 10.00
(b) 02 Enter/Exit Without Paying WAC 478-116-110	10.00
(c) 03 Failure to Lock Ignition WAC 478-116-200	3.00
(d) 04 Failure to Set Brakes WAC 478-116-200	5.00
(e) 05 ((~~Improper Display of Vehicle Permit~~])) ((~~WAC 478-116-340~~])) Permit not Registered to this Vehicle WAC 478-116-060	((~~2.00~~])) 5.00
(f) 06 Improper Display of Vehicle Permit WAC 478-116-340	2.00
(g) 07 Occupying More than One Stall or Space WAC 478-116-140	2.00
((~~(g) 07~~])) (h) 08 Parking in Restricted Parking Area WAC 478-116-110	5.00
((~~(h) 08~~])) (i) 09 Parking in Prohibited Area WAC 478-116-130	10.00
((~~(i) 09~~])) (j) 10 Parking on ((~~Grass] [Planted Areas~~])) Planted Areas WAC 478-116-130	5.00
((~~(j) 10~~])) (k) 11 Parking Out of Assigned Area WAC 478-116-130	5.00
((~~(k) 11~~])) (l) 12 Parking Over Posted Time Limit WAC 478-116-110	5.00
((~~(l) 12~~])) (m) 13 Parking with No Valid Permit Displayed WAC 478-116-060	5.00
((~~(m) 13~~])) (n) 14 Parking within 10 Feet of Fire Hydrant WAC 478-116-130	10.00
((~~(n) 14~~])) (o) 15 Parking at Expired Meter WAC 478-116-350	5.00
((~~(o) 15~~])) (p) 16 Parking Outside Cycle Area WAC 478-116-070	5.00
((~~(p) 16~~])) (q) 17 Parking in Space/Area Not Designated for Parking WAC 478-116-130	5.00
((~~(q) 17~~])) (r) 18 Parking While Privilege Suspended WAC 478-116-520	((~~5.00~~])) 25.00
((~~(r) 18~~])) (s) 19 Use of Forged/Stolen Vehicle Permit WAC 478-116-060 and ((~~WAC~~])) 478-116-370	25.00
((~~(s) 19~~])) (t) 20 Impound WAC 478-116-580	At cost
((~~(t) 20~~])) (u) 21 Other Violations of the University Parking and Traffic Regulations	25.00
(v) 22 Failure to Transfer a Valid Permit WAC 478-116-340	2.00

WSR 79-02-091
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
[Memorandum, Chairman—February 7, 1979]

The Washington State Ecological Commission will hold regular quarterly meetings in the first or second week of the months January, April, July and October. The next quarterly meeting will be held in Wenatchee on April 4, 1979. Forthcoming meeting dates and places are yet to be determined.

For further information, please contact Susan Pratt, Commission Secretary, Washington State Ecological Commission, Department of Ecology, Olympia, Wa. 98504 (206-753-2240).

WSR 79-02-092
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
[Memorandum, Chairman—February 7, 1979]

RCW 43.21A.170 requires that designated state agency heads and the public be given notice of meetings of the Washington State Ecological Commission, and that the public be given full opportunity to examine and be heard on all proposed orders, regulations, or recommendations.

This is to advise you that the Washington State Ecological Commission will hold a regular quarterly meeting on April 4, 1979 in Wenatchee, Washington.

For further information, contact Susan Pratt, Commission Secretary, Washington State Ecological Commission, Department of Ecology, Olympia, Wa. 98504. (Telephone 206-753-2240)

WSR 79-02-093
NOTICE OF PUBLIC MEETINGS
CONSERVATION COMMISSION
[Memorandum, Exec. Sec.—February 7, 1979]

The Conservation Commission holds regular bimonthly meetings on the third Thursday of the month at various locations in the state of Washington.

The Conservation Commission's next meeting for 1979 will be March 15, 1979, in Olympia, Washington. Please contact Shirley Casebier, Conservation Commission, Olympia, Washington 98504, Phone: 753-3894 for further information.

Places for other forthcoming meetings are yet to be determined.

Table of WAC Sections Affected

WAC #		WSR #
16-218-010	AMD-P	79-02-073
16-218-02001	AMD-P	79-02-073
16-228-165	AMD-P	79-02-077
16-230-150	AMD	79-02-046
16-230-160	AMD	79-02-046
16-230-170	AMD	79-02-046
16-230-180	AMD	79-02-046
16-230-190	AMD	79-02-046
16-230-200	REP	79-02-046
16-230-260	AMD-P	79-01-080
16-230-270	AMD-P	79-01-080
16-230-290	AMD-P	79-01-080
16-401-003	REP-P	79-02-072
16-401-025	AMD-P	79-02-072
16-401-030	AMD-P	79-02-072
16-401-035	REP-P	79-02-072
16-403-170	AMD-P	79-01-076
16-427-001	REP-P	79-02-071
16-427-010	REP-P	79-02-071
16-427-015	REP-P	79-02-071
16-427-020	REP-P	79-02-071
16-427-025	REP-P	79-02-071
16-427-030	REP-P	79-02-071
16-427-040	REP-P	79-02-071
16-427-050	REP-P	79-02-071
16-427-060	REP-P	79-02-071
16-427-070	REP-P	79-02-071
16-428-001	REP-P	79-02-071
16-428-010	REP-P	79-02-071
16-428-020	REP-P	79-02-071
16-428-030	REP-P	79-02-071
16-428-040	REP-P	79-02-071
16-428-050	REP-P	79-02-071
16-428-060	REP-P	79-02-071
16-428-070	REP-P	79-02-071
16-429-001	REP-P	79-02-071
16-429-010	REP-P	79-02-071
16-429-020	REP-P	79-02-071
16-429-030	REP-P	79-02-071
16-429-040	REP-P	79-02-071
16-429-050	REP-P	79-02-071
16-429-060	REP-P	79-02-071
16-429-070	REP-P	79-02-071
16-429-080	REP-P	79-02-071
16-429-090	REP-P	79-02-071
16-429-100	REP-P	79-02-071
16-430-001	REP-P	79-02-071
16-430-010	REP-P	79-02-071
16-430-015	REP-P	79-02-071
16-430-020	REP-P	79-02-071
16-430-025	REP-P	79-02-071
16-430-040	REP-P	79-02-071
16-430-050	REP-P	79-02-071
16-430-060	REP-P	79-02-071
16-430-070	REP-P	79-02-071
16-430-100	REP-P	79-02-071
16-430-110	REP-P	79-02-071
16-432-010	NEW-P	79-02-071
16-432-020	NEW-P	79-02-071
16-432-030	NEW-P	79-02-071
16-432-040	NEW-P	79-02-071
16-432-050	NEW-P	79-02-071
16-432-060	NEW-P	79-02-071
16-432-070	NEW-P	79-02-071
16-432-080	NEW-P	79-02-071
16-432-090	NEW-P	79-02-071
16-432-100	NEW-P	79-02-071
16-432-110	NEW-P	79-02-071
16-432-120	NEW-P	79-02-071
16-432-130	NEW-P	79-02-071
16-454-050	REP-P	79-02-071
16-454-055	REP-P	79-02-071
16-454-060	REP-P	79-02-071
16-454-065	REP-P	79-02-071
16-454-070	REP-P	79-02-071
16-454-075	REP-P	79-02-071
16-454-080	REP-P	79-02-071
16-454-085	REP-P	79-02-071
16-454-090	REP-P	79-02-071
16-454-095	REP-P	79-02-071
16-620-007	REP-P	79-02-004
16-620-007	REP-P	79-02-076
16-620-240	AMD-P	79-02-004
16-620-240	AMD-P	79-02-076
16-620-260	AMD-P	79-02-004
16-620-260	AMD-P	79-02-076
16-750-010	AMD-P	79-02-074
24-12-011	AMD-P	79-02-026
50-12-040	AMD-P	79-01-095
50-12-040	AMD-E	79-02-034
50-12-050	AMD-P	79-01-095
50-12-050	AMD-E	79-02-034
50-16-030	AMD-P	79-01-095
50-16-035	AMD-P	79-01-095
50-16-045	AMD-P	79-01-095
50-16-060	AMD-P	79-01-095
50-16-070	AMD-P	79-01-095
50-16-075	AMD-P	79-01-095
50-16-080	AMD-P	79-01-095
50-16-095	AMD-P	79-01-095
50-16-100	AMD-P	79-01-095
50-20-010	AMD-P	79-01-095
50-20-050	AMD-P	79-01-095
50-24-030	AMD-P	79-01-095
50-24-120	AMD-P	79-01-095
50-24-140	AMD-P	79-01-095
51-10	AMD-P	79-02-078
51-10	AMD-P	79-02-078
82-28-010	AMD-P	79-01-091
82-28-040	AMD-P	79-01-091
82-28-050	AMD-P	79-01-091
82-28-06001	AMD-P	79-01-091
82-28-080	AMD-P	79-01-091
82-28-130	AMD-P	79-01-091
82-28-190	AMD-P	79-01-091
82-28-230	AMD-P	79-01-091
131-08-005	AMD-P	79-01-086
131-16-011	AMD-P	79-01-087
131-16-040	AMD-P	79-01-087
131-16-061	AMD-P	79-01-087
131-16-062	NEW-P	79-01-087
131-16-067	NEW-P	79-01-087
132E-128-010	AMD-E	79-02-018
132E-128-020	AMD-E	79-02-018
132E-128-030	AMD-E	79-02-018
132E-128-040	AMD-E	79-02-018
132E-128-050	AMD-E	79-02-018
132E-128-060	AMD-E	79-02-018
132E-128-070	AMD-E	79-02-018
132E-128-080	AMD-E	79-02-018
132E-128-090	REP-E	79-02-018
132E-129-010	AMD-E	79-02-018
132E-129-020	AMD-E	79-02-018
132E-129-030	NEW-E	79-02-018
132E-129-040	NEW-E	79-02-018
132E-129-050	NEW-E	79-02-018
132E-129-060	NEW-E	79-02-018
132E-129-070	NEW-E	79-02-018
136-10-050	AMD	79-01-096
136-18-020	AMD	79-01-098
136-18-030	AMD	79-01-098
136-18-040	REP	79-01-098
136-18-050	AMD	79-01-098
136-18-060	AMD	79-01-098
136-18-070	AMD	79-01-098
136-20-010	AMD	79-01-099
136-20-020	AMD	79-01-099
136-20-030	AMD	79-01-099
136-20-040	AMD	79-01-099
136-20-050	AMD	79-01-099
136-20-060	AMD	79-01-099
136-32-030	AMD	79-01-097
173-58	NEW-P	79-01-079
173-70	NEW-P	79-01-078
173-160-090	AMD	79-02-010
173-160-09001	NEW	79-02-010
173-160-100	AMD	79-02-010
173-160-200	AMD	79-02-010
173-160-290	AMD	79-02-010
173-240-010	NEW	79-02-033
173-240-020	NEW	79-02-033
173-240-030	NEW	79-02-033
173-240-040	NEW	79-02-033
173-240-050	NEW	79-02-033
173-240-060	NEW	79-02-033
173-240-070	NEW	79-02-033
173-240-080	NEW	79-02-033
173-240-090	NEW	79-02-033
173-240-100	NEW	79-02-033
173-240-105	NEW	79-02-033
173-240-110	NEW	79-02-033
173-240-120	NEW	79-02-033
173-240-130	NEW	79-02-033
173-240-140	NEW	79-02-033
173-240-150	NEW	79-02-033
173-240-160	NEW	79-02-033
173-240-170	NEW	79-02-033
173-240-180	NEW	79-02-033
180-16-167	REP	79-02-048
180-16-240	AMD	79-02-048
180-30-110	AMD-P	79-02-070
180-30-250	AMD-P	79-02-070
204-36-010	AMD	79-02-085
204-36-020	AMD	79-02-085
204-36-030	AMD	79-02-085
204-36-060	AMD	79-02-085
204-36-070	AMD	79-02-085
204-52-010	NEW	79-02-084
204-52-020	NEW	79-02-084
204-52-030	NEW	79-02-084
204-52-040	NEW	79-02-084
204-52-050	NEW	79-02-084
204-52-060	NEW	79-02-084
204-52-070	NEW	79-02-084
204-52-080	NEW	79-02-084
204-52-090	NEW	79-02-084
204-52-100	NEW	79-02-084
204-66-180	AMD	79-01-077
220-16-025	AMD-P	79-01-100
220-16-028	AMD-P	79-01-100
220-16-045	REP-P	79-01-100
220-16-050	REP-P	79-01-100
220-16-051	NEW-P	79-01-100
220-16-060	REP-P	79-01-100
220-16-070	AMD-P	79-02-083
220-16-135	REP-P	79-01-100
220-16-340	AMD-P	79-02-083
220-20-020	AMD-P	79-01-100
220-20-020	AMD-P	79-02-083
220-22-400	AMD-P	79-01-100
220-28-007F0E	REP-E	79-02-002
220-28-007G0C	REP-E	79-02-002
220-28-010D0G	REP-E	79-02-002
220-28-013B0G	REP-E	79-02-002
220-28-013G0C	REP-E	79-02-002
220-32-02200B	NEW-E	79-02-035
220-32-03000L	NEW-E	79-02-035
220-32-04000E	NEW-E	79-02-035
220-32-05100H	NEW-E	79-02-035
220-32-05700D	NEW-E	79-02-035
220-36-03001	AMD-P	79-02-083
220-40-030	AMD-P	79-02-083

Table of WAC Sections Affected

WAC #		WSR #
220-44-030	AMD-P	79-01-100
220-44-040	AMD-P	79-01-100
220-48-080	AMD-P	79-01-100
220-48-08000A	NEW-E	79-02-045
220-48-09100A	NEW-E	79-02-013
220-48-100	AMD-P	79-01-100
220-49-020	AMD-P	79-01-100
220-49-022	AMD-P	79-01-100
220-50-010	NEW-P	79-02-083
220-50-020	NEW-P	79-02-083
220-50-030	NEW-P	79-02-083
220-50-040	NEW-P	79-02-083
220-50-050	NEW-P	79-02-083
220-50-060	NEW-P	79-02-083
220-50-080	NEW-P	79-02-083
220-50-100	NEW-P	79-02-083
220-52-018	AMD	79-02-053
220-52-019	AMD	79-02-053
220-52-040	AMD	79-02-053
220-52-043	AMD	79-02-053
220-52-050	AMD	79-02-053
220-52-053	AMD	79-02-053
220-52-060	AMD	79-02-053
220-52-071	AMD	79-02-053
220-52-073	AMD	79-02-053
220-52-074	AMD	79-02-053
220-52-07400A	REP-E	79-02-042
220-52-07400B	NEW-E	79-02-042
220-52-075	NEW	79-02-053
220-56-019	AMD	79-02-052
220-56-021	AMD	79-02-052
220-56-023	AMD	79-02-052
220-56-050	AMD-P	79-02-054
220-56-065	AMD	79-02-052
220-56-080	AMD	79-02-052
220-56-08000G	NEW-E	79-02-051
220-56-084	AMD	79-02-052
220-56-086	AMD	79-02-052
220-56-088	AMD	79-02-052
220-57-130	AMD	79-02-052
220-57-135	AMD	79-02-052
220-57-137	NEW	79-02-052
220-57-145	AMD	79-02-052
220-57-155	AMD	79-02-052
220-57-160	AMD	79-02-052
220-57-200	AMD	79-02-052
220-57-205	AMD	79-02-052
220-57-210	AMD	79-02-052
220-57-215	AMD	79-02-052
220-57-220	AMD	79-02-052
220-57-235	AMD	79-02-052
220-57-240	AMD	79-02-052
220-57-260	AMD	79-02-052
220-57-265	AMD	79-02-052
220-57-270	AMD	79-02-052
220-57-290	AMD	79-02-052
220-57-305	AMD	79-02-052
220-57-310	AMD	79-02-052
220-57-345	AMD	79-02-052
220-57-350	AMD	79-02-052
220-57-370	AMD	79-02-052
220-57-385	AMD	79-02-052
220-57-400	AMD	79-02-052
220-57-435	AMD	79-02-052
220-57-455	AMD	79-02-052
220-57-460	AMD	79-02-052
220-57-465	AMD	79-02-052
220-57-473	NEW	79-02-052
220-57-480	AMD	79-02-052
220-57-505	AMD	79-02-052
220-57-515	AMD	79-02-052
220-57A-005	AMD	79-02-052
220-57A-010	AMD	79-02-052
220-57A-040	AMD	79-02-052
220-57A-060	REP	79-02-052
220-57A-065	AMD	79-02-052
220-57A-080	AMD	79-02-052
220-57A-095	AMD	79-02-052
220-57A-115	AMD	79-02-052
220-57A-120	AMD	79-02-052
220-57A-135	AMD	79-02-052
220-57A-150	AMD	79-02-052
220-57A-155	AMD	79-02-052
220-57A-185	AMD	79-02-052
220-57A-190	AMD	79-02-052
232-12-510	AMD	79-02-008
232-18-025	AMD-P	79-02-009
232-18-040	AMD-P	79-02-009
232-18-050	AMD-P	79-02-009
232-18-060	AMD-P	79-02-009
232-18-100	AMD-P	79-02-009
232-18-150	AMD-P	79-02-009
232-18-190	AMD-P	79-02-009
232-18-203	AMD-P	79-02-009
232-18-205	AMD-P	79-02-009
232-18-240	AMD-P	79-02-009
232-18-300	AMD-P	79-02-009
232-18-305	AMD-P	79-02-009
232-18-310	AMD-P	79-02-009
232-18-320	AMD-P	79-02-009
232-18-330	AMD-P	79-02-009
232-18-340	AMD-P	79-02-009
232-18-345	AMD-P	79-02-009
232-18-350	AMD-P	79-02-009
232-18-355	AMD-P	79-02-009
232-18-360	AMD-P	79-02-009
232-18-365	AMD-P	79-02-009
232-18-370	AMD-P	79-02-009
232-18-375	AMD-P	79-02-009
232-18-400	AMD-P	79-02-009
232-18-410	AMD-P	79-02-009
232-18-420	AMD-P	79-02-009
232-18-425	AMD-P	79-02-009
232-18-440	AMD-P	79-02-009
232-18-442	AMD-P	79-02-009
232-18-444	AMD-P	79-02-009
232-18-450	AMD-P	79-02-009
232-18-455	AMD-P	79-02-009
232-18-460	AMD-P	79-02-009
232-18-470	AMD-P	79-02-009
232-18-480	AMD-P	79-02-009
232-18-485	AMD-P	79-02-009
232-18-500	AMD-P	79-02-009
232-18-535	AMD-P	79-02-009
232-18-540	AMD-P	79-02-009
232-18-545	AMD-P	79-02-009
232-18-550	AMD-P	79-02-009
232-18-570	AMD-P	79-02-009
232-18-580	AMD-P	79-02-009
232-18-600	AMD-P	79-02-009
232-18-650	AMD-P	79-02-009
232-18-660	AMD-P	79-02-009
232-18-690	AMD-P	79-02-009
232-18-695	AMD-P	79-02-009
232-18-700	AMD-P	79-02-009
232-18-830	REP-P	79-02-009
232-18-835	REP-P	79-02-009
232-28-800	REP-P	79-02-086
232-28-801	NEW-P	79-02-086
248-08-595	AMD	79-02-055
248-14-001	AMD	79-02-036
248-14-230	AMD	79-02-036
248-14-235	NEW	79-02-036
248-14-240	AMD	79-02-036
248-14-245	NEW	79-02-036
248-14-250	AMD	79-02-036
248-14-260	AMD	79-02-036
248-14-270	AMD	79-02-036
248-14-401	NEW	79-02-036
248-18-060	AMD-P	79-01-094
248-18-090	AMD-P	79-01-094
248-18-110	AMD-P	79-01-094
248-18-135	AMD-P	79-01-094
248-18-140	AMD-P	79-01-094
248-18-150	AMD-P	79-01-094
248-18-155	NEW-P	79-01-094
248-18-160	AMD-P	79-01-094
248-18-170	AMD-P	79-01-094
248-18-270	AMD-P	79-01-094
248-18-280	AMD-P	79-01-094
248-18-315	NEW-P	79-01-094
248-57-010	NEW-P	79-01-083
248-57-100	NEW-P	79-01-083
248-57-200	NEW-P	79-01-083
248-57-300	NEW-P	79-01-083
248-57-400	NEW-P	79-01-083
248-57-500	NEW-P	79-01-083
248-57-600	NEW-P	79-01-083
248-57-700	NEW-P	79-01-083
248-57-800	NEW-P	79-01-083
248-57-900	NEW-P	79-01-083
248-57-990	NEW-P	79-01-083
248-76	REP-P	79-02-031
248-102-030	REP	79-02-014
248-102-040	AMD	79-02-014
248-102-050	REP	79-02-014
248-102-060	REP	79-02-014
250-20-061	AMD	79-02-066
250-40-070	AMD	79-02-088
251-08-160	NEW-P	79-01-093
251-10-030	AMD-P	79-01-092
251-12-600	AMD-P	79-01-092
251-18-020	AMD-P	79-01-092
251-18-200	AMD-P	79-01-092
251-18-380	AMD-P	79-01-092
251-18-420	AMD-P	79-01-092
251-22-060	AMD-P	79-01-092
261-40-020	AMD-E	79-02-049
296-62-07335	AMD-E	79-02-038
296-62-07347	NEW	79-02-037
296-62-14531	NEW	79-02-037
296-104-200	AMD-P	79-02-007
296-116-351	AMD	79-02-030
308-12-311	NEW-E	79-02-043
308-12-311	NEW-P	79-02-067
308-24-335	NEW	79-02-012
308-122-220	AMD-P	79-02-075
308-122-230	AMD-P	79-02-075
308-122-410	AMD-P	79-02-075
308-138-100	NEW	79-02-011
308-138-110	NEW	79-02-011
308-138-120	NEW	79-02-011
308-138-130	NEW	79-02-011
308-138-140	NEW	79-02-011
308-138-150	NEW	79-02-011
308-138-160	NEW	79-02-011
308-138-170	NEW	79-02-011
308-138-180	NEW	79-02-011
308-300-030	AMD	79-01-088
308-300-110	AMD	79-01-088
320-18-010	NEW	79-02-044
332-17-010	NEW	79-02-001
332-17-020	NEW	79-02-001
332-17-030	NEW	79-02-001
332-17-100	NEW	79-02-001
332-17-110	NEW	79-02-001
332-17-120	NEW	79-02-001
332-17-130	NEW	79-02-001
332-17-140	NEW	79-02-001
332-17-150	NEW	79-02-001
332-17-160	NEW	79-02-001
332-17-165	NEW	79-02-001

Table of WAC Sections Affected

WAC #		WSR #
332-17-200	NEW	79-02-001
332-17-300	NEW	79-02-001
332-17-310	NEW	79-02-001
332-17-320	NEW	79-02-001
332-17-340	NEW	79-02-001
332-17-400	NEW	79-02-001
332-17-410	NEW	79-02-001
332-17-420	NEW	79-02-001
332-17-430	NEW	79-02-001
332-17-440	NEW	79-02-001
332-17-450	NEW	79-02-001
332-17-460	NEW	79-02-001
352-32-250	AMD	79-02-032
356-10-030	AMD-P	79-02-016
356-10-050	AMD-P	79-02-016
356-10-060	AMD-P	79-02-016
356-18-060	AMD-P	79-02-016
356-26-060	AMD-P	79-01-101
360-11-010	AMD-P	79-02-068
360-12-015	NEW-P	79-02-068
360-12-050	AMD-P	79-02-068
360-12-065	AMD-P	79-02-068
360-12-130	AMD-P	79-02-068
360-16-240	AMD	79-02-060
360-36-110	AMD	79-02-060
360-36-120	AMD	79-02-060
360-36-130	AMD-P	79-02-068
360-36-130	AMD	79-02-060
360-36-140	AMD	79-02-060
360-36-150	REP	79-02-060
360-36-160	REP	79-02-060
360-36-170	REP	79-02-060
360-52-060	AMD-P	79-02-068
360-54-010	NEW	79-02-061
360-54-020	NEW	79-02-061
360-54-030	NEW	79-02-061
360-54-040	NEW	79-02-061
360-54-050	NEW	79-02-061
365-60-010	NEW-P	79-01-074
365-60-010	NEW-E	79-01-075
365-60-020	NEW-P	79-01-074
365-60-020	NEW-E	79-01-075
372-20	REP	79-02-033
372-20-005	REP	79-02-033
372-20-010	REP	79-02-033
372-20-020	REP	79-02-033
372-20-025	REP	79-02-033
372-20-030	REP	79-02-033
372-20-040	REP	79-02-033
372-20-050	REP	79-02-033
372-20-055	REP	79-02-033
372-20-060	REP	79-02-033
372-20-070	REP	79-02-033
372-20-080	REP	79-02-033
372-20-090	REP	79-02-033
372-20-100	REP	79-02-033
372-20-110	REP	79-02-033
388-29-130	AMD-P	79-01-089
388-29-230	AMD-P	79-02-057
388-54-470	AMD-E	79-01-090
388-54-510	AMD	79-01-085
388-54-540	AMD-E	79-01-090
388-54-550	AMD-E	79-01-090
388-54-555	AMD-E	79-01-090
388-55-010	AMD	79-02-025
388-59-010	AMD-P	79-01-089
388-59-020	AMD-P	79-01-089
388-59-030	AMD-P	79-01-089
388-59-040	AMD-P	79-01-089
388-59-045	NEW-P	79-01-089
388-59-048	NEW-P	79-01-089
388-59-050	AMD-P	79-01-089
388-59-060	AMD-P	79-01-089
388-59-090	AMD-P	79-01-089
388-70-022	AMD-P	79-02-069
388-88-117	NEW	79-01-084
388-96-010	AMD-P	79-02-058
388-96-125	AMD-P	79-02-081
388-96-222	AMD-P	79-02-039
388-96-585	AMD-P	79-02-081
388-96-719	AMD-P	79-02-081
388-96-727	AMD-P	79-02-081
388-96-750	NEW-P	79-02-058
390-05-270	REP	79-02-056
390-05-271	NEW	79-02-056
390-05-273	NEW	79-02-056
446-10-010	NEW-P	79-02-023
446-10-010	NEW-E	79-02-024
446-10-020	NEW-P	79-02-023
446-10-020	NEW-E	79-02-024
446-10-030	NEW-P	79-02-023
446-10-030	NEW-E	79-02-024
446-10-040	NEW-P	79-02-023
446-10-040	NEW-E	79-02-024
446-10-050	NEW-P	79-02-023
446-10-050	NEW-E	79-02-024
446-10-060	NEW-P	79-02-023
446-10-060	NEW-E	79-02-024
446-10-070	NEW-P	79-02-023
446-10-070	NEW-E	79-02-024
446-10-080	NEW-P	79-02-023
446-10-080	NEW-E	79-02-024
446-10-090	NEW-P	79-02-023
446-10-090	NEW-E	79-02-024
446-10-100	NEW-P	79-02-023
446-10-100	NEW-E	79-02-024
446-10-110	NEW-P	79-02-023
446-10-110	NEW-E	79-02-024
446-10-120	NEW-P	79-02-023
446-10-120	NEW-E	79-02-024
446-10-130	NEW-P	79-02-023
446-10-130	NEW-E	79-02-024
446-10-140	NEW-P	79-02-023
446-10-140	NEW-E	79-02-024
446-10-150	NEW-P	79-02-023
446-10-150	NEW-E	79-02-024
468-42-002	AMD-P	79-02-064
468-42-004	AMD-P	79-02-063
468-42-012	AMD-P	79-02-065
468-42-303	AMD-P	79-02-062
468-42-308	NEW-P	79-02-062
468-300-010	AMD-P	79-02-050
468-300-020	AMD-P	79-02-050
468-300-030	AMD-P	79-02-050
468-300-040	AMD-P	79-02-050
468-300-050	AMD-P	79-02-050
468-300-060	REP-P	79-02-050
478-116-600	AMD-P	79-02-090
478-140-015	AMD-P	79-02-080
478-140-018	AMD-P	79-02-080
478-140-021	AMD-P	79-02-080
478-140-024	AMD-P	79-02-080
478-140-070	NEW-P	79-02-080
478-156-017	AMD-P	79-02-089
480-12-190	AMD-P	79-02-082
480-62-080	NEW-P	79-01-082
480-62-080	NEW	79-02-087
480-120-021	AMD-P	79-01-081
480-120-088	NEW-P	79-01-081
490-02-010	NEW	79-02-019
490-03-010	NEW	79-02-019
490-04A-010	AMD	79-02-019
490-04A-040	AMD	79-02-019
490-04A-050	REP	79-02-019
490-04A-060	NEW	79-02-019
490-04A-070	NEW	79-02-019
490-05-001	NEW	79-02-019
490-05-020	NEW	79-02-019
490-05-030	NEW	79-02-019
490-08A-001	NEW	79-02-019
490-08A-010	AMD	79-02-019
490-12A	REP	79-02-019
490-12A-010	REP	79-02-019
490-12A-020	REP	79-02-019
490-12A-022	REP	79-02-019
490-12A-024	REP	79-02-019
490-12A-030	REP	79-02-019
490-12A-032	REP	79-02-019
490-12A-034	REP	79-02-019
490-12A-036	REP	79-02-019
490-12A-040	REP	79-02-019
490-12A-042	REP	79-02-019
490-12A-044	REP	79-02-019
490-12A-046	REP	79-02-019
490-12A-050	REP	79-02-019
490-12A-052	REP	79-02-019
490-15A	REP	79-02-019
490-15A-001	REP	79-02-019
490-15A-004	REP	79-02-019
490-15A-008	REP	79-02-019
490-15A-012	REP	79-02-019
490-15A-016	REP	79-02-019
490-15A-020	REP	79-02-019
490-15A-024	REP	79-02-019
490-15A-028	REP	79-02-019
490-28A-001	NEW	79-02-019
490-28A-002	NEW	79-02-019
490-28A-010	REP	79-02-019
490-28A-011	REP	79-02-019
490-28A-012	AMD	79-02-019
490-28A-013	AMD	79-02-019
490-28A-014	NEW	79-02-019
490-28A-030	REP	79-02-019
490-28A-040	REP	79-02-019
490-28A-050	REP	79-02-019
490-28A-060	REP	79-02-019
490-29-001	NEW	79-02-019
490-29-002	NEW	79-02-019
490-31-001	NEW	79-02-019
490-31-010	NEW	79-02-019
490-32A-001	NEW	79-02-019
490-32A-010	AMD	79-02-019
490-33-001	NEW	79-02-019
490-33-010	NEW	79-02-019
490-34-001	NEW	79-02-019
490-34-010	NEW	79-02-019
490-34-020	NEW	79-02-019
490-36A-001	NEW	79-02-019
490-36A-020	AMD	79-02-019
490-36A-030	NEW	79-02-019
490-40A-010	AMD	79-02-019
490-40A-020	AMD	79-02-019
490-40A-030	REP	79-02-019
490-40A-040	AMD	79-02-019
490-40A-050	REP	79-02-019
490-40A-060	REP	79-02-019
490-40A-070	REP	79-02-019
490-40A-080	REP	79-02-019
490-40A-090	REP	79-02-019
490-40A-100	REP	79-02-019
490-40A-110	REP	79-02-019
490-44A	REP	79-02-019
490-44A-010	REP	79-02-019
490-44A-020	REP	79-02-019
490-44A-030	REP	79-02-019
490-44A-040	REP	79-02-019
490-44A-050	REP	79-02-019
490-44A-060	REP	79-02-019
490-44A-070	REP	79-02-019
490-44A-080	REP	79-02-019
490-48A-010	AMD	79-02-019
490-52A	REP	79-02-019

WAC #		WSR #
490-52A-010	REP	79-02-019
490-52A-020	REP	79-02-019
490-52A-030	REP	79-02-019
490-53-001	NEW	79-02-019
490-53-010	NEW	79-02-019
490-56A	REP	79-02-019
490-56A-010	REP	79-02-019
490-56A-020	REP	79-02-019
490-56A-030	REP	79-02-019
490-60A-010	AMD	79-02-019
490-64A	REP	79-02-019
490-64A-010	REP	79-02-019
490-64A-020	REP	79-02-019
490-64A-030	REP	79-02-019
490-64A-040	REP	79-02-019
490-64A-050	REP	79-02-019
490-64A-060	REP	79-02-019
490-64A-070	REP	79-02-019
490-68A	REP	79-02-019
490-68A-010	REP	79-02-019
490-68A-020	REP	79-02-019
490-68A-030	REP	79-02-019
490-68A-040	REP	79-02-019
490-72A	REP	79-02-019
490-72A-010	REP	79-02-019
490-72A-020	REP	79-02-019
490-72A-030	REP	79-02-019
490-72A-040	REP	79-02-019
490-76A-010	AMD	79-02-019
490-76A-020	AMD	79-02-019
490-500-140	REP-P	79-02-059
490-500-145	AMD-P	79-02-059
490-500-190	AMD-P	79-02-059