

Washington State Register

FEBRUARY 15, 1984

OLYMPIA, WASHINGTON

ISSUE 84-04



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CITATION

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DENNIS W. COOPER
Code Reviser

WASHINGTON STATE REGISTER

(ISSN 0164-6389) is published twice each month by the Statute Law Committee, Office of the Code Reviser, Olympia, WA 98504, pursuant to RCW 34.08.020. Subscription rate is \$134.75 per year, sales tax included, postpaid to points in the United States. Second-class postage paid at Olympia, Washington.

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

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

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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.

1983 - 1984

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates ¹			Distribution Date	First Agency Action Date ³
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS ² or 10 p. max. Non-OTS		
For Inclusion in—	File no later than—			Count 20 days from—	For hearing/adoption on or after
83-18	Aug 10	Aug 24	Sep 7	Sep 21	Oct 11
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83-23	Oct 26	Nov 9	Nov 23	Dec 7	Dec 27
83-24	Nov 9	Nov 23	Dec 7	Dec 21	Jan 10, 1984
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*Dates adjusted to accomodate July 4th holiday on normal distribution and closing date. See WAC 1-12-030(5)(c) and 1-13-030(5)(c).

¹All 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.

²A filing of any length will be accepted on the closing dates of this column if it has been prepared by the Order Typing Service (OTS) of the Code Reviser's Office; see WAC 1-12-220 or 1-13-240. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³No proceeding may 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(4) and 34.04.025(4). These dates represent the twentieth day after the distribution date of the applicable Register.

WSR 84-04-001
EMERGENCY RULES
DEPARTMENT OF GAME
(Game Commission)
 [Order 225—Filed January 19, 1984]

Be it resolved by the Game Commission, acting at Olympia, by conference call, that it does adopt the annexed rules relating to regulation change for sport fishing on the Samish River system, WAC 232-28-60602.

We, the Game Commission, find that an emergency exists and that this 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 the emergency is recreational fisheries have taken their 5% incidental catch allowance of wild fish from runs returning at levels less than established spawning escapement objectives. All further catches must be limited to hatchery-origin steelhead.

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

This rule is promulgated pursuant to RCW 77.12.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 18, 1984.

By Vern E. Ziegler
 Chairman, Game Commission

NEW SECTION

WAC 232-28-60602 REGULATION CHANGE FOR SPORT FISHING ON THE SAMISH RIVER SYSTEM. Notwithstanding the provisions of WAC 232-28-611 on the Samish River system, only steelhead with dorsal fins measuring less than 2 1/4 inches in height or with missing adipose or ventral fins may be reduced to possession. It is unlawful to possess a steelhead with a dorsal fin measuring equal to or greater than 2 1/4 inches in height or to possess a steelhead with a freshly cut or mutilated fin. Effective January 24, 1984.

WSR 84-04-002
EMERGENCY RULES
DEPARTMENT OF GAME
(Game Commission)
 [Order 229—Filed January 19, 1984]

Be it resolved by the Washington State Game Commission, acting at Olympia, by conference call, that it does adopt the annexed rules relating to regulation change for sport fishing on the Chehalis River system, WAC 232-28-60603.

We, the Game Commission, find that an emergency exists and that this 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 the emergency is recreational fisheries have taken their 5% incidental catch allowance of wild fish from runs returning at levels less than established spawning escapement objectives. All further catches must be limited to hatchery-origin steelhead.

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

This rule is promulgated pursuant to RCW 77.12.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED OR ADOPTED January 18, 1984.

By Vern E. Ziegler
 Chairman, Game Commission

NEW SECTION

WAC 232-28-60603 REGULATION CHANGE FOR SPORT FISHING ON THE CHEHALIS RIVER SYSTEM. Notwithstanding the provisions of WAC 232-28-612 and WAC 232-28-613 on the Chehalis River system, only steelhead with dorsal fins measuring less than 2 1/4 inches in height or with missing adipose or ventral fins may be reduced to possession. It is unlawful to possess a steelhead with a dorsal fin measuring equal to or greater than 2 1/4 inches in height or to possess a steelhead with a freshly cut or mutilated fin. Effective February 1, 1984.

WSR 84-04-003
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed January 19, 1984]

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 AFDC and GAU—Eligibility—Need, amending chapter 388-28 WAC;

that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.12 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
Division of Administration and Personnel
Department of Social and Health Services
Mailstop OB 14
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 18, 1984

By: David A. Hogan, Director
Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.
Re: Amending WAC 388-28-440.

Purpose of the Rule: To establish resource eligibility criteria.

The Reason These Rules are Necessary: To be in compliance with federal regulations.

Statutory Authority: RCW 74.08.090.

Summary of Rule: All references to conditional eligibility have been deleted. Any resource over the maximum causes ineligibility for AFDC and refugee assistance. General assistance will still apply the excess nonexempt resource (if less than one month's needs) at the time of opening an eligibility review.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: Betty Brinkman, Program Manager, Division of Income Assistance, Mailstop: OB 31C, Phone: 753-4908.

These rules are necessary as a result of federal law, 45 CFR 233.20.

Economic Impact on Small Businesses: None.

AMENDATORY SECTION (Amending Order 1940, filed 1/28/83, effective 3/1/83)

WAC 388-28-400 EFFECT OF RESOURCES (~~AND INCOME~~) ON FINANCIAL NEED—SUMMARY OF BASIC POLICIES. (1) Meaning of resources.

(a) A resource is any property which the applicant possesses and can currently use to supply all or part of his or her requirements. See definition of "resource" and "income" in WAC 388-22-030.

(b) Property shall be considered a resource only when ((it)) the property is actually at hand for current use and/or disposition by the applicant. Real and personal property shall be considered at hand for current use and disposition when ((it)) the real and personal property can be utilized to supply requirements by use, by direct transfer to a buyer, by conversion into cash, or by a pledge of such asset.

(c) Resources shall be considered to be at hand for current use and/or disposition whenever ((they)) the resources are in the form of real or personal property over which the applicant has title or control. Title exists in the form of record title to real estate and certain personal property, such as an automobile; title to most other personal

property exists by mere possession. Title to property raises a presumption of the right and ability of the title holder to use or dispose of such property.

(2) Consideration of resources and resource potentials.

(a) For the purpose of determining current and continued eligibility for public assistance, the local office shall evaluate the status of all real or personal property (community, separate, or jointly owned) held by or subject to the disposition or control of an applicant and his or her spouse and members of the assistance unit.

(b) Also, the resource potentials of such persons must be considered.

(3) Exempt resources. Exempt resources do not affect eligibility in terms of their disposition value but may in respect to the use or income producing value.

(4) Nonexempt resources. Any resource except those listed in WAC 388-28-420 and WAC 388-28-430 as exempt is a nonexempt resource and shall be evaluated according to the resource's equity value—fair market value minus encumbrances (legal debts). The possession of all nonexempt resources affects eligibility. Their sale, pledge, lease, rental, or use values are used to determine financial need. ~~((When such values are equal to the appropriate payment level plus authorized additional requirements the applicant is ineligible. If the appropriate payment level plus authorized additional requirements exceed the values of nonexempt resources, eligibility exists in the difference.))~~

(5) Clarification of ownership or value.

(a) If there is evidence ~~((that))~~ the applicant has a resource but there is also some doubt about ~~((this)) the resource~~ or about ~~((its)) the resource's~~ value, the applicant is responsible for clarifying the data to the extent of his or her ability to do so. Without such clarification, continuing eligibility cannot be established.

(b) If the applicant does not clarify the facts in question within a reasonable period of time set by the local office, but not to exceed forty-five days from date of application, eligibility does not exist for continuing assistance.

(c) If the applicant is handicapped in his or her ability to clarify his or her eligibility, the local office shall assist him or her to do so.

(d) If the applicant produces evidence supporting his or her eligibility but doubt of ~~((its)) the evidence's~~ reliability or conclusiveness still exists, the local office shall attempt to obtain conclusive evidence directly.

(6) An applicant must proceed to make available any resource which will reduce need.

In determining whether an applicant is proceeding with reasonable diligence to make a resource potential available to meet need, the local office is governed by the factors involved in individual situations. The applicant is responsible for submitting evidence in the form of statements or letters ~~((which would indicate))~~ indicating the factors involved and the approximate time ~~((that))~~ a final decision could be expected. A definite period of time is determined by the local office, made known to the applicant, and recorded.

(7) ~~((Conditional eligibility.))~~ When an applicant has taken reasonably required action to make a resource potential available but without success, his or her current eligibility is not affected. However, if there is reason to believe ~~((that))~~ the resource potential will be available later, his or her continued eligibility is conditional and subject to review at such later period at which time the appropriate policy herein is utilized.

AMENDATORY SECTION (Amending Order 1547, filed 10/1/80)

WAC 388-28-410 EFFECT OF RESOURCES (~~AND INCOME~~) ON FINANCIAL NEED—EXEMPT AND NONEXEMPT RESOURCES. When ~~((it)) a determination~~ has been ~~((determined))~~ made that an applicant possesses a resource in accordance with the ~~((above))~~ considerations in WAC 388-28-400, such resources shall be classified as exempt or nonexempt in accordance with WAC 388-28-415 through 388-28-455.

AMENDATORY SECTION (Amending Order 1940, filed 1/28/83, effective 3/1/83)

WAC 388-28-415 EFFECT OF RESOURCES (~~AND INCOME~~) ON FINANCIAL NEED—EXEMPT RESOURCES. An applicant may possess and retain ~~((the following))~~ exempt resources and be eligible for public assistance. While the fact of ownership does not make an applicant ineligible, the use of such properties to produce income (such as rental of a room in the home), or to meet the cost of an item included in the standard of need (such as wood on the home

property (~~(which meets)~~) meeting the need for fuel) does affect financial need.

AMENDATORY SECTION (Amending Order 1547, filed 10/1/80)

WAC 388-28-420 EFFECT OF RESOURCES (~~(AND INCOME)~~) ON FINANCIAL NEED—REAL PROPERTY—HOME.

(1) The applicant's home is an exempt resource subject to the conditions specified. There is no ceiling value on the home.

(2) A home is defined as real property owned and used by an applicant as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, including property normally considered and used as a part of a home, such as(~~(:)~~):

- (a) Yard and home garden space;
- (b) Road to get to the home;
- (c) Right of way to and land holding a water supply;
- (d) (~~(Out-buildings)~~) Outbuildings and land on which they are located serving a normal and useful function of the home, such as garage, woodshed, chicken house, barn, pasture for cow, etc. In this connection, the use of necessary land and buildings to produce self-consumed products (~~(as outlined in WAC 388-28-605)~~) is considered as a reasonable part of the home property;
- (e) Land and buildings necessary to carry out the functions (~~(described in WAC 388-28-430(1)(c) and (1)(d))~~) when such a plan is approved by the CSO.

Property in addition to that covered under subsections (2)(a) through (2)(e) of this section is considered under WAC 388-28-455.

(3) The home when used as a place of residence by the applicant or by his or her dependents is an exempt resource.

(a) "Dependents" as used in this section means spouse of the applicant and/or minor children and disabled sons or daughters.

(b) "Disabled sons or daughters" means one or more unmarried, natural or adopted, minor or adult sons or daughters with a medically-verified disability (~~(which)~~) significantly (~~(handicaps)~~) handicapping them in performing employment or homemaking activities and (~~(who are)~~) dependent on the applicant for their livelihood.

(4) When the home is not being used for residential purposes by the applicant or by his or her dependents, the property shall be considered as a nonexempt resource subject to the exceptions in subsections (4)(a) and (b) of this section.

(a) An applicant absent from his or her home for temporary visits is considered as continuing to reside in his or her home unless he or she expresses his or her intent to abandon the home as a residence.

(b) Effective (~~(6/12/80)~~) June 12, 1980, an applicant absent from his or her home for more than (~~(90)~~) ninety days is presumed to have abandoned the home for residential purposes, except when such absence is due to natural disaster, hospitalization, or other health reasons. (~~(if)~~) When such absence is over (~~(90)~~) ninety days, and there is cause to believe (~~(that)~~) the applicant will be unable to return to his or her home and the home is not occupied by his or her dependents, there shall be a rebuttable presumption (~~(that)~~) the home is a nonexempt resource when the following conditions are met.

(~~(A)~~) (i) The individual specifies in writing (~~(that it is)~~) his or her intent not to return to the home and use (~~(it)~~) the home as his or her place of residence either for himself or herself, or for his or her dependents, or

(~~(B)~~) (ii) For medical absences, the CSO administrator, with the cooperation of the medical consultant, shall contact the president of the local medical society and ask that three doctors, one of which may be the attending doctor, review the existing medical findings and history and provide the CSO with a statement signed by all three physicians that it is their professional belief and opinion (~~(that)~~) the individual, for health reasons, will either be able or unable to return to his or her home property. If the conclusion reached by the three physicians is not unanimous, this shall be so indicated.

In the event the evaluation from the three physicians indicates (~~(that)~~) it is their medical opinion the individual will be able to return to his or her home during his or her lifetime, the home property shall continue to be considered as exempt property.

In the event the evaluation from the three physicians indicates unanimously (~~(that)~~) it is their medical opinion the individual will be unable to return to his or her home during the remainder of his or her lifetime, the home, if not occupied by his or her dependents, shall be considered nonexempt property which can be made available to meet need.

The CSO administrator shall advise the president of the local medical society, as well as the physicians selected by the president, (~~(that)~~)

the department will pay each physician participating in the review an amount not to exceed (~~((\$10))~~) ten dollars per case.

(~~(C)~~) (iii) For absences resulting from natural disaster, the local office administrator determines (~~(that)~~) the residence is accessible and inhabitable. When a home that is determined inaccessible or uninhabitable could, in the judgment of the CSO administrator, become accessible and inhabitable with reasonable effort and expense to the applicant, (~~(it)~~) the home is presumed to be a nonexempt resource.

AMENDATORY SECTION (Amending Order 1840, filed 6/30/82)

WAC 388-28-430 EFFECT OF RESOURCES (~~(AND INCOME)~~) ON FINANCIAL NEED—PERSONAL PROPERTY EXEMPTIONS—CEILING VALUES—GENERAL ASSISTANCE.

(1) The following personal property is an exempt resource for general assistance. There is no ceiling value on such property.

(a) Used and useful household furnishings and personal clothing. Household furnishings and personal clothing in storage shall be presumed to be not used and useful, but all other household furnishings and personal clothing shall be presumed to be used and useful and both presumptions stand in the absence of evidence to the contrary.

(b) Personal property of "great sentimental value" may be exempted when the applicant establishes the circumstances and conditions (~~(which give it)~~) giving the personal property this value. When the intrinsic value is relatively high (stamp or coin collections, etc.), there may be need to review (~~(it)~~) the personal property carefully.

(c) Term and/or burial insurance for the use of the applicant or recipient.

(d) One cemetery plot for each member of an assistance household is exempt personal property. Any additional plots are nonexempt.

(2) The following items are (~~(exempt)~~) resources (~~(to the extent that the values of such items are)~~) which must be evaluated within the following maxima or ceiling values for general assistance(~~(:)~~):

(a) The total value of cash, marketable securities, cash discount value of real estate or chattel mortgages and sales contracts, and any excess of values exempted under subsections (2)(b) and (c) of this section and any other resources not specifically exempted shall not exceed (~~((\$1,500.00))~~) one thousand five hundred dollars for a single person, or (~~((\$2,250.00))~~) two thousand two hundred fifty dollars for a family of two or more.

(b) Life insurance may have a cash surrender value not to exceed (~~((\$1,500.00))~~) one thousand five hundred dollars considered as an exempt resource.

(c) Used and useful vehicles with an equity not exceeding the value of (~~((\$1,500.00))~~) one thousand five hundred dollars or less is an exempt resource.

(~~(3)~~) For AFDC and RA, household furnishings and personal clothing essential for daily living are exempt resources without ceiling value. Such items which are in storage shall be presumed to be not essential for daily living but all other household furnishings and personal clothing shall be presumed to be essential for daily living and both presumptions stand in the absence of evidence to the contrary.

(4) For AFDC and RA the total value of cash, marketable securities, cash discount value of real estate or chattel mortgages, sales contracts, and burial plots, cash surrender value of life insurance and burial insurance and, excess value of vehicles, value of nonexempt property and any other resources not specifically exempted shall not exceed one thousand dollars regardless of family size.

(5)(a) For AFDC and RA one used and useful vehicle, with an equity value of \$1,500.00 or less is an exempt resource;

(b) Excess equity value of a used and useful vehicle and the equity value of other vehicles shall apply toward the limit in subsection (4) of this section:

(6) The following rules apply to all grant programs:

(a) Other personal property, such as tools, farm machinery, livestock, business equipment, and inventory, can be declared an exempt resource by the CSO on the basis of an agreed plan. The following conditions apply:

(i) The exempted property must either produce income which reduces the applicant's or recipient's need for public assistance, or aid in rehabilitating him or her or his or her dependents by providing self-employment experience which can reasonably be expected to lead to full or partial self-support.

(ii) If stock, raw materials, or inventory of a business are exempted, any increase in their value must be examined to determine whether the increase is necessary to the health of the enterprise. Such increase shall not be used as a means of diverting funds which might reasonably constitute income to the recipient.

~~(b) Funds represented by values within the ceiling values are not used to determine financial need or to compute grants.~~

~~(c) Funds represented by values in excess of the maxima or ceilings are nonexempt; that is, they are used to determine financial need and to compute grants.~~

~~(d) All cash savings held by the applicant or held jointly with any other person shall be considered. Any funds on deposit, in hand or in any place from which cash may be drawn by the applicant is a cash fund. A cash fund includes a bank account, savings, funds held in trust for future use (when applicant can make withdrawals), savings bonds, advance insurance premium payments, interest, etc.~~

~~(e) A joint account shall be considered the property of the applicant or recipient since the entire amount is at his or her disposal, except when the applicant or recipient can show that all or a portion of the funds deposited within the joint account is derived from funds exclusively the other joint holder's and held and/or utilized solely for the benefit of that joint account holder. All funds within the joint account so verified shall not be considered actually available to the applicant or recipient.~~

~~(f) Real estate or chattel mortgages or sales contracts held by the applicant will be considered exempt resources in combination with the value of other exempt personal property, within the limitation allowed in subsections (2) and (5) of this section.~~

~~(g) The cash discount value of a mortgage or contract represents the value of the resource.~~

~~(h) Any payments on mortgages or contracts received by an applicant or recipient shall be considered income as specified in WAC 388-28-580.~~

~~(i) When the equity of another person in an unassignable policy held by an applicant can be established, the amount of such equity may be deducted in determining the applicant's holdings in insurance, provided that person holding the equity is named as beneficiary of the proceeds to the extent of such equity and without power or revocation by the insured.~~

~~(j) An insurance policy legally assigned belongs to the assignee and may not be regarded as the property of the insured. However, the assignment of a policy within two years prior to application or by a recipient must be evaluated as the transfer of a resource.~~

~~(k) A motor home is a totally nonexempt resource and its value is not applied to the ceiling values in this section. If it is the only residence of the household, it is considered to be the home and is a totally exempt resource.~~

~~(l) A motor home is a motor vehicle originally designed, reconstructed or permanently altered to provide facilities for human habitation.~~

~~(m) In determining the resource value of automobiles, the national automobile dealers association official used car guide shall be used. For automobiles listed in this guide "average loan" value in the current edition shall be presumed to be the resource value.~~

~~(n) In determining the resource value of recreational vehicles the Kelley bluebook R.V. guide shall be used. For vehicles listed in this guide "wholesale" value in the current edition shall be presumed to be the resource value.~~

~~(o) For vehicles not listed in these guides the method of determining the resource value shall be documented in the case record.~~

~~(p) The values listed in these guides can be overcome by positive evidence to the contrary. Such evidence shall be documented in the case record.~~

~~(q) The changes to resource limits for federally funded programs will be phased in by applying them when case actions are taken and/or when eligibility is determined or redetermined.))~~

~~(3) ((The rules in this section shall be effective April 1, 1982)) A motor home is a totally nonexempt resource and its value is not applied to the ceiling values in this section. If the motor home is the only residence of the household, it is considered to be the home and is a totally exempt resource.~~

~~(4) A motor home is a motor vehicle originally designed, reconstructed, or permanently altered to provide facilities for human habitation.~~

NEW SECTION

WAC 388-28-435 EFFECT OF RESOURCES ON FINANCIAL NEED—PERSONAL PROPERTY EXEMPTIONS—CEILING VALUES—AFDC AND RA. (1) Household furnishings and personal clothing essential for daily living are exempt resources without ceiling value. Such items in storage shall be presumed to be not

essential for daily living, but all other household furnishings and personal clothing shall be presumed to be essential for daily living and both presumptions stand in the absence of evidence to the contrary.

(2) The total value of cash, marketable securities, cash discount value of real estate or chattel mortgages, sales contracts, and burial plots, cash surrender value of life insurance and burial insurance, and excess value of vehicles, value of nonexempt property, and any other resources not specifically exempted shall not exceed one thousand dollars regardless of family size. Possession of resources in excess of the maximum shall render the household ineligible.

(3) One used and useful vehicle with an equity value of one thousand five hundred dollars or less is an exempt resource.

(4) Excess equity value of a used and useful vehicle and the equity value of other vehicles shall apply toward the limit in subsection (2) of this section.

NEW SECTION

WAC 388-28-438 EFFECT OF RESOURCES ON FINANCIAL NEED—PERSONAL PROPERTY EXEMPTIONS—ALL PROGRAMS. (1) Other personal property, such as tools, farm machinery, livestock, business equipment, and inventory, can be declared an exempt resource by the CSO on the basis of an agreed plan. The following conditions apply:

(a) The exempted property must either produce income reducing the applicant's or recipient's need for public assistance, or aid in rehabilitating him or her or his or her dependents by providing self-employment experience which can reasonably be expected to lead to full or partial self-support.

(b) If stock, raw materials, or inventory of a business are exempted, any increase in their value must be examined to determine whether the increase is necessary to the health of the enterprise. Such increase shall not be used as a means of diverting funds which might reasonably constitute income to the recipient.

(2) Funds represented by values within the ceiling values are not used to determine financial need or to compute grants.

(3) Funds represented by values in excess of the maxima or ceilings are nonexempt; that is, they are used to determine financial need and to compute general assistance grants. If the funds are in excess of the ceiling value for AFDC and refugee assistance, the applicant/recipient is ineligible.

(4) All cash savings held by the applicant or held jointly with any other person shall be considered. Any funds on deposit, in hand, or in any place from which cash may be drawn by the applicant, is a cash fund. A cash fund includes a bank account, savings, funds held in trust for future use (when applicant can make withdrawals), savings bonds, advance insurance premium payments, interest, etc.

(5) A joint account, or an account held for another, shall be considered the property of the applicant or recipient since the entire amount is at his or her disposal, except when the applicant or recipient can show that all or a portion of the funds deposited within the account is derived from funds exclusively the other holder's and held and/or utilized solely for the benefit of that account holder. All funds within the account so verified shall not be considered actually available to the applicant or recipient.

(6) The equity value in the cash discount value of a chattel mortgage or sales contract represents the value of the resource.

(7) Any payments on mortgages or contracts received by an applicant or recipient shall be considered income as specified in WAC 388-28-580.

(8) When the equity of another person in an unassignable policy held by an applicant can be established, the amount of such equity may be deducted in determining the applicant's holdings in insurance, provided the person holding the equity is named as beneficiary of the proceeds to the extent of such equity and without power or revocation by the insured.

(9) An insurance policy legally assigned belongs to the assignee and may not be regarded as the property of the insured. However, the assignment of a policy within two years prior to application or by a recipient must be evaluated as the transfer of a resource.

(10) In determining the resource value of automobiles, the national automobile dealers association official used car guide shall be used. For automobiles listed in this guide, "average loan" value in the current edition shall be presumed to be the resource value.

(11) In determining the resource value of recreational vehicles, the Kelley bluebook R.V. guide shall be used. For vehicles listed in this guide, "wholesale" value in the current edition shall be presumed to be the resource value.

(12) For vehicles not listed in these guides, the method of determining the resource value shall be documented in the case report.

(13) The values listed in these guides can be overcome by positive evidence to the contrary. Such evidence shall be documented in the case record.

(14) The changes to resource limits for federally funded programs will be phased in by applying them when case actions are taken and/or when eligibility is determined or redetermined.

AMENDATORY SECTION (Amending Order 1728, filed 12/4/81)

WAC 388-28-440 ACCUMULATION AND DEPLETION OF ALLOWABLE CASH RESOURCE RESERVES. (1) Recipients may spend their cash reserves and rebuild them with succeeding public assistance grants, with funds from other exempt sources, or other income which has been considered in computing financial need. ~~((They))~~ Recipients may place grants in accounts along with cash reserves and then spend out of those accounts during the month.

(2) Cash on hand may exceed the specified limits ~~((specified in WAC 388-28-430(2)(a) to the extent unexpended money which has))~~ for a maximum of thirty days if it has already been considered in computing financial need ~~((and from the public assistance grant is on hand within thirty days after its receipt))~~.

(3) FOR GENERAL ASSISTANCE ONLY, allowable cash reserves may be accumulated from nonrecurrent cash lump-sum sources, including the following:

- (a) Income tax refunds.
- (b) Inheritances.
- (c) Insurance benefits.
- (d) Gifts.
- (e) Prizes and awards.
- (f) Repayment of debts owed the recipient.
- (g) Proceeds from the sale of exempt property.
- (h) Social Security death benefits.
- (i) Indian per capita payments generated by tribally held land or business.

(4) IN GENERAL ASSISTANCE ONLY if a lump sum, when added to existing reserves, causes the resources to exceed allowable limits, the excess is newly acquired income to be treated in accordance with WAC 388-28-484.

(5) Recipients may not use the following types of one-time payments to accumulate resource reserves:

- (a) Earnings ~~((which are))~~ accrued over a period of time and received in one payment.
- (b) Payments ~~((which represent))~~ representing accumulated periodic benefits. Examples are Social Security retirement and disability benefits, railroad retirement benefits, unemployment insurance benefits, and veterans' benefits.

(6) If a lump sum is placed in trust for a recipient and is not under his or her control, the following rules apply:

- (a) Funds kept in trust do not affect public assistance need.
- (b) FOR GENERAL ASSISTANCE ONLY the trustee may release to the recipient an amount up to the allowable resource limit for the assistance unit less any amount of existing cash and marketable securities as of the date the lump sum was received. Such disbursement, if made within thirty days of the date the lump sum was received, is used to accumulate allowable reserves and does not affect public assistance need. This may be done once for each lump sum placed in trust.

AMENDATORY SECTION (Amending Order 1241, filed 9/23/77)

WAC 388-28-450 NONEXEMPT RESOURCES—EFFECT ON FINANCIAL NEED. ~~((Any resource, except those listed in WAC 388-28-420 and 388-28-430 as exempt, is a nonexempt resource.))~~

(1) The possession of a nonexempt resource by an applicant affects his or her financial need to the extent ~~((that))~~ the value of the resource decreases his or her need for public assistance. The value of such resource is deducted from the cost of the general assistance applicant's requirements for one month at time of application and each succeeding eligibility review. ~~((See WAC 388-28-481 for effect of nonexempt resources on continuing need.))~~ If the value of nonexempt resources exceeds one month's appropriate payment level plus additional requirements, the applicant is ineligible.

(2) For general assistance, the value assigned to such resources shall be the fair market value ~~((unless quick or forced sale value is otherwise specifically designated as the value))~~ minus legal encumbrances.

(3) For AFDC and RA, the value of nonexempt resources shall be the fair market value minus legal encumbrances. The fair market value shall be reassessed if the applicant provides acceptable evidence that a good-faith effort has been made to sell the resource at the fair market value determined by the department and the value is less than the resource ceiling. If the total value of the nonexempt resource exceeds the maximum in WAC 388-28-435(2), the applicant is ineligible.

AMENDATORY SECTION (Amending Order 1940, filed 1/28/83, effective 3/1/83)

WAC 388-28-473 PROPERTY TRANSFERRED CONTRARY TO WAC 388-28-471 AND 388-28-472. (1) If a recipient transfers previously exempt property contrary to WAC 388-28-471 and 388-28-472 or if the proceeds from the transfer are used for purposes other than described in those rules, the value of the property transferred is considered available to meet need following effective date rules in WAC 388-33-135(3).

(2) ~~((It is presumed that the recipient had funds available to meet need from the first of the month following the date of transfer.))~~ The amount considered available to meet need shall be either his or her equity in the ~~((quick sale))~~ fair market value of the resource or the actual amount received, whichever is the greater. If the resource was a mortgage or conditional sales contract, the value of the equity transferred shall be the amount considered available to meet need. The transfer affects eligibility according to WAC 388-28-484(2)(b) for AFDC and refugee assistance and the transfer affects eligibility according to subsections (3), (4), and (5) of this section for general assistance.

(3) If the grant is adjusted before the first of the month following transfer:

(a) Assistance is continued when the amount considered available from subsection (2) of this section and other income available during the month amounts to less than one month's requirements;

(b) Assistance is suspended when the amount considered available from subsection (2) of this section and other income available in the next two months is less than two months' requirements;

(c) General assistance is terminated when the amount considered available from subsection (2) of this section and other income available in the next two months is more than two months' requirements. The future period of ineligibility is determined using current requirements and the method described in WAC 388-28-460.

(4) If the grant was not adjusted ~~((the first of the month following transfer))~~ following effective date rules in WAC 388-33-135(3), partial or total ineligibility exists and the amount of overpayment is determined.

(a) The grant is continued if the amount considered available from subsection (2) of this section is completely liquidated as overpayment.

(b) The grant is suspended or terminated when the total amount considered available from subsection (2) of this section is not liquidated by the overpayment. The amount considered available after figuring the overpayment is used to determine future period of ineligibility using the rules in subsection (3)(b) or (3)(c) of this section as appropriate. The first of the month the assistance payment can be adjusted is used to establish the beginning of the future period.

(5) The rules in WAC 388-28-463 and 388-28-464 apply to transfers under this section.

AMENDATORY SECTION (Amending Order 1940, filed 1/28/83, effective 3/1/83)

WAC 388-28-484 TREATMENT OF NEWLY ACQUIRED NONEXEMPT INCOME AND RESOURCES. (1) Income affects the grant amount according to the provisions of WAC 388-28-483.

(2) When the value of the income is taken into account in the assistance payment as specified in WAC 388-28-483, the following rules apply:

(a) If the income value plus any other income amounts to less than the payment level plus authorized additional requirements and is recurrent or nonrecurrent, assistance is continued in the amount of the difference.

(b) Effective January 1, 1982, for AFDC and refugee assistance, when the assistance unit's income after applicable disregards exceeds the need standard, plus authorized additional requirements, the unit shall be ineligible for assistance for the number of full months derived by dividing this total income by the need standard plus authorized additional requirements.

(i) Any income remaining after this calculation is treated as income received in the first month following the period of ineligibility.

(ii) The period of ineligibility may be shortened when the following conditions are met:

(A) A life-threatening circumstance exists, and

(B) The income causing the period of ineligibility has or will be expended in connection with the life-threatening circumstance, and

(C) Until the time of the life-threatening circumstance, the income must have been used to meet essential needs, and

(D) Currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstances.

(c) If the nonrecurrent income equals or exceeds one month's payment level plus authorized additional requirements for general assistance, but is less than two months' payment level plus authorized additional requirements minus other income, the recipient is ineligible for a grant from the effective date specified in WAC 388-28-483, and his or her grant is suspended. The suspension period is determined exactly, that is, up to the date of the absorption of the income.

(d) If the income is recurrent and equal to or in excess of one month's payment level plus authorized additional requirements minus other income the recipient is ineligible from the effective date specified in WAC 388-28-483 and the grant is terminated, except for persons in institutions other than nursing homes as provided in WAC 388-34-160.

(e) For general assistance if the income is recurrent or nonrecurrent and its value is in excess of two months' payment level plus authorized additional requirements minus other income, the recipient is ineligible from the effective date specified in WAC 388-28-483 and the grant is terminated. Ineligibility shall continue for two months. The period of ineligibility, however, may be reduced if the applicant has verifiable expenses such as medical care, unforeseen disaster or other changes in circumstances which make it impossible for him or her to live on his or her resource for the two-month period of ineligibility. The eligibility of a former recipient who reapplies shall be determined on the same basis as a new applicant.

(3) If income is not taken into account in assistance payments but is subsequently discovered, an overpayment shall be established according to chapter 388-44 WAC.

(4) If a general assistance recipient has been determined to be ineligible for a current or future period of time, and his or her grant will be suspended or terminated for such period of time, due to either newly acquired income, or transfer of property, and is in need during such period of ineligibility, assistance may be granted within the limits of the rule in WAC 388-28-464.

(5) A person acquiring income during suspended status shall be treated as a recipient in terms of eligibility, not as an applicant.

(6) Rules and procedure in chapter 388-44 WAC are followed in respect to overpayment.

(7) An applicant or recipient whose nonexempt gross income exceeds one hundred fifty percent of the standard of need for the appropriate household size plus additional requirements authorized for that assistance unit, is not eligible for AFDC or refugee assistance from the date specified in WAC 388-28-483. The income of all members of the assistance unit and the income of natural, adoptive, or stepparents of children in the assistance unit residing in the same household, shall be considered in this test.

(a) Advance earned income credits are not counted in the one hundred fifty percent test.

(b) Gross income shall be defined as all income not specifically exempted by rule or regulation before applicable program disregards are applied.

(c) If the assistance unit's gross income exceeds one hundred fifty percent of the need standard plus authorized additional requirements but the net income does not exceed one hundred percent of the basic payment level plus authorized additional requirements, the assistance unit shall be ineligible for one full month.

(d) Net income shall be defined as gross income less applicable disregards and deductions for which the applicant or recipient is eligible.

(8) Income which has been taken into account in computing financial need according to subsection (2) of this section if retained by:

(~~α~~) a GAU recipient does not affect his or her eligibility unless the amount retained at the time of the next periodic review exceeds the exempt property holdings permitted for an applicant. In this event the rule on nonexempt resources or income pertaining to an applicant are applied.

~~((b) An AFDC or RA recipient does not affect his or her eligibility unless the amount retained at the time of the next monthly status report exceeds the exempt property holdings permitted for an applicant or recipient.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-28-455 NONEXEMPT RESOURCES—REAL PROPERTY—NONEXEMPT.

**WSR 84-04-004
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed January 19, 1984]**

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 Monthly maintenance standard—Applicant not in own home, amending WAC 388-83-036.

It is the intention of the secretary to adopt these rules on an emergency basis on or about January 18, 1984; that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.09 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
Division of Administration and Personnel
Department of Social and Health Services
Mailstop OB 14
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 18, 1984

By: David A. Hogan, Director
Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 388-83-036.

Purpose of the Rule or Rule Change: To include adult residential treatment facilities (ARTFs).

The Reason(s) These Rules are Necessary: To allow for medical assistance to individuals in an ARTF.

Statutory Authority: RCW 74.08.090.

Summary of the Rule or Rule Change: ARTFs are included as a nonmedical facility.

Person or Persons Responsible for the Drafting, Implementation and Enforcement of the Rule: Jim Sparks, Program Manager, Division of Medical Assistance, Phone: 3-7316, Mailstop: LK-11.

These rules are not necessary as a result of federal law, federal court decision or state court decision.

AMENDATORY SECTION (Amending Order 1685, filed 7/29/81)

WAC 388-83-036 MONTHLY MAINTENANCE STANDARD—APPLICANT NOT IN OWN HOME. (1) The monthly standard for a Title XVI related individual or GA-U recipient living in a CCF, adult family home, adult residential treatment facility (ARTF) or group home shall be the cost standard of the facility. Cost plus a specified CPI may not exceed three hundred percent of the current SSI federal benefit level.

(2) The AFDC recipient receiving intensive (thirty days or less) alcohol treatment may be granted GA-U funds within the maximum which are paid to the facility for the cost of care.

(3) For the Title XVI related person with income, all earned and unearned exemptions allowed by SSI may be retained for personal needs. The GA-U recipient is subject to GA-U income and resource standards.

(4) If income available to the recipient is less than the CPI standard, a state payment is authorized to the recipient to meet his or her personal needs.

(5) Payment is made by the department to the facility for the difference between income available for payment on care and the cost standard of the facility.

WSR 84-04-005
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2067—Filed January 19, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Monthly maintenance standard—Applicant not in own home, amending WAC 388-83-036.

I, David A. Hogan, find that an emergency exists and that this 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 the emergency is these rules will result in substantially improved services to clients.

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

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 18, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 1685, filed 7/29/81)

WAC 388-83-036 MONTHLY MAINTENANCE STANDARD—APPLICANT NOT IN OWN HOME. (1) The monthly standard for a Title XVI related individual or GA-U recipient living in a CCF, adult family home, adult residential treatment facility (ARTF) or group home shall be the cost standard of the facility. Cost plus a specified CPI may not exceed three hundred percent of the current SSI federal benefit level.

(2) The AFDC recipient receiving intensive (thirty days or less) alcohol treatment may be granted GA-U funds within the maximum which are paid to the facility for the cost of care.

(3) For the Title XVI related person with income, all earned and unearned exemptions allowed by SSI may be retained for personal needs. The GA-U recipient is subject to GA-U income and resource standards.

(4) If income available to the recipient is less than the CPI standard, a state payment is authorized to the recipient to meet his or her personal needs.

(5) Payment is made by the department to the facility for the difference between income available for payment on care and the cost standard of the facility.

WSR 84-04-006
ADOPTED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Order 84-1, Resolution No. 84-1—Filed January 20, 1984]

Be it resolved by the Board of Pilotage Commissioners, acting at Colman Dock, Seattle, Washington 98104, that it does adopt the annexed rules relating to pilotage rates for the Puget Sound pilotage district, WAC 296-116-300.

This action is taken pursuant to Notice No. WSR 83-24-083 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 88.16.035(4) and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 12, 1984.

By Ralph E. White
Chairman

AMENDATORY SECTION (Amending Order 83-6, Resolution No. 83-6, filed 8/17/83)

WAC 296-116-300 PILOTAGE RATES FOR THE PUGET SOUND PILOTAGE DISTRICT. These rates shall become effective on August 1, 1983, or as soon thereafter as provided in RCW 34.04.040.

CLASSIFICATION	RATE
Ship Length overall (LOA) Charges:	per LOA rate schedule in this section
Boarding Fee:	\$24.00
Per each boarding/deboarding at the Port Angeles Pilot station.	
Harbor Shift - Live Ship (Seattle Port)	LOA Zone I
Harbor Shift - Live Ship (Other than Seattle Port)	LOA Zone I
Harbor Shift - Dead Ship	Double LOA Zone I
Dead Ship Towing Charge:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Waterway and Bridge Charges:	
Ships up to 90' beam:	
A charge of \$122.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle, south of Eleventh Street Bridge in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$58.00 per bridge.	
Ships 90' beam and/or over:	
A charge of \$164.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle and south of Eleventh Street Bridge in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$115.00 per bridge.	
(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)	
In a case where two pilots are employed for a single vessel waterway or bridge transit, a second pilot charge shall (be levied in the amount of a harbor shift only) include the bridge and waterway charge in addition to the harbor shift rate.	
Compass Adjustment	163.00
Radio Direction Finder Calibration	163.00
Launching Vessels	244.00
Trial Trips, 6 hours or less (Minimum \$392.00)	66.00 per hr.
Trial Trips, over 6 hours (two pilots)	130.00 per hr.
Shilshole Bay - Salmon Bay	95.00
Salmon Bay - Lake Union	76.00
Lake Union - Lake Washington (plus LOA zone from Webster Point)	95.00
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles (When pilot is ordered and vessel proceeds without stopping for pilot)	LOA Zone I

CLASSIFICATION	RATE
Docking Delay after Anchoring:	66.00
Applicable Harbor Shift rate to apply, plus \$66.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$66.00 for every hour or fraction thereof.	
Sailing Delay	66.00 per hour
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$66.00 for every hour or fraction thereof.	
Slow-Down - \$66.00 per hour for all time in excess of time spent in that particular transit for that speed of advance normal for vessel that is slowed.	66.00 per hour
Super Ships - Additional charge to LOA zone mileage of \$0.0406 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons. In excess of 50,000 gross tons, the charge shall be \$0.0486 per gross ton.	
Delayed Arrival Port Angeles	66.00 per hour
(When pilot is ordered and vessel does not arrive within two hours without notification of change of ETA.)	
Transportation to vessels on Puget Sound:	
March Point or Anacortes	\$ 96.00
Bangor	56.00
Bellingham	106.00
Bremerton	29.00
Cherry Point	125.00
Dupont	56.00
Edmonds	20.00
Everett	36.00
Ferndale	115.00
Manchester	44.00
Mukilteo	35.00
Olympia	72.00
Point Wells	20.00
Port Gamble	51.00
Port Townsend (Indian Island)	73.00
Semiahmoo (Blaine)	131.00
Tacoma	37.00
Tacoma Smelter	42.00
Winslow	29.00
(a) Interport shifts: Transportation paid to and from both points.	
(b) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is cancelled on or before scheduled reporting time, transportation paid one way only.	
(c) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.	
(d) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$1.40 per mile.	
Delinquent payment charge: 1% per month after 60 days from first billing.	
Non Use of Pilots: Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.	
LOA Rate Schedule	
The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric	

Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I	II	III	IV	V	VI
	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
Up to 449	115	179	311	466	629	818
450 - 459	117	183	314	474	637	821
460 - 469	121	186	317	481	647	824
470 - 479	125	190	321	491	650	827
480 - 489	127	194	323	499	656	830
490 - 499	130	196	327	508	662	835
500 - 509	135	200	332	516	668	840
510 - 519	137	205	335	523	673	843
520 - 529	139	213	342	526	680	850
530 - 539	145	216	346	531	690	858
540 - 549	147	219	352	537	702	866
550 - 559	150	225	355	543	707	874
560 - 569	156	232	362	548	715	884
570 - 579	159	236	366	550	721	890
580 - 589	166	239	372	554	727	899
590 - 599	173	244	375	558	736	908
600 - 609	179	252	380	560	744	914
610 - 619	189	255	386	564	752	923
620 - 629	197	259	391	568	761	932
630 - 639	208	264	395	570	767	941
640 - 649	217	270	400	573	776	948
650 - 659	229	275	406	577	785	957
660 - 669	236	278	411	580	793	964
670 - 679	242	284	414	589	801	972
680 - 689	248	289	420	596	809	981
690 - 699	255	295	425	606	818	998
700 - 719	267	304	434	613	833	1012
720 - 739	282	314	444	622	850	1029
740 - 759	295	327	454	629	866	1046
760 - 779	307	341	464	637	884	1062
780 - 799	321	353	474	647	899	1080
800 - 819	333	366	483	653	914	1095
820 - 839	346	378	493	662	932	1110
840 - 859	361	392	503	670	948	1128
860 - 879	373	406	513	687	964	1144
880 - 899	386	419	523	703	981	1160
900 - 919	398	432	532	719	998	1177
920 - 939	412	444	543	736	1012	1194
940 - 959	425	457	551	752	1029	1208
960 - 979	437	471	562	767	1046	1226
980 - 999	452	483	571	785	1062	1242
1000 & over	464	498	582	801	1080	1258

WSR 84-04-007
EMERGENCY RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Order 84-1, Resolution No. 84-1—Filed January 20, 1984]

Be it resolved by the Board of Pilotage Commissioners, acting at Colman Dock, Seattle, Washington 98104, that it does adopt the annexed rules relating to pilotage rates for the Puget Sound pilotage district, WAC 296-116-300.

We, the Board of Pilotage Commissioners, find that an emergency exists and that this 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 the emergency is that the amendment to WAC 296-116-300 is to insert language inadvertently omitted when this section was amended in 1983.

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

This rule is promulgated pursuant to RCW 88.16.035(4) and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 12, 1984.

By Ralph E. White
 Chairman

AMENDATORY SECTION (Amending Order 83-6, Resolution No. 83-6, filed 8/17/83)

WAC 296-116-300 PILOTAGE RATES FOR THE PUGET SOUND PILOTAGE DISTRICT. *These rates shall become effective on August 1, 1983, or as soon thereafter as provided in RCW 34.04.040.*

CLASSIFICATION	RATE
Ship Length overall (LOA) Charges:	per LOA rate schedule in this section
Boarding Fee: Per each boarding/deboarding at the Port Angeles Pilot station.	\$24.00
Harbor Shift - Live Ship (Seattle Port)	LOA Zone I
Harbor Shift - Live Ship (Other than Seattle Port)	LOA Zone I
Harbor Shift - Dead Ship	Double LOA Zone I
Dead Ship Towing Charge: LOA of tug + LOA of tow + beam of tow Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	Double LOA Zone

Waterway and Bridge Charges:

Ships up to 90' beam:
 A charge of \$122.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle, south of Eleventh Street Bridge in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$58.00 per bridge.

Ships 90' beam and/or over:
 A charge of \$164.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle and south of Eleventh Street Bridge in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$115.00 per bridge.

CLASSIFICATION

RATE

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

In a case where two pilots are employed for a single vessel waterway or bridge transit, a second pilot charge shall ~~((be levied in the amount of a harbor shift only))~~ include the bridge and waterway charge in addition to the harbor shift rate.

Compass Adjustment	163.00
Radio Direction Finder Calibration	163.00
Launching Vessels	244.00
Trial Trips, 6 hours or less (Minimum \$392.00)	66.00 per hr.
Trial Trips, over 6 hours (two pilots)	130.00 per hr.
Shilshole Bay — Salmon Bay	95.00
Salmon Bay — Lake Union	76.00
Lake Union — Lake Washington (plus LOA zone from Webster Point)	95.00
Cancellation Charge	LOA Zone I
Cancellation Charge — Port Angeles (When pilot is ordered and vessel proceeds without stopping for pilot)	LOA Zone I
Docking Delay after Anchoring:	66.00
Applicable Harbor Shift rate to apply, plus \$66.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$66.00 for every hour or fraction thereof.	
Sailing Delay	66.00 per hour
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$66.00 for every hour or fraction thereof.	
Slow-Down — \$66.00 per hour for all time in excess of time spent in that particular transit for that speed of advance normal for vessel that is slowed.	66.00 per hour
Super Ships — Additional charge to LOA zone mileage of \$0.0406 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons. In excess of 50,000 gross tons, the charge shall be \$0.0486 per gross ton.	
Delayed Arrival Port Angeles	66.00 per hour
(When pilot is ordered and vessel does not arrive within two hours without notification of change of ETA.)	
Transportation to vessels on Puget Sound:	
March Point or Anacortes	\$ 96.00
Bangor	56.00
Bellingham	106.00
Bremerton	29.00
Cherry Point	125.00
Dupont	56.00
Edmonds	20.00
Everett	36.00
Ferndale	115.00
Manchester	44.00
Mukilteo	35.00
Olympia	72.00
Point Wells	20.00
Port Gamble	51.00
Port Townsend (Indian Island)	73.00
Semiahmoo (Blaine)	131.00
Tacoma	37.00
Tacoma Smelter	42.00
Winslow	29.00

- (a) Interport shifts: Transportation paid to and from both points.
- (b) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is cancelled on or before

scheduled reporting time, transportation paid one way only.

- (c) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.
- (d) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$1.40 per mile.

Delinquent payment charge: 1% per month after 60 days from first billing.

Non Use of Pilots: Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

LOA Rate Schedule

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I	II	III	IV	V	VI
	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
Up to 449	115	179	311	466	629	818
450 - 459	117	183	314	474	637	821
460 - 469	121	186	317	481	647	824
470 - 479	125	190	321	491	650	827
480 - 489	127	194	323	499	656	830
490 - 499	130	196	327	508	662	835
500 - 509	135	200	332	516	668	840
510 - 519	137	205	335	523	673	843
520 - 529	139	213	342	526	680	850
530 - 539	145	216	346	531	690	858
540 - 549	147	219	352	537	702	866
550 - 559	150	225	355	543	707	874
560 - 569	156	232	362	548	715	884
570 - 579	159	236	366	550	721	890
580 - 589	166	239	372	554	727	899
590 - 599	173	244	375	558	736	908
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650 - 659	229	275	406	577	785	957
660 - 669	236	278	411	580	793	964
670 - 679	242	284	414	589	801	972
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690 - 699	255	295	425	606	818	998
700 - 719	267	304	434	613	833	1012
720 - 739	282	314	444	622	850	1029
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760 - 779	307	341	464	637	884	1062
780 - 799	321	353	474	647	899	1080
800 - 819	333	366	483	653	914	1095
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960 - 979	437	471	562	767	1046	1226
980 - 999	452	483	571	785	1062	1242
1000 & over	464	498	582	801	1080	1258

WSR 84-04-008
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE UNIVERSITY
(Services and Activities Fee Committee)
 [Memorandum—January 18, 1984]

The Services and Activities Fee Committee of the Associated Students of Washington State University will hold meetings on the following dates:

February 7, 14, 21, 28
 March 6, 13, 20, 27
 April 3, 10, 17, 24
 May 8, 15, 22, 29

All Services and Activities Fee Committee meetings will begin at 6:30 p.m. in Room 232, Compton Union Building, Washington State University, Pullman, Washington 99164.

WSR 84-04-009
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Institutions)
 [Filed January 20, 1984]

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 community alternatives program (CAP), new WAC 275-27-800, 275-27-810 and 275-27-820.

It is the intention of the secretary to adopt these rules on an emergency basis on or about January 20, 1984; that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 71.20.020.

The specific statute these rules are intended to implement is RCW 71.20.020.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
 Division of Administration and Personnel
 Department of Social and Health Services
 Mailstop OB 14
 Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 19, 1984
 By: David A. Hogan, Director
 Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.
 Re: New WAC 275-27-800, 275-27-810 and 275-27-820.

Purpose of the Rule: To establish eligibility requirements, and to explain services provided by the community alternatives program (CAP).

The Reason These Rules are Necessary: To implement the community alternatives program. (A Title XIX project authorized by waiver under section 1915(c) of the Social Security Act.)

Summary of the Rule: Establishes requirements for clients eligibility and explains services provided by the community alternatives program.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: Cliff Lamb, Manager, Contracts and Analysis, Program Support and Administration, Developmental Disabilities, Mailstop: OB 42C, Phone: 753-1712.

These rules are not necessary as a result of federal law, federal court decision or state court decision.

Economic Impact on Small Businesses: There is no direct measurable cost of compliance for small businesses by the WAC provision.

NEW SECTION

WAC 275-27-800 COMMUNITY ALTERNATIVES PROGRAM (CAP). Purpose—Legal basis.

(1) The purpose of this program is to authorize certain home and community-based services for persons with developmental disabilities to provide an alternative to care in an institution for the mentally retarded (IMR).

(2) Community alternatives program (CAP) is a Medicaid program authorized by P.L. 97-35 Section 2176 as approved by the secretary of the U.S. Department of Health and Human Services.

NEW SECTION

WAC 275-27-810 ELIGIBLE PERSONS. (1) To be eligible to apply for community alternatives program (CAP) services, the individual must:

(a) Meet the criteria for the division of developmental disabilities (DDD) eligibility according to RCW 71.20.016.

(b) Meet the criteria for disability as established in the Social Security Act.

(c) Have an income of less than three hundred percent of the federal Supplemental Security Income (SSI) benefit amount.

(d) Need an IMR level of care as determined by a DDD nursing care consultant.

(i) Require twenty-four hour care and require services that cannot be provided by a family member, and

(ii) Have a documented need for habilitation services and training.

(2) Participation in CAP is by choice of the otherwise IMR-eligible person.

NEW SECTION

WAC 275-27-820 CAP—SERVICES. (1) The following services may be authorized as specified by the individual service plan.

(a) Case management services, including intake, eligibility determination, assessment of need, placement, coordination, service authorization, and case monitoring.

(b) Habilitation services, including training, support, and supervision of developing the individual's physical skills, personal care, and social or community integration skills.

(c) Respite care for eligible individuals needing temporary support and supervision which cannot be provided by his or her family.

(d) Professional and other community-based services.

(2) The projected cost of services in the CAP individual service plan may not exceed eighty percent of the cost of care in an IMR, as determined by DDD case management services at the time of individual service plan development.

(3) The division shall review CAP eligibility annually.

WSR 84-04-010
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Institutions)

[Order 2068—Filed January 20, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to community alternatives program (CAP), new WAC 275-27-800, 275-27-810 and 275-27-820.

I, David A. Hogan, find that an emergency exists and that this 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 the emergency is these rules will result in substantially improved services to clients.

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

This rule is promulgated pursuant to RCW 71.20.030 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 19, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

NEW SECTION

WAC 275-27-800 COMMUNITY ALTERNATIVES PROGRAM (CAP). Purpose—Legal basis.

(1) *The purpose of this program is to authorize certain home and community-based services for persons with developmental disabilities to provide an alternative to care in an institution for the mentally retarded (IMR).*

(2) *Community alternatives program (CAP) is a Medicaid program authorized by P.L. 97-35 Section 2176 as approved by the secretary of the U.S. Department of Health and Human Services.*

NEW SECTION

WAC 275-27-810 ELIGIBLE PERSONS. (1) *To be eligible to apply for community alternatives program (CAP) services, the individual must:*

(a) *Meet the criteria for the division of developmental disabilities (DDD) eligibility according to RCW 71.20.016.*

(b) *Meet the criteria for disability as established in the Social Security Act.*

(c) *Have an income of less than three hundred percent of the federal Supplemental Security Income (SSI) benefit amount.*

(d) *Need an IMR level of care as determined by a DDD nursing care consultant.*

(i) *Require twenty-four hour care and require services that cannot be provided by a family member, and*

(ii) *Have a documented need for habilitation services and training.*

(2) *Participation in CAP is by choice of the otherwise IMR-eligible person.*

NEW SECTION

WAC 275-27-820 CAP—SERVICES. (1) *The following services may be authorized as specified by the individual service plan.*

(a) *Case management services, including intake, eligibility determination, assessment of need, placement, coordination, service authorization, and case monitoring.*

(b) *Habilitation services, including training, support, and supervision of developing the individual's physical skills, personal care, and social or community integration skills.*

(c) *Respite care for eligible individuals needing temporary support and supervision which cannot be provided by his or her family.*

(d) *Professional and other community-based services.*

(2) *The projected cost of services in the CAP individual service plan may not exceed eighty percent of the cost of care in an IMR, as determined by DDD case management services at the time of individual service plan development.*

(3) *The division shall review CAP eligibility annually.*

WSR 84-04-011

ADOPTED RULES

DEPARTMENT OF TRANSPORTATION
(Transportation Commission)

[Order 40, Resolution No. 210—Filed January 20, 1984]

Be it resolved by the Washington State Transportation Commission, act at Vancouver, Washington, that it does adopt the annexed rules relating to the size of vehicles, amending WAC 468-38-235, commuter traffic restrictions.

This action is taken pursuant to Notice No. WSR 83-23-088 filed with the code reviser on November 22, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Transportation Commission as authorized in RCW 46.44.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 19, 1984.

By Richard Odabashian
Chairman

AMENDATORY SECTION (Amending Order 31, Resolution No. 156, filed 8/20/82)

WAC 468-38-235 COMMUTER TRAFFIC RESTRICTIONS. Movement by special permit will be prohibited on urban sections of state highways in the vicinity of cities having a population of more than 15,000 and other sections of state highways having excessive volumes during the morning and evening commuting hours ((and other sections of state highways having excessive volumes)). The department shall prescribe specific hours and regulations for oversize movements in and adjacent to Seattle, Tacoma, Spokane, Everett, Vancouver and other areas as deemed necessary. Movement of empty equipment trailers up to ten feet wide may be allowed during such hours on a trip to pick up or from delivering over-wide loads.

WSR 84-04-012

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed January 23, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Utilities and Transportation Commission intends to adopt, amend, or repeal rules relating to heat suppliers, chapter 480-95 WAC. The proposed adoption is described in Cause No. U-83-59. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the proposed adoption on economic values, pursuant to chapter 43.21H RCW and WAC 480-05-050(17);

that the agency will at 9:00, Wednesday, March 14, 1984, in the Commission's Hearing Room, Sixth Floor, Highways-Licenses Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 80.01.040 and 80.62.040.

The specific statutes these rules are intended to implement is chapter 80.62 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 9, 1984.

This notice is connected to and continues the matter in Notice No. WSR 83-24-064 filed with the code reviser's office on December 7, 1983.

Dated: January 23, 1984

By: Barry M. Mar
Secretary

WSR 84-04-013

EMERGENCY RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Order R-300, Cause No. U-83-59—Filed January 23, 1984]

In the matter of adopting chapter 480-95 WAC relating to heat suppliers.

The Washington Utilities and Transportation Commission finds that an emergency exists and that this 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 the public interest. A statement of the facts constituting such emergency is rules are required to be in place within 180 days following the effective date of chapter 94, Laws of 1983. Emergency rules are necessary to meet that deadline while permanent rules are still under consideration.

This rule adoption is being promulgated pursuant to RCW 80.01.040 and 80.62.040.

This rule-making 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 Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

This adoption of chapter 480-95 WAC affects no economic values.

In reviewing the entire record herein, it has been determined that chapter 480-95 WAC should be adopted, to read as set forth in Appendix A shown below and made a part hereof by this reference. Chapter 480-95 WAC as adopted, will establish procedures and standards applicable to heat suppliers and contracts between heat suppliers and ultimate consumers; provide for complaint procedures and establish an application fee.

ORDER

WHEREFORE, IT IS ORDERED That chapter 480-95 WAC as set forth in Appendix A, be adopted, as emergency rules of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.030 and 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rules, 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.

DATED at Olympia, Washington, this 23rd day of January, 1984.

Washington Utilities and Transportation Commission
Robert W. Bratton, Chairman
A. J. "Bud" Pardini, Commissioner
APPENDIX "A"

Chapter 480-95 WAC
HEAT SUPPLIERS

NEW SECTION

WAC 480-95-010 APPLICATION OF RULES. These rules shall apply to any heat supplier subject to the jurisdiction of the commission under authority of chapter 94, Laws of 1983.

NEW SECTION

WAC 480-95-020 DEFINITIONS. Unless the language or context indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purposes of these rules, have the meanings hereinafter indicated.

(1) The terms "heat," "heat source," "heat supplier," and "commission," shall have the meaning ascribed to them in section 2, chapter 94, Laws of 1983.

(2) "Permit" means a nonexclusive operating permit authorized to be issued by the commission for the provision of heating services within a designated service territory.

(3) "Designated service territory" means the geographic service area of a heat supplier.

(4) "Provider of heating services" means any person, firm, or corporation, including municipal corporations, affording heat from any source whether electric, oil, natural gas, or other within the geographic scope of the designated service territory of a heat supplier or an applicant for a permit to operate as a heat supplier.

(5) "Rate" means any price, charge, or classification made, demanded, observed, or received by heat suppliers or providers of heating services in the sale or purchase of heat from any heat source whatever, or any rule, regulation, or practice respecting any such price, charge, or classification, and any contract pertaining to the sale or purchase of heat.

(6) "Formula" means any mathematical relationships by which a rate is to be calculated.

(7) "Customer" means any person, partnership, firm, corporation, municipality, cooperative organization, or governmental agency which is receiving service from a heat supplier or has completed an application to a heat supplier for service.

NEW SECTION

WAC 480-95-030 PERMIT REQUIRED. No heat supplier shall engage in the development, production, transmission, distribution, delivery, furnishing, or selling of heat without having first obtained from the commission a permit to so do within a designated service territory.

NEW SECTION

WAC 480-95-040 OPERATION UNDER TRADE NAME. No permit will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of RCW 19.80.010 and a certified copy thereof is filed with the commission.

NEW SECTION

WAC 480-95-050 APPLICATION FOR PERMIT. Application for permits or extension thereof shall be typewritten, on forms to be furnished by the commission, completing all information therein requested. The application shall provide the following basic information:

(1) The area proposed to be served by specific reference to known and ascertainable streets, avenues, roads, or highways, or boundaries, or by metes and bounds. The application shall be accompanied by a map specifically delineating the area in which service is intended to be provided.

(2) A detailed description of the operating system, together with a statement as to the number and type of customers the applicant expects to be serving at the end of the first, fifth, and tenth years of operations and the heating requirements expressed in terms of British Thermal Units (BTU's).

(3) A statement signed by a registered professional engineer qualified to make such a statement that:

(a) The calculation of the load and design of the system has been reviewed;

(b) The calculation of the load appears reasonable; and

(c) The system is designed in compliance with applicable codes and has sufficient capacity to meet projected uses.

(4) A form of service contract or contracts to be used, including the rates to be charged or the formula by which rates are to be determined.

Applications not in substantial conformity with the requirements of this rule may be rejected by the commission.

NEW SECTION

WAC 480-95-060 NOTICE OF APPLICATIONS. (1) For purposes of this rule, applications shall include applications for permit or extension thereof.

(2) The commission shall notify all known existing providers of heating service which, at the time of the filing of an application, are serving or hold a permit to serve the territory described in the application, of the filing of the same. The notice will set forth the docket number, if any, of the application and shall identify the applicant and the designated service territory covered by the application. Notice will be given by mail in accordance with commission rules. Such existing providers of heating service shall have twenty days from the date of such notice to file with the commission protests to the application. Protests must set forth specifically the grounds upon which they are made and contain a concise statement of the interest of the protestant in the subject matter of the application. Protests are to be directed

only to the fitness, willingness, and ability of the applicant to serve, the adequacy of the design of the system, and/or the reasonableness of the proposed contract rates in relation to the rates charged to customers for comparable heating services by other providers thereof. The commission may reject any protest which appears to be frivolous, or fails to raise substantial issues as to the qualifications of the applicant or its system, or is otherwise not deemed meritorious. Amendment of the application to meet protests will be permitted within ten days of the last day for the filing of such protests.

NEW SECTION

WAC 480-95-070 PROCEDURE BEFORE COMMISSION. The commission will review the application in detail and may request amendment or such additional information as may be required to assure compliance with statutory standards. The commission may, on its own motion if it is not satisfied that the granting of the application would comport with statutory standards, or upon protest raising substantive issues, set the application for hearing in accordance with the provisions of chapter 34.04 RCW. No application will be denied without an opportunity for hearing, and in the event of hearing, the burden shall be upon the applicant to show that it meets the requirements of section 5, chapter 94, Laws of 1983.

NEW SECTION

WAC 480-95-080 SALE, LEASE, OR TRANSFER OF PERMIT. Any permit may be sold, leased, or transferred upon application therefor on forms to be furnished by the commission giving all information requested therein and accompanied by the applicable fee. Transfer applications shall not be subject to protest, and may be granted by the commission upon a showing that the transferee is fit, willing, and able to provide heating service.

NEW SECTION

WAC 480-95-090 DUPLICATE PERMITS. All applications for duplicate permits must be accompanied by an affidavit of the holder that the original has been lost or destroyed.

NEW SECTION

WAC 480-95-100 FEES.

- (1) Application for permit \$150.00
- (2) Application for extension 150.00
- (3) Application for sale, transfer, or lease 150.00
- (4) Application for duplicate permit 3.00

NEW SECTION

WAC 480-95-110 CONTRACTS. (1) Except as otherwise authorized by the commission, service to each class of customer shall be provided by uniform contract and at uniform rates. Heat suppliers may employ a master contract or may enter into individual contracts

with each customer. If a master form of contract is used, a true and correct copy shall be filed with the commission, and the heat supplier shall file quarterly a complete list of customers subscribing to service under the master contract. In the event that separate contracts are used, a true and correct copy of each contract shall be filed with the commission. Amendments to the contract or contracts shall also be filed with the commission.

(2) Contracts between a heat supplier and its customer shall be for a minimum of one year. They shall be terminable within the period for which they are written only in the manner provided in the contract, and under no circumstances upon less than thirty days' notice to the commission and each contracting party. Every such contract shall so provide.

(3) Every contract shall be mutually binding upon both heat supplier and customer, shall be entered into and performed in good faith, for an agreed rate or upon a formula by which the rate can reasonably be determined, and for an agreed term. Contracts shall conform to the following requirements:

(a) The time or term of performance by both parties must be stated and in no event shall the term or notice required for termination be shorter than that provided in these rules;

(b) Define the circumstances under which a customer deposit may be required, and delineate the circumstances under which discontinuance of service may be effectuated;

(c) Specify the procedure for renewal, modification, or termination of the contract;

(d) Specify the rates or the formula for determining rates to be charged during the contract term and, if necessary, specify the procedure for changing rates or the formula by which rates are to be determined; and

(e) Define the service responsibilities of the heat supplier and the customer for the purpose of maintaining adequate service. Each heat supplier shall commit to maintaining its plant and system in such condition as will enable it to furnish adequate service and shall endeavor to avoid interruptions of service, and, when such interruptions occur, to reestablish service with a minimum of delay. The contract will also provide that should it be necessary for the heat supplier to make repairs to or change its facilities it may, without incurring any liability therefor, interrupt service for such periods as may be reasonably necessary, and in such manner as to minimize the inconvenience to customers. All customers affected by a scheduled interruption shall be given notification at least one day in advance. Each heat supplier shall keep a record of all interruptions of service including in such record the location, the date and time, the duration, and, as far as possible, the cause of each interruption. Copies of such records shall be submitted to the commission on request.

(4) Every contract shall contain the provision that it is made subject to the power and authority of the commission from time to time to determine the reasonableness of rates as provided in section 7, chapter 94, Laws of 1983.

NEW SECTION

WAC 480-95-120 COMPLAINTS. Any complaint or dispute involving a heat supplier and a customer shall be treated in the following manner:

(1) Each complaint or dispute received by a heat supplier shall be investigated promptly as required by the particular case, and the result reported to the customer. When circumstances indicate the need for corrective action, such action shall be taken as soon as possible.

(2) Each heat supplier shall ensure that personnel engaged in initial contact with a dissatisfied or complaining customer that if dissatisfied with the decision or the explanation that is provided, the customer has the right to have that problem considered and acted upon by supervisory personnel. The customer shall be provided with the name or department of such supervisory personnel and a telephone number by which they may be reached.

(3) Each heat supplier shall ensure that supervisory personnel contacted by a dissatisfied applicant or customer shall inform the still-dissatisfied applicant or customer of the availability of the commission for further review of any complaint or dispute. The telephone number and address of the commission shall also be provided.

(4) All parties to a dispute between a customer and a heat supplier shall have the right to bring before the commission an informal complaint pursuant to the provisions of WAC 480-08-040 and/or a formal complaint pursuant to provisions of WAC 480-08-050.

(5) When a complaint is referred to a heat supplier by the commission, the heat supplier shall, within two working days, report results of any investigation made regarding the complaint to the commission and shall keep the commission currently informed as to the progress made with respect to the solution of, and final disposition of the complaint. If warranted in a particular case, a heat supplier may request an extension of time.

(6) Each heat supplier shall keep a record of all complaints concerning its service or rates. The record shall show at least the name and address of the complainant, the nature and date of the complaint, action taken, and the final disposition of the complaint. Such record shall be maintained in a suitable place readily available for commission review. All written complaints shall be acknowledged. Correspondence and records of complaints shall be retained by the heat supplier for a minimum period of one year.

WSR 84-04-014

ADOPTED RULES

DEPARTMENT OF ECOLOGY

[Order DE 83-34—Filed January 23, 1984]

I, John F. Spencer, deputy director of the Department of Ecology, do promulgate and adopt at the Department of Ecology, Lacey, Washington, the annexed rules relating to Instream resources protection program—Kennedy-Goldsborough Water Resource Inventory Area (WRIA) 14, adopting chapter 173-514 WAC.

This action is taken pursuant to Notice No. WSR 83-19-070 filed with the code reviser on September 21, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to chapters 90.54, 90.22 and 75.20 RCW and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 17, 1984

By John F. Spencer
Deputy Director

NEW SECTION

WAC 173-514-010 GENERAL PROVISION. These rules apply to waters within the Kennedy-Goldsborough Water Resource Inventory Area (WRIA 14), as defined in WAC 173-500-040. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (Minimum Water Flows and Levels), chapter 75.20 RCW (State Fisheries Code) and in accordance with chapter 173-500 WAC (Water Resources Management Program).

NEW SECTION

WAC 173-514-020 PURPOSE. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Kennedy-Goldsborough Water Resource Inventory Area with instream flows and levels necessary to provide protection for wildlife, fish, scenic, aesthetic, and environmental values, recreation, navigation, and water quality.

NEW SECTION

WAC 173-514-030 ESTABLISHMENT OF INSTREAM FLOWS. (1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name Reach	Control Station By River Mile and Sec. Township, & Range	Stream Management
12-0740-00 Shumocher Creek	.02 Sec.7, T.21N., R.2WWM	From Mason Lake to headwaters including all tributaries.
WDOE-0745-50 Sherwood Creek	0.14 Sec.20, T.22N., R.1WWM	From influence of mean annual high tide at low instream flow levels to Mason Lake, including Mason Lake and all tributaries.
12-0750-00 Deer Creek	0.8 Sec.20, T.21N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
12-0755-00	0.5	From influence of

Control Station No. Stream Management Unit Name Reach	Control Station By River Mile and Sec. Township, & Range	Stream Management
Cranberry Creek	Sec.36, T.21N., R.3WWM	mean annual high tide at low instream flow levels to headwaters, including Cranberry Lake, Lake Limerick and all tributaries.
12-0760-00 Johns Creek	2.5 Sec.3, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
WDOE-0770-50 Goldsborough Creek	0.23 Sec.20, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
WDOE-0775-50 Mill Creek	3.1 Sec.25, T.20N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including Lake Isabella and all tributaries.
12-0780-00 Skookum Creek	3.0 Sec.19, T.19N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.
WDOE-0785-50 Kennedy Creek	0.06 Sec.32, T.19N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including Summit Lake and all tributaries.
WDOE-0787-00 Perry Creek	1.06 Sec.13, T.18N., R.3WWM	From influence of mean annual high tide at low instream flow levels to headwaters, including all tributaries.

(2) Instream flows are established for the stream management units in WAC 173-514-030(1) as follows:

Instream Flows in the Kennedy-Goldsborough WRIA
(Instantaneous cubic feet per second)

Month	Day	12-0740-00 Shumocher Creek	WDOE 0745-50 Sherwood Creek	12-0750-00 Deer Creek
Jan	1	20	60	55
	15	20	60	55
Feb	1	20	60	55
	15	20	60	55
Mar	1	20	60	55
	15	20	60	55
Apr	1	20	60	55
	15	20	60	46
May	1	17	48	39
	15	14	37	33
Jun	1	12	29	28
	15	10	23	23.5
Jul	1	8.6	17.5	20
	15	7.2	14	20
Aug	1	6	11	20

Month	Day	12-0740-00 Shumocher Creek	WDOE 0745-50 Sherwood Creek	12-0750-00 Deer Creek
Sep	15	6	11	20
	1	6	11	20
Oct	15	6	11	20
	1	6	11*	20*
Nov	15	6	19*	20*
	1	11	34*	33*
Dec	15	20	60*	55*
	1	20	60	55

*Denotes closure period to all consumptive uses

Instream Flows in the Kennedy-Goldsborough WRIA
(Cont'd)
(Instantaneous cubic feet per second)

Month	Day	12-0755-00 Cranberry Creek	12-0760-00 Johns Creek	WDOE-0770-50 Goldsborough Creek
Jan	1	50	45	50
	15	50	45	50
Feb	1	50	45	50
	15	50	45	85
Mar	1	50	45	85
	15	50	45	85
Apr	1	50	45	85
	15	40	45	85
May	1	31	34	85*
	15	23.5	26	85*
Jun	1	18	20	85*
	15	14	15.5	69*
Jul	1	10.5	12	55*
	15	8	9	52*
Aug	1	8	7	48*
	15	8	7	45*
Sept	1	8	7	45*
	15	8	7	45*
Oct	1	8*	7*	45*
	15	15*	7*	50*
Nov	1	28*	18*	50
	15	50*	45*	50
Dec	1	50	45	50
	15	50	45	50

*Denotes closure period to all consumptive uses

Instream Flows in the Kennedy-Goldsborough WRIA
(Cont'd)
(Instantaneous cubic feet per second)

Month	Day	WDOE 0775-50 Mill Creek	12-0765-00 Skookum Creek	WDOE-0785-50 Kennedy Creek	WDOE-0787-00 Perry Creek
Jan	1	65	40	60	30
	15	65	40	60	30
Feb	1	65	40	60	30
	15	65	40	60	30

Month	Day	WDOE 0775-50 Mill Creek	12-0765-00 Skookum Creek	WDOE-0785-50 Kennedy Creek	WDOE-0787-00 Perry Creek
Mar	1	65	40	60	30
	15	65	40	60	30
Apr	1	65	40	60	21
	15	65	40	46	14
May	1	55	26*	35*	10*
	15	46	16.5*	27*	6.8*
Jun	1	40	11*	20*	4.6*
	15	33	7*	16*	3.2*
Jul	1	28	4.6*	12*	2.2*
	15	24	3*	9*	1.5*
Aug	1	20	3*	7*	1*
	15	20	3*	7*	1*
Sep	1	20	3*	7*	1*
	15	20	3*	7*	1*
Oct	1	20	3*	7*	1*
	15	20	5.6*	14*	2.5*
Nov	1	35	15	29*	5.4
	15	65	40	60*	13
Dec	1	65	40	60	30
	15	65	40	60	30

*Denotes closure period to all consumptive uses

(3) Instream flow hydrographs, as represented in the document entitled "Kennedy-Goldsborough Instream Resources Protection Program, figs. 2-7, pgs. 26-28," shall be used for identification of instream flows on those days not specifically identified in WAC 173-514-030(2).

(4) Future consumptive water right permits issued hereafter for diversion of surface water in the Kennedy-Goldsborough WRIA and perennial tributaries shall be expressly subject to instream flows established in WAC 173-514-030 (1) through (3) as measured at the appropriate gage, preferably the nearest one downstream, except from those exempted uses described in WAC 173-514-060 (1) through (3).

(5) Projects that would reduce the flow in a portion of a stream's length (e.g.: Hydroelectric projects that bypass a portion of a stream) will be considered consumptive only with respect to the affected portion of the stream and will be subject to specific instream flow requirements as specified by the department for the bypassed reach notwithstanding WAC 173-514-030 (1) through (3) and 173-514-040 if detailed, project-specific instream flow studies for the bypassed reach, as may be required, demonstrate that a different flow requirement is appropriate. The department may require the project proponent to conduct such studies.

(6) If department investigations determine that withdrawal of ground water from the source aquifers would not interfere significantly with stream flow during the period of stream closure or with maintenance of minimum flows, then applications to appropriate public ground waters may be approved and permits or certificates issued.

NEW SECTION

WAC 173-514-040 SURFACE WATER SOURCE LIMITATIONS TO FURTHER CONSUMPTIVE APPROPRIATION. (1) The department, having determined further consumptive appropriation for all uses would harmfully impact instream values, closes the following streams including tributaries for the period indicated:

(a) Stream Name	Tributary to	Closure Period
Alderbrook Creek	Hood Canal	May 1 - October 31
Campbell Creek	Oakland Bay	May 1 - October 31
Elson Creek	Skookum Inlet	May 1 - October 31
Fawn Lake Outlet	Skookum Inlet	May 1 - October 31
Jones Creek	Pickering Passage	May 1 - October 31
Jarrell Creek	Jarrell Cove	May 1 - October 31
Little Creek	Skookum Creek	May 1 - October 31
Melaney Creek	Oakland Bay	May 1 - October 31
Shelton Creek	Oakland Bay	May 1 - October 31
Twahnoh Creek	Hood Canal	May 1 - October 31
Uncle John Creek	Oakland Bay	May 1 - October 31

The minimum flow during the closure period on the streams listed above is the natural flow. Because insufficient flow data is available to develop instream flows outside the closure period, minimum flows for any water right application for consumptive use will be considered on a case by case basis in consultation with the departments of fisheries and game (RCW 75.20.050).

(b) Stream Name	Closure Period
Kennedy Creek	May 1 - November 15
Cranberry Creek	September 16 - November 15
Deer Creek	September 16 - November 15
Johns Creek	September 16 - November 15
Sherwood Creek	September 16 - November 15
Perry Creek	May 1 - October 31

Because sufficient hydrologic data is available for the above streams, a minimum flow is established during the closed and nonclosed period in WAC 173-514-030(2).

(2) Except as noted in the footnotes, the following existing surface water source limitations, previously established administratively under the authority of chapter 90.03 RCW and RCW 75.20.050 are hereby confirmed and adopted for the period indicated:

Stream*/Tributary To	Action	Period
Goldsborough Creek - Oakland Bay	Closure+	May 1 - October 31
Gosnell Creek - Isabella Lake	Low Flow (10 cfs)	All Year
Jarrell Creek - Jarrell Cove	Low flow@ (.30 cfs)	May 1 - October 31
Johns Creek - Oakland Bay	Low flow@ (4 cfs)	Sept. 16 - November 15
Kennedy Creek - Totten Inlet	Low flow@ (3 cfs)	May 1 - November 15
Schneider Creek - Totten Inlet	Closure#	May 1 - October 31
Skookum Creek - Skookum Inlet	Closure+	May 1 - October 31
Summit Lake - Kennedy Creek	Lake Level	All year
Unnamed Stream - Mill Creek Sec.34, T.20N R.3 EWM	Low Flow (2 cfs)	All Year

*Closures and low flow limitations also apply to tributaries of these streams.

@Superseded by a new action in this section.

#The minimum flow during the closure period is the natural flow.

+Minimum flows are specified in WAC 173-514-030(2).

NEW SECTION

WAC 173-514-050 LAKES. In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

NEW SECTION

WAC 173-514-060 EXEMPTIONS. (1) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Single domestic and stockwatering use, except that related to feedlots, shall be exempt from the provisions established in this chapter. If the cumulative impacts of numerous single domestic diversions would significantly affect the quantity of water available for instream uses, then only single domestic in-house use shall be exempt if no alternative source is available.

(3) Nonconsumptive uses which are compatible with the intent of the chapter may be approved.

NEW SECTION

WAC 173-514-070 FUTURE RIGHTS. No rights to divert or store public surface waters of the Kennedy-Goldsborough WRIA 14, shall hereafter be granted which shall conflict with the purpose of this chapter.

NEW SECTION

WAC 173-514-080 ENFORCEMENT. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 43.83B.335.

NEW SECTION

WAC 173-514-090 REGULATION REVIEW. Review of the rules in this chapter shall be initiated by the department of ecology within five years of the date of adoption.

WSR 84-04-015**ADOPTED RULES****DEPARTMENT OF GAME****(Game Commission)**

[Order 222—Filed January 24, 1984]

Be it resolved by the State Game Commission, acting at the Department of General Administration, 218 General Administration Building, Olympia, that it does adopt the annexed rules relating to WAC 232-12-025, hunts authorized pursuant to RCW 77.12.040;

This action is taken pursuant to Notice No. WSR 83-23-104 filed with the code reviser on November 23, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 77.12.240 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 9, 1984.

By Vern E. Ziegler
Chairman, Game Commission

NEW SECTION

WAC 232-12-025 HUNTS AUTHORIZED PURSUANT TO RCW 77.12.240—Anyone participating in a director-authorized hunt must conduct themselves in accordance with the following rules.

(1) Black Bear.

(a) No dogs are permitted out of the vehicle, including on a strike-board, outside of the designated hunting area. If the bear is started inside a permit area, it may be pursued and killed outside the permit boundaries.

(b) When a bear is taken, the permittee shall skin the entire bear, including head, leaving claws attached, and deliver the hide, together with the first tooth behind the canine tooth on the lower jaw to the Regional Office. All bear hides taken pursuant to a black bear damage permit shall be disposed of as prescribed in RCW 77.12.240.

(c) Within 5 days after expiration of a black bear permit, the permittee shall return to the respective region a bear hunting report and the windshield identification cards. Failure to comply with this provision shall constitute ineligibility for the next year's black bear damage permit drawings.

(d) The permittee shall abide by all conditions as set forth on the black bear damage permit. Failure to comply with these hunting conditions shall constitute a violation of RCW 77.16.020 section (1) (Hunting bear during closed season).

WSR 84-04-016**NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION**

[Memorandum—January 23, 1984]

The State Human Rights Commission, at its meeting on January 19, 1984, voted to begin its regular commission meeting of February 16, 1984, at 1:00 p.m. The meeting will adjourn at 10:00 p.m. to be reconvened at 9:00 a.m. on February 17, 1984. The meeting is scheduled to adjourn at 12:00 p.m. on February 17, 1984.

The change in time and extension of the meeting has been planned in order to allow for a goals setting session to be included in the regular commission meeting.

WSR 84-04-017
PROPOSED RULES
THE EVERGREEN
STATE COLLEGE
 [Filed January 24, 1984]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that The Evergreen State College intends adopt, amend, or repeal rules concerning regular meeting of the board of trustees, WAC 174-104-010;

that the institution will at 1:45 p.m., Wednesday, April 11, in the Board of Trustees Room #3112, The Evergreen State College Campus, Library Building, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.40.120(11).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before April 3, 1984.

This notice is connected to and continues the matter in Notice No. WSR 83-23-090 filed with the code reviser's office on November 22, 1983.

Dated: January 17, 1984

By: Richard N. Schwartz
 Acting President

WSR 84-04-018
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
 [Filed January 24, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Department of Agriculture intends to adopt, amend or repeal rules concerning marketing order for Washington mint, chapter 16-540 WAC;

that the agency will at 1:30 p.m., Thursday, March 8, 1984, in the Federal-State Agricultural Service Center, 2015 South 1st Street, Yakima, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 25, 1984.

The authority under which these rules are proposed is chapter 15.65 RCW.

The specific statute these rules are intended to implement is RCW 15.65.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 8, 1984.

Dated: January 24, 1984

By: Arthur C. Scheunemann
 Assistant Director

STATEMENT OF PURPOSE

Title: Amending chapter 16-540 WAC.

Description of Purpose: Increase the annual assessment on mint.

Statutory Authority: Chapter 15.65 RCW.

Summary of Rule: Rule sets new assessment rate at three and one-half cents per affected unit.

Reasons Supporting Proposal: New rate is an increase to raise more funds for research projects and assist the commission in carrying out its aims and purposes.

Agency Personnel Responsible for Drafting: Roger L. Roberts, Special Programs Administrator, Agricultural Development Division, Washington State Department of Agriculture, 406 General Administration Building, AX-41, Olympia, Washington 98504, (206) 753-5046; Implementation and Enforcement: Washington Mint Commission, P.O. Box 2111, Pasco, Washington 99302.

Persons Proposing Rule: Washington mint producers by petition to the Director of Agriculture as provided for in RCW 15.65.050.

Agency Comments or Recommendations: None.

Rule is not necessary as a result of federal law or federal or state court action.

Small Business Economic Impact: None.

AMENDATORY SECTION (Amending Order 1406, filed 7/23/75)

WAC 16-540-040 ASSESSMENTS AND COLLECTIONS. (1) Assessments.

(a) The fixed annual assessment on all varieties of mint oil subject to this marketing order shall be ~~((two))~~ three and one-half cents per pound of oil as weighed by first purchaser.

(b) First purchasers shall collect assessments at time of payment for oil, from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board. Producers and producer-handlers who ship their oil direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.

(2) Collections. Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order to all persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate such policies and purposes. However, if at the end of any fiscal year, the unexpended moneys on deposit with the board shall exceed the total assessments received during that fiscal year, no assessment shall be levied during the next succeeding fiscal year.

(3) Penalties. Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 84-04-019
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
 [Filed January 24, 1984]

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

Amd WAC 356-18-070 Sick leave—Reporting—Payment.
 New *WAC 356-30-065 Appointments—Temporary;

that the agency will at 10:00 a.m., Thursday, March 8, 1984, in the Board Hearings Room, Department of Personnel, 600 South Franklin, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

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

The specific statute these rules are intended to implement is RCW 41.06.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 6, 1984.

This notice is connected to and continues the matter in Notice Nos. WSR 83-23-054 and *83-24-006 filed with the code reviser's office on November 15, 1983, and *November 29, 1983.

Dated: January 23, 1984
 By: Leonard Nord
 Secretary

WSR 84-04-020
EMERGENCY RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
 [Order 195—Filed January 24, 1984]

Be it resolved by the State Personnel Board, acting at the Department of Personnel, 600 South Franklin, Olympia, WA 98504, that it does adopt the annexed rules relating to shift differential provisions and compensation, amending WAC 356-15-060.

We, the State Personnel Board, find that an emergency exists and that this 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 the emergency is the Washington Federation of State Employees has proposed that the pay for shift differential be aligned to the latest salary survey findings. The federation asked the board to adopt the pay increase with the intent to persuade the legislature to fund the increase.

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

This rule is promulgated pursuant to RCW 41.06.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 12, 1984.

By Leonard Nord
 Secretary

AMENDATORY SECTION (Amending Order 98, filed 1/13/77, effective 2/13/77)

WAC 356-15-060 SHIFT DIFFERENTIAL PROVISIONS AND COMPENSATION. (1) Any employee working a shift shall be paid a shift premium (as shown in the shift differential schedule) under any one of the following conditions:

(a) When her/his scheduled working hours extend before 6 a.m. or beyond 6 p.m., she/he shall receive the premium rate for those hours that so extend.

(b) The premium rate shall be paid for all hours worked on a scheduled evening or night shift. Evening or night shifts are defined as those in which four or more hours of a scheduled shift extend beyond 6 p.m. or in which three or more hours of a scheduled shift are completed prior to 6 a.m.

(2) Monthly shift differential rates: In cases where shift differential hours are regularly scheduled over a year, agencies may pay shift differential at a monthly rate which is equal for all months of the year. Such monthly rates shall be calculated by dividing twelve into the amount of shift premium an employee would earn in a year if the hourly rules in subsection (1) of this ((rate)) section were applied. This option is granted to simplify bookkeeping and is not authorized to establish shift differential rates higher or lower than those set by the board.

(3) Shift differential and overtime: When a scheduled work period employee works overtime on a shift which qualifies for shift differential, her/his overtime shall be computed as one-and-one-half times her/his basic salary and shift differential combined.

(4) Payment during leave periods: Employees eligible for shift differential will receive the shift differential rate for authorized periods of paid leave, i.e., vacation leave, sick leave, military leave, holiday leave, etc.

((SHIFT DIFFERENTIAL SCHEDULE
 (Effective 7-1-75))

CODE	TITLE	HOURLY PREMIUM
5630-5634	Registered Nurses	23¢
0628-0641	Liquor Store Personnel/ working in the stores	23¢
	All other classes	20¢))
<u>SHIFT DIFFERENTIAL SCHEDULE (Effective 7-1-84)</u>		<u>50¢ per hour</u>

WSR 84-04-021
EMERGENCY RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
 [Order 196—Filed January 24, 1984]

Be it resolved by the State Personnel Board, acting at the Department of Personnel, 600 South Franklin, Olympia, WA 98504, that it does adopt the annexed rules relating to:

Amd WAC 356-06-010 Definitions.
 Amd WAC 356-30-130 Seasonal career employment.

We, the State Personnel Board, find that an emergency exists and that this 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 the emergency is changes to WAC 356-06-010 and 356-30-130 regarding seasonal career employment were adopted by the board on a permanent basis on December 8, 1983; agencies affected by these changes proposed additional clarifying language which was adopted as an emergency to be effective over the adoption in December.

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

This rule is promulgated pursuant to RCW 41.06.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 12, 1984.

By Leonard Nord
 Secretary

AMENDATORY SECTION (Amending Order 194, filed 12/30/83)

WAC 356-06-010 DEFINITIONS. The following definitions apply throughout these rules unless the context clearly indicates another meaning:

ACTING APPOINTMENT – An appointment of limited duration made from within the classified service to a supervisory or managerial position.

ADMINISTRATIVE PERSONNEL – Employees who regularly exercise discretion and independent judgment in the performance of: (1) Work related directly to management policy; or (2) work providing direct assistance to executive or administrative personnel.

AGENCY – An office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

AGRICULTURAL PERSONNEL – Employees performing work which includes farming and all its branches, including cultivating the soil, or growing or harvesting crops, or raising livestock, bees, fur-bearing animals, or poultry, or doing any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

ALLIED REGISTER – A register for a class for which the duties and minimum or desirable qualifications are equivalent to or above those for another class.

ALLOCATION – The assignment of a position to a job classification.

ANNIVERSARY DATE – Original entry date into state service as adjusted by leave without pay or break in service.

APPOINTING AUTHORITY – A person or group of persons lawfully authorized to make appointments.

BARGAINING UNIT – The group of employees in positions determined by the personnel board to constitute a unit appropriate for collective bargaining purposes under these rules.

BASIC SALARY RANGE – The dollar amount of the step of the salary range to which the employee is entitled, before any deduction, and exclusive of additional compensation of any kind.

BOARD – The state personnel board.

BUMPING – The replacement of an incumbent by another employee subject to reduction in force, who has greater seniority.

CAREER PLANNING – A programmed process designed to assist employee career growth through job experience, training and/or continuing education.

CERTIFICATION – Providing an agency with the appropriate number of names of candidates who have passed the examination for a given class and are eligible to be considered for vacancies.

CLASS – Identification of a position, or a group of positions, sufficiently similar in duties so that the same requirements of training, experience, or skill and the same title, examination, and salary range may be applied.

CLASSIFIED SERVICE – All positions and employees in the state service subject to the provisions of chapter 41.06 RCW and these rules.

COLLECTIVE BARGAINING OR COLLECTIVE NEGOTIATION – The performance of the mutual obligation of the appointing authority, or designee, and the certified exclusive representative of a bargaining unit to meet in an attempt to reach an agreement on all personnel matters over which the appointing authority may lawfully exercise discretion.

COMPENSATORY TIME – Time off in lieu of cash payment for overtime.

COMPETITIVE SERVICE – All positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

DATE OF ELECTION – The date of election is the date the director of personnel certifies the results of the election.

DEMOTION – A change of a permanent employee from a position in one class to a position in another class having a lower maximum salary.

DESIRABLE QUALIFICATIONS – The levels of education and/or experience deemed desirable or preferable for admission to the examination in lieu of fixed minimum qualifications.

DIRECTOR – The director of the department of personnel.

DISABILITY – An employee's bodily inability to perform adequately the essential duties of the job class. (For purposes of WAC 356-35-010, this definition shall not include maternity.)

DISMISSAL – The termination of employment of a permanent employee (for cause) or of a probationary employee as specified in these rules.

EDUCATION LEAVE OF ABSENCE – An authorized leave of absence for educational purposes.

ELEVATION – Restoring an employee to the higher classification, with permanent status, which was held prior to being granted a demotion.

ELIGIBLE – An applicant whose name is on a register.

EMERGENCY APPOINTMENT – An appointment, for emergency reasons, not to exceed 60 calendar days.

EMPLOYEE – Any person employed under the jurisdiction of these rules.

EMPLOYEE ORGANIZATION – Any organization having the authority, as specified in WAC 356-42-010, to represent state employees on personnel matters.

EXECUTIVE PERSONNEL (As used in chapter 15 of these rules) – Employees who customarily and regularly exercise discretionary powers in directing and controlling program operations of an agency or division or customarily recognized subdivision thereof and personnel who are responsible for (1) hiring or firing or making substantial recommendation for same and (2) directing the work of and (3) regulating the working hours of two or more employees.

EXEMPT POSITION – Any position designated as exempt from the application of these rules as specified in WAC 356-06-020.

EXCHANGE TIME – Equal time off for excess hours worked by exceptions work period employees.

EXIT LEAVE – The paid hours of nonworking time taken by an employee who is not eligible to receive a lump sum cash payment for accrued vacation leave. Exit leave is taken following the last designated work day prior to an employee's resignation, dismissal, or separation due to reduction in force or disability and continuing until all the employee's accrued vacation leave is exhausted.

FULL TIME EMPLOYMENT – Regularly scheduled employment requiring an average of 40 hours of work per week. However, for certification from a register, work between 32 – 40 hours per week shall be considered full time.

HANDICAPPED – Persons with physical, mental or sensory impairments that would impede that individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight, static and permanent in that they are seldom fully corrected by medical replacement, therapy or surgical means.

HOLIDAYS – Paid nonwork days for state employees as established by RCW 1.16.050.

HOUSED PERSONNEL – Employees whose duties require that they reside at the place of their employment or who otherwise spend a substantial portion of their work time subject to call and not engaged in the performance of active duties.

HUMAN RESOURCE DEVELOPMENT – The function of achieving agency goals by changing or enhancing employees' knowledges, skills, attitudes and behaviors.

INTERMITTENT EMPLOYMENT – Employment without any understanding of continuity, fitting no particular pattern and performed for no more than a total of (nine months) 1560 hours during any consecutive 12-month period.

INTERVENING SALARY STEPS – All increment steps in a salary range, except the lowest and highest.

LAW ENFORCEMENT PERSONNEL – Employees empowered by statute to enforce laws designed to maintain public peace and order, protect life and property, and detect and prevent crimes. Employees in these positions must have the power of arrest, and have been trained in rules of evidence, laws of arrest, search and seizure and legal rights of citizens.

MINIMUM QUALIFICATIONS – The training, experience, and other qualifications established for a given class and required of an applicant for admission to the examination for that class.

NONCOMPETITIVE POSITIONS – Positions designated by the board as not requiring a competitive examination.

ORIENTATION – An introduction to the organization and to tasks, jobs, procedures and other activities new to the employee.

OVERTIME – Work authorized and performed in accordance with WAC 356-15-030.

PART TIME EMPLOYMENT – Work of less than 40 hours per week. However, for certification from registers, work of less than 32 hours per week shall be considered part time.

PERIODIC INCREMENT DATE – The date established in accordance with the merit system rule on which an employee is entitled to a salary increase within a salary schedule range as prescribed in the merit system rules.

PERMANENT EMPLOYEE – An employee who has successfully completed a probationary period and has had no break in service.

PERSONNEL RECORD – Such information having pertinence to the employment of an employee and which is retained in a specific location as required by WAC 356-46-060(2)A.

POSITION – A group of duties and responsibilities normally assigned to an employee. Such position may be filled or vacant, full-time or part-time, seasonal, temporary or permanent.

PREMIUM PAYMENT – Wage payment over and above the basic salary rate authorized by the board for extraordinary conditions of employment.

PROBATIONARY PERIOD – The trial period of employment following certification and appointment to, or re-employment in, the classified service and continuing for 6 to 12 months as determined under the provisions of WAC 356-30-260.

PROFESSIONAL PERSONNEL – Employees performing work which requires consistent exercise of independent

judgment and is in a specialized field requiring advanced knowledge normally gained through achieving a baccalaureate degree but which may be gained through equivalent experience.

PROJECT EMPLOYMENT – A program designated by the director of personnel as "project employment," that is separately financed by a grant, federal funds, or by state funds, or by a combination of funds to provide training or employment opportunities or expertise or additional employees to carry out a specific project or goal and which, either because of the nature of the project, funding requirements, or potential harmful impact on employment opportunities for regular civil service employees, cannot be facilitated through the regular civil service system. Such a program may last upward to two years and beyond, but has an end in sight.

PROMOTION – A change of an employee from a position in one class to a position in a class having a higher maximum salary.

PROVISIONAL APPOINTMENT – An appointment to a position pending the establishment of a register for that class.

REDUCTION IN FORCE – A separation resulting from a lack of funds, lack of work, good faith reorganization for efficiency purposes, or from there being fewer positions than the employees entitled to the positions because of exercising their rights to return to the classified service. When a reduction in force occurs, it is a separation from service without cause on the part of the employee.

REDUCTION – Placement of an employee's salary at a lower step within the range as a result of a disciplinary action.

REEMPLOYMENT – An appointment, made from the re-employment register, of a former employee who had permanent status.

REGISTER – A list of eligible names established for employment or reemployment in a class.

REINSTATEMENT – Return of an employee to full employment rights by board action following appeal hearing.

RESIGNATION – A voluntary separation from employment.

REVERSION – Voluntary or involuntary movement of an employee during a six-month trial service period to the class which was held prior to the current trial service appointment.

SALARY RANGE – A sequence of minimum, intervening, and maximum dollar amounts designated by the board as the monthly compensation for a class.

SCHEDULING PLAN – A series of schedules, approved for specific positions by the director of personnel or the personnel board, through which schedules the incumbents move in an established pattern.

SEASONAL CAREER EMPLOYEES – Incumbents who have been appointed into seasonal career positions with the mutual expectation of continued employment or employees who have repeatedly returned to state employment in the same agency (~~(in a work pattern defined as seasonal career employment)~~) and are granted a seasonal career appointment at the start of their fourth season of consecutive employment as provided in WAC 356-30-130(3).

SEASONAL CAREER EMPLOYMENT – Two work patterns are included: (1) Work in positions, not intermittent in nature nor exempted by statutes or the provisions of WAC 356-06-020, which is cyclic in nature and beginning at approximately the same time each year lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period; and (2) work patterns in positions as in (1) above but lasting for only a minimum of three months each season and for the past three consecutive seasons in the same agency.

SEASONAL CAREER POSITIONS – A grouping of assigned duties, tasks, and responsibilities in seasonal career employment established to respond to work that is cyclic in nature beginning at approximately the same time each year and lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period.

SENIORITY – A measure of the last period of unbroken time served in positions in the classified service under the jurisdiction of the state personnel board. Service in positions brought under the jurisdiction of the state personnel board by statute is counted as though it had previously been under the jurisdiction of the state personnel board. Leaves of absence granted by agencies and separations due to reduction in force are not considered a break in service. Time spent on leaves of absence without pay is not credited unless it is for educational leaves, or statutes require it be credited; or it is taken at the specific request of an agency so employees may perform work specifically related to state work. Time spent off the state payroll due to reduction in force will be credited for that period of time the employee is eligible to be placed on the reduction in force register. Leaves without pay granted to directly or indirectly reduce the possible effect of reduction in force will be credited in accordance with WAC 356-18-140 and 356-18-220. Leaves of absence without pay granted to employees who are drawing worker's compensation because of injury or illness while employed by the state will be credited. Time spent in exempt appointments listed in RCW 41.06.070 will be credited and the service will not be regarded as broken when employees return from exempt service in accordance to RCW 41.06.070(22), WAC 356-06-055 and 356-30-330. Time spent under the jurisdiction of the higher education personnel board will be added when the employee comes under the jurisdiction of the state personnel board through the provisions of WAC 356-06-055(6). The length of active military service of a veteran, not to exceed five years, shall be added to the state service for such veteran or his widow.

SERIES – A group of classes of positions to which the same kind of work is assigned but which is at different levels of difficulty and responsibility.

SUPERVISOR – Any employee assigned responsibility by management to participate in all the following functions with respect to their subordinate employees: (1) Selection of staff, (2) training and development, (3) planning and assignment of work, (4) evaluation of performance, and (5) corrective action. Participation in these functions must not be of a merely routine nature but requires the exercise of individual judgment.

SUSPENSION – An enforced absence without pay for disciplinary purposes.

TANDEM EMPLOYMENT – Any position filled by more than one employee as voluntarily agreed between management and employee(s) who jointly fulfill the responsibilities and duties of the position(s).

TEMPORARY EMPLOYMENT – Single or multiple periods of employment during the absence of a permanent employee on leave, or for work done at a workload peak and normally lasting for less than nine months and having an end in sight.

TERMINATION – Separation from employment for reasons beyond the control of the employee.

TRAINING – An organized learning process designed to provide needed changes in the skills, knowledges, attitudes or behaviors of employees.

TRANSFER – The change of an employee from one to another classified position having the same salary range number.

TRIAL SERVICE PERIOD – A six-month trial period of employment of a permanent employee beginning with the effective date of the promotion or demotion or appointment from the promotional register.

TUITION REIMBURSEMENT – A full or partial reimbursement to eligible employees by the employing agency for tuition paid to attend approved courses.

UNDERFILL – The filling of a position with an employee in a lower related class in the absence of an adequate eligible register for the classification.

UNION SHOP – A form of union security that requires that all employees within a bargaining unit become members of the certified bargaining representative within 30 calendar days of the union shop election or 30 calendar days from an employee's date of hire, whichever is later.

UNION SHOP FEE – The union shop fee, sometimes known as a representation fee, is the fee paid by an employee to a union shop representative in lieu of holding membership in that union. An employee who has been certified for nonmembership status because of bona fide religious tenets of a church or religious body of which the employee is a member, shall pay a fee equivalent to the regular monthly dues of the union shop representative minus any included monthly premiums for union sponsored insurance programs.

UNION SHOP REPRESENTATIVE – A union shop representative is an employee organization that is certified as exclusive bargaining representative for a bargaining unit and which has also been certified as union shop representative by the director of personnel. To be certified as union shop representative, a majority of all employees in the bargaining unit must vote in favor of having the petitioning employee organization as their union representative.

VETERAN – For the purpose of granting preference during layoffs and subsequent reemployment, any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who,

upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given: **PROVIDED**, That the person has not voluntarily retired with 20 or more years of active military service and has military retirement pay in excess of \$500 per month.

VETERAN'S WIDOW – For the purpose of granting preference during layoffs and subsequent reemployment, the unremarried wife of a deceased veteran as defined in WAC 356-06-010 except that such veteran's one-year minimum length of active military service shall be disregarded.

VOLUNTEER EXPERIENCE – Work experience for which no salary was received, which may be credited toward meeting the minimum qualifications for a classification: Provided such experience is equivalent to and not prohibited by the minimum qualifications of the classification. Volunteer experience for which academic credit was granted may be used to satisfy either the educational or the experience requirements of a class, but may not be used for both.

WORK DAY – A 24-hour period beginning at a time determined by the appointing authority. For scheduled standard work period positions the work day begins at the scheduled starting time of the employee.

WORK PERIOD DESIGNATION – Identification of each classification's and position's criteria for hours of work as defined in WAC 356-15-020 and qualifications for premium pay as defined in chapter 356-15 WAC.

WORK SCHEDULE – A series of workshifts and work days within the workweek.

WORKSHIFT – Scheduled working hours within the workday.

WORKWEEK – A regular recurring period of 168 hours beginning at a time determined by the appointing authority and continuing for seven consecutive 24-hour periods. For scheduled standard work period positions the workweek begins at the scheduled starting time of the first shift of the employee's uniform shifts.

Y-RATE – A salary amount which either exceeds the maximum step for the salary range of an employee's class or a salary amount that falls between the steps of a salary range of an employee's class.

AMENDATORY SECTION (Amending Order 194, filed 12/30/83)

WAC 356-30-130 SEASONAL CAREER EMPLOYMENT. (1) (~~Seasonal career positions are those established to respond to work that is cyclic in nature beginning at approximately the same time each year and lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period.~~) Seasonal career employees are those in seasonal career positions or employees whose repeated pattern of work is defined as the second pattern (2) in the definition of seasonal career employment.

(2) (~~The appointing authority may establish seasonal~~) Positions which are established to respond to cyclic work load requirements and which meet the definition of

seasonal career employment shall be established as seasonal career positions; provided, that the agency will not establish seasonal career positions which circumvent the utilization of full time positions. ((Seasonal career employees are those who have been appointed to a seasonal career position with the mutual expectations of continued employment season after season.))

(3) An initial appointment into seasonal career employment shall be from a register or lists, except that employees selected for a fourth consecutive season of cyclical temporary employment, as provided in the definition of seasonal career employment, shall be granted a seasonal career appointment provided they pass a qualifying examination for the classification in which they are employed.

(4) Upon completion of the probationary period of 1040, 1560, or 2080 accumulated scheduled hours (if serving a six-month, nine-month, or twelve-month probationary period), employees in seasonal career ((positions)) employment shall assume the rights of a permanent employee. Past service that later entitles employees to seasonal career employment will count toward permanent status at the beginning of the fourth qualifying season.

(5) Seasonal career employees affected by reduction-in-force, ((or)) reduction in hours of work, ((a)) subsequent reemployment or increase in scheduled hours of work ((affecting seasonal career employees in seasonal career positions shall be by seniority)) will have their reduction-in-force rights only within their seasonal career layoff unit((; provided;)) and will compete based on seniority. Notification of reduction-in-force or alterations of work schedules shall be given no later than two working days prior to the effective date. ((Seasonal career employees shall not accrue seniority while on seasonal layoff)) Seniority gained by seasonal career employees during seasonal layoff shall be disregarded.

(6) ((Agencies)) Seasonal career reduction-in-force registers shall ((maintain)) be maintained and ((post seasonal reduction in force registers for reemployment to seasonal career positions)) posted within their respective agencies in accordance with the agency's reduction-in-force ((policy)) procedures and policies.

(7) Seasonal career employees ((who have completed one season of employment)) separated due to a reduction-in-force shall be placed on a separate seasonal career reduction-in-force register for ((that)) the season ((of employment)) from which they were laid off.

WSR 84-04-022

ADOPTED RULES

DEPARTMENT OF PERSONNEL

(Personnel Board)

[Order 197—Filed January 24, 1984]

Be it resolved by the State Personnel Board, acting at the Department of Personnel, 600 South Franklin, Olympia, WA 98504, that it does adopt the annexed rules relating to:

Amd WAC 356-07-020 ((Definitions)) Public records—Writing—Defined.
 Amd *WAC 356-18-050 Sick leave credit—Purpose—Accrual—Conversion.
 Amd WAC 356-46-060 Agencies—Personnel records.

This action is taken pursuant to Notice Nos. WSR *83-24-006 and 84-01-050 filed with the code reviser on *November 29, 1983, and December 15, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 41.06.150 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 12, 1984.

By Leonard Nord
Secretary

AMENDATORY SECTION (Amending Order 60, filed 12/13/73)

WAC 356-07-020 ((DEFINITIONS)) PUBLIC RECORDS—WRITINGS—DEFINED. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

(3) Both "public records" and "writings" as described in subsections (1) and (2) of this section are the property of the state of Washington and, in accordance with chapter 40.14 RCW, require the authority of the state records committee before their disposal may be accomplished.

AMENDATORY SECTION (Amending Order 184, filed 5/19/83)

WAC 356-18-050 SICK LEAVE CREDIT—PURPOSE—ACCRUAL—CONVERSION. (1) Sick leave credits are granted as a form of insurance to minimize loss of compensation to employees due solely to reasons specified in WAC 356-18-060.

(2) Eight hours of sick leave credit shall be granted for each month in which a fulltime employee is in pay status for 15 or more calendar days. Sick leave credit for ((parttime, intermittent, hourly, or seasonal)) other than fulltime employees whose payroll hours are less than forty hours a week shall be computed and accrued at the ratio of payroll hours to payroll hours required for full-time employment.

(3) Employees shall be eligible to receive monetary compensation for accrued sick leave as follows:

(a) In January of each year, and at no other time, an employee whose sick leave balance at the end of the previous year exceeds 480 hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(i) No sick leave hours may be converted which would reduce the calendar year-end balance below 480 hours.

(ii) Monetary compensation for converted hours shall be paid at the rate of 25% and shall be based upon the employee's current salary.

(iii) All converted hours will be deducted from the employee's sick leave balance.

(b) Employees who separate from state service on or after September 1, 1979, due to retirement or death shall be compensated for their total unused sick leave accumulation at the rate of 25%. Compensation shall be based upon the employee's salary at the time of separation. For the purpose of this subsection, retirement shall not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(c) No contributions are to be made to the department of retirement systems (DRS) for such payments in (a) or (b) above, nor shall such payments be reported to DRS as compensation.

(4) An employee who separates for any reason other than retirement or death shall not be paid for his/her accrued sick leave.

(5) Former employees who are again employed within two years of their separation from service shall be granted all unused sick leave credits, if any, to which they were entitled at time of separation for the purpose of using sick leave for the reasons prescribed in WAC 356-18-060. Upon any subsequent retirement or death of a reemployed retiree, only that unused sick leave accrued since the original retirement minus that taken within the same period may be compensated per the conversion provisions of WAC 356-18-050(3)(b).

(6) Employees coming under the jurisdiction of the state personnel board from the jurisdiction of the higher education personnel board by the provisions of WAC 356-06-055(6) shall be credited with their sick leave accumulated with the higher education system.

AMENDATORY SECTION (Amending Order 177, filed 10/26/82)

WAC 356-46-060 AGENCIES—PERSONNEL RECORDS. (1) Each agency shall maintain a record of each employee showing the name, title, position held, organizational assignment, salary, changes of employment status, attendance, leaves, and such other information as may be necessary for the administration of regulations. Personnel records shall be open to the inspection of the personnel board and, depending on the

functional requirement of the content of each individual record, shall accompany the employee throughout his/her service career.

(2) Agencies shall publish policies pertaining to the retention and confidentiality of personnel records in accordance with these rules and chapter 40.14 RCW which are consistent with the following requirements:

(a) Agencies shall designate the official depository and custodian of personnel records.

(b) Agencies shall ensure that employees have knowledge of all job performance information inserted into the personnel record pertaining to the employee.

(c) Employees and/or their representatives may review the employee's personnel records, subject to policies of the employing agency.

(d) Employees or their representatives contesting allegedly erroneous, prejudicial, or otherwise adverse information in the employee's personnel records may insert rebuttal or refuting documentation into their personnel records.

(e) Information in the personnel records relating to employee misconduct shall be destroyed in accordance with policies established in chapter 40.14 RCW in situations where the employee is exonerated or where the information is found to be false. The agency's record retention plan shall provide for the prompt destruction of this information.

(f) Information relating to employee misconduct committed in the performance of off-duty activities shall be placed in the personnel records and retained by the agency in accordance with policies established in chapter 40.14 RCW, only where said information has a reasonable bearing on the employee's job performance. Employees may request that such information be removed from their personnel record at the conclusion of the retention period. The information may be retained by the agency if it has a reasonable bearing on the efficient and effective management of the agency.

(g) Information relating to employee misconduct that is committed in the performance of state business shall be maintained by the agency for a minimum of six years or in accordance with policies established in chapter 40.14 RCW. Employees may request that such information be removed from their personnel record at the conclusion of the retention period. The information may be retained by the agency if it has a reasonable bearing on the efficient and effective management of the agency.

(h) Notwithstanding paragraphs (e), (f) and (g) of this section, agencies may retain information relating to employee misconduct or alleged misconduct if the employee requests that the information be retained or if agency management reasonably expects that the information will be needed in a pending or prospective legal action.

(3) The agency shall submit its policy relating to the retention and confidentiality of personnel records to the director of personnel for approval and filing.

WSR 84-04-023
NOTICE OF PUBLIC MEETINGS
COMMISSION ON
ASIAN AMERICAN AFFAIRS
 [Memorandum—January 24, 1984]

The Washington State Commission on Asian American Affairs' meeting schedule published in the Washington State Register (WSR 83-23-083) has been changed. The meeting scheduled for February 18, 1984, in Olympia has been canceled. This is the only change in the published schedule.

WSR 84-04-024
ADOPTED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Order 84-1—Filed January 25, 1984]

I, Sam Kinville, director of the Department of Labor and Industries, do promulgate and adopt at Room 334, General Administration Building, Olympia, Washington 98504, the annexed rules relating to this notice proposes to repeal rules pertaining to registration fees for apprenticeship and training agreements and apprenticeship and training standards in accordance with House Bill No. 59 enacted by the 1983 legislature. The specific authority allowing the department to establish and collect fees was repealed effective July 24, 1983.

This action is taken pursuant to Notice No. WSR 83-23-096 filed with the code reviser on November 22, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to chapter 90, Laws of 1983, and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 25, 1984.

By Sam Kinville
 Director

REPEALER

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

(1) WAC 296-04-500 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING AGREEMENTS AND STANDARDS.

(2) WAC 296-04-501 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING AGREEMENTS.

(3) WAC 296-04-502 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING STANDARDS.

(4) WAC 296-04-503 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING STANDARDS—LIMITATION ON FEES.

(5) WAC 296-04-504 REGISTRATION FEES—APPLICATION TO EXISTING APPRENTICESHIP AND TRAINING AGREEMENTS AND STANDARDS.

(6) WAC 296-04-505 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING AGREEMENTS AND STANDARDS—EFFECT OF FAILURE TO MAKE TIMELY PAYMENT.

(7) WAC 296-04-506 REGISTRATION FEES FOR APPRENTICESHIP AND TRAINING AGREEMENTS AND STANDARDS—MAILING ADDRESS.

WSR 84-04-025
PROPOSED RULES
BOARD OF
INDUSTRIAL INSURANCE APPEALS
 [Filed January 25, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Board of Industrial Insurance Appeals intends to adopt, amend, or repeal rules relating to rules of practice and procedure before the Board of Industrial Insurance Appeals, WAC 263-12-115.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on January 27, 1984.

The authority under which these rules are proposed is RCW 51.52.020, chapter 23, Laws of 1961.

The specific statute these rules are intended to implement is chapter 52.52 [51.52] RCW and chapter 301, Laws of 1983.

This notice is connected to and continues the matter in Notice No. WSR 83-22-067 filed with the code reviser's office on November 2, 1983.

Dated: January 25, 1984

By: Michael L. Hall
 Chairman

WSR 84-04-026
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health)
 [Filed January 25, 1984]

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 certificate of need, amending chapter 248-19 WAC.

These rules were adopted on an emergency basis on November 2, 1983;

that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19,

Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 70.38.135.

The specific statute these rules are intended to implement is chapter 70.38 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
Division of Administration and Personnel
Department of Social and Health Services
Mailstop OB 14
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 23, 1984

By: David A. Hogan, Director
Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 248-19-220 and 248-19-230.

The Purpose of the Rule Change: To implement the provisions of Senate Bill 4202, chapter 235, Laws of 1983 which amends chapter 70.38 RCW concerning the review of hospices and substantial changes in the services of a health care facility.

The Reasons These Rule Changes are Necessary: Because Senate Bill 4202 which amends chapter 70.38 RCW added the term "hospices" to the definition of health care facility, thus requiring the establishment of such facilities to be subject to certificate of need review. The law is not specific enough to permit the department to review hospice without promulgating regulations. This bill has also required the department to specify the substantial changes in services which are subject to certificate of need review. These rules have been adopted on an emergency basis in order to allow the department to review hospices and to continue to review substantial changes in health services as mandated by the legislature. They are being filed for permanent adoption to allow the department to continue to carry out these functions when the emergency adoption expires.

Statutory Authority: RCW 70.38.135.

Summary of Rule Change: These rules amend WAC 248-19-220 and 248-19-230 in order to allow the department to review "hospice" as the establishment of a new health care facility. The changes in these sections are listed below:

Definition of the term "hospice"; establish the conditions under which the expansion of a hospice shall be

considered the establishment of a new health care facility; and state that persons who are providing services of a hospice as of the effective date of the amendments to chapter 70.38 RCW shall not be considered the establishment of a new health care facility.

The rules relating to substantial change in services amends WAC 248-19-230 and specifies the services which shall be considered substantial changes in service. As the result of comments received by the department following the emergency adoption of the rules, one additional service, "organ transplants" has been added to the list of services.

The Person Responsible for the Drafting, Implementation and Enforcement of the Rule: Frank Chestnut, Supervisor, Certificate of Need Unit, Office of State Health Planning and Development, Phone: 753-5854, Mailstop: ET-33.

These rules are not necessary as the result of federal law, federal court decision, or state court decisions.

WAC 248-19-220(23) and 248-19-230(13): Proposed rules affecting hospices.

No businesses, large or small, are affected by the proposed rule change.

WAC 248-19-230(1): Proposed rule affecting hospitals.

The proposed rule change does not impose an additional cost of compliance and therefore, no economic impact statement is required under the Regulatory Fairness Act.

AMENDATORY SECTION (Amending Order 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-220 DEFINITIONS. For the purposes of chapter 248-19 WAC, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Affected persons" means the applicant, the health systems agency for the health service area (~~(in which)~~) where the proposed project is to be located, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area (~~(in which)~~) where the project is proposed to be located (~~(which provide)~~) providing services similar to the services under review, health care facilities and health maintenance organizations, which, prior to receipt by the department of the proposal being reviewed, have formally indicated an intention to provide similar services in the future, third-party payers (~~(who reimburse)~~) reimbursing health care facilities for services in the health service area (~~(in which)~~) where the project is proposed to be located, any agency (~~(which establishes)~~) establishing rates for health care facilities or health maintenance organizations located in the health service area (~~(in which)~~) where the project is proposed to be located, any person residing within the geographic area served or to be served by the applicant, and any person (~~(who)~~) regularly (~~(uses)~~) using health care facilities within that geographic area.

(3) "Ambulatory care facility" means any place, building, institution, or distinct part thereof (~~(which is)~~) not a health care facility as defined in this section and (~~(which is)~~) operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

(4) "Ambulatory surgical facility" means a facility, not a part of a hospital, (~~(which provides)~~) providing surgical treatment to patients not requiring inpatient care in a hospital. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice.

(5) "Applicant," except as used in WAC 248-19-390, means any person ~~((who proposes))~~ proposing to engage in any undertaking ~~((which is))~~ subject to review under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

"Applicant," as used in WAC 248-19-390, means any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity ~~((that engages))~~ engaging in any undertaking ~~((which is))~~ subject to review under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(6) "Annual implementation plan" means a description of objectives which will achieve goals of the health systems plan and specific priorities among the objectives. The annual implementation plan is for a one-year period and must be reviewed and amended as necessary on an annual basis.

(7) "Board" means the Washington state board of health.

(8) "Capital expenditure" means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, such acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a health care facility, which if acquired directly by such facility, would be subject to review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review.

(9) "Certificate of need" means a written authorization by the secretary for a person to implement a proposal for one or more undertakings.

(10) "Certificate of need unit" means that organizational unit of the department ~~((which is))~~ responsible for the management of the certificate of need program.

(11) "Commencement of construction" means whichever of the following occurs first: Giving notice to proceed with construction to a contractor for a construction project; beginning site preparation or development; excavating or starting the foundation for a construction project; or beginning alterations, modification, improvement, extension, or expansion of an existing building.

(12) "Construction" means the erection, building, alteration, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

(13) "Council" means the state health coordinating council established under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(14) "Days," except when called "working days," means calendar days ~~((which are))~~ counted by beginning with the day after the date of the act, event, or occurrence from which the designated period of time begins to run. If the last day of the period so counted should fall on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period shall run until the end of the first working day ~~((which follows))~~ following the Saturday, Sunday, or legal holiday.

"Working days" exclude all Saturdays and Sundays, January 1, February 12, the third Monday in February, the last Monday of May, July 4, the first Monday in September, November 11, the fourth Thursday in November, the day immediately following Thanksgiving day, and December 25. Working days are counted by beginning with the first working day after the date of the act, event, or occurrence from which a designated period of time begins to run.

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

(16) "Expenditure minimum" means one hundred fifty thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period, in an index established by rules and regulations by the department for the purpose of making such adjustment.

(17) "Health care facility" means hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, both skilled nursing facilities

and intermediate care facilities, kidney disease treatment centers including freestanding hemodialysis units, ambulatory surgical facilities, rehabilitation facilities, hospices and home health agencies, and includes such facilities when owned and operated by the state or a political subdivision or instrumentality of the state and such other facilities as required by Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 93-641 and implementing regulations, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts.

(18) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, Section 1310(d) of the Public Health Service Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subsection (18)(b)(i) of this ~~((sub-section))~~ section to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily:

(A) Directly through physicians who are either employees or partners of such organization, or

(B) Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(19) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

(20) "Health systems agency" means a public regional planning body or a private nonprofit corporation ~~((which is))~~ organized and operated in a manner ~~((that is))~~ consistent with the laws of the state of Washington and ~~((Public Law))~~ P.L. 93-641 and ~~((which is))~~ capable of performing each of the functions described in RCW 70.38.085, and is capable as determined by the secretary of the United States Department of Health and Human Services, upon recommendation of the governor or the council, of performing each of the functions described in the federal law, Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

"Appropriate health systems agency" means the health systems agency for the health service area ~~((in which))~~ where a particular project is to be located.

(21) "Health systems plan" means a plan established by a health systems agency which is a detailed statement of goals and resources required to reach those goals as described in the federal law, Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(22) "Home health agency" means any entity which is or is to be certified as a provider of home health services in the Medicaid or Medicare program.

(23) "Hospice" means any public or private entity, center, institution, or distinct part or parts thereof certified or to be certified as a hospice provider in the Medicare program or licensed or certified by the state of Washington to provide hospice services or providing a coordinated program of home and inpatient services for the terminally ill. Services provided by a hospice are primarily palliative and supportive rather than curative in nature, including bereavement care to the family after the patient's death, and provided by an interdisciplinary team. The services are designed to meet the physiological, psychological, social, and spiritual needs of the patient and his or her family.

~~((23))~~ (24) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or any state-owned and operated institution ~~((which is))~~ primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services of injured, disabled, or sick persons. Such term includes tuberculosis hospitals but does not include psychiatric hospitals.

~~((24))~~ (25) "Hospital commission" means the Washington state hospital commission established pursuant to chapter 70.39 RCW.

~~((25))~~ (26) "Inpatient" means a person ~~((who receives))~~ receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

~~((26))~~ (27) "Institutional health services" means health services provided in or through health care facilities and entailing annual direct operating costs of at least seventy-five thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period in an index established by rules and regulations by the department.

~~((27))~~ (28) "Intermediate care facility" means any institution or distinct part thereof (~~(which is)~~) certified as an intermediate care facility for participation in the Medicaid (Title XIX of the Social Security Act) program.

~~((28))~~ (29) "Kidney disease treatment center" means any place, institution, building or agency or a distinct part thereof (~~(which is)~~) equipped and operated to provide services, (~~(which include)~~) including dialysis services, to persons who have end-stage renal disease.

~~((29))~~ (30) "Long-range health facility plan" means a document prepared by each hospital (~~(which contains)~~) containing a description of (~~(its)~~) the hospital's plans for substantial changes in (~~(its)~~) the facilities and services for three years.

~~((30))~~ (31) "Major medical equipment" means a single unit of medical equipment or a single system of components (~~(which is)~~) used for the provision of medical and other health services and (~~(which costs)~~) costing in excess of one hundred fifty thousand dollars, except that such term does not include dental equipment or medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital, and (~~(it)~~) the clinical laboratory has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such act. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

~~((31))~~ (32) "May" means permissive or discretionary.

~~((32))~~ (33) "Nursing home" means any home, place, institution, building or agency or distinct part thereof (~~(which operates)~~) operating or (~~(maintains)~~) maintaining 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. The term "nursing home" includes any such entity (~~(which is)~~) owned and operated by the state or (~~(which is)~~) licensed or required to be licensed under the provisions of chapter 18.51 RCW and any other intermediate care facility or skilled nursing facility as these terms are defined in this section. The term "nursing home" does not include: General hospitals or other places (~~(which provide)~~) providing care and treatment for the acutely ill and (~~(maintain)~~) maintaining and (~~(operate)~~) operating facilities for major surgery or obstetrics or both; psychiatric hospitals as defined in this section; private establishments, other than private psychiatric hospitals, licensed or required to be licensed under the provisions of chapter 71.12 RCW; boarding homes licensed under the provisions of chapter 18.20 RCW; or any place or institution (~~(which is)~~) operated to provide only board, room, and laundry to persons not in need of medical or nursing treatment or supervision.

~~((33))~~ (34) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person proposing such capital expenditure on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

(b) A formal internal commitment of funds by a health care facility for a force account expenditure (~~(which constitutes)~~) constituting a capital expenditure; or

(c) In the case of donated property, the date on which the gift is completed in accordance with state law.

~~((34))~~ (35) "Offer," when used in connection with health services, means the health facility provides or holds itself out as capable of providing or as having the means for the provision of one or more specific health services.

~~((35))~~ (36) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

~~((36))~~ (37) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, (~~(which are)~~) made for architectural designs, plans, drawings or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which may be considered the "commencement of construction" as this term is defined in this section.

~~((37))~~ (38) "Project" means any and all undertakings which may be or are proposed in a single certificate of need application or for which a single certificate of need is issued.

~~((38))~~ (39) "Psychiatric hospital" means any institution or distinct part thereof (~~(which is)~~) primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons and (~~(which is)~~) licensed or required to be licensed under the provisions of chapter 71.12 RCW, or is owned and operated by the state or by a political subdivision or instrumentality of the state.

~~((39))~~ (40) "Rehabilitation facility" means an inpatient facility (~~(which is)~~) operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other health services (~~(which are)~~) provided under competent professional supervision.

~~((40))~~ (41) "Secretary" means the secretary of the Washington state department of social and health services or his or her designee.

~~((41))~~ (42) "Shall" means compliance is mandatory.

~~((42))~~ (43) "Skilled nursing facility" means any institution or distinct part thereof (~~(which is)~~) certified as a skilled nursing facility for participation in the Medicare (Title XVIII) or Medicaid (Title XIX) program.

~~((43))~~ (44) "State health plan" means a document, described in Title XV of the Public Health Service Act, developed by the department and the council in accordance with RCW 70.38.065.

~~((44))~~ (45) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

~~((45))~~ (46) "Undertaking" means any action which, according to the provisions of chapter 248-19 WAC, is subject to the requirements for a certificate of need or an exemption from the requirements for a certificate of need.

AMENDATORY SECTION (Amending Order 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-230 APPLICABILITY OF CHAPTER 248-19 WAC. (1) The following undertakings shall be subject to the provisions of chapter 248-19 WAC, with the exceptions provided for in this section.

(a) The construction, development, or other establishment of a new health care facility.

(b) Any capital expenditure by or on behalf of a health care facility (~~(which)~~) substantially changing the health services of the facility. Substantial changes in services shall be limited to the following:

(i) (~~(is associated with the addition of a substantial health service not provided by or on behalf of the facility within the previous twelve months or which is associated with the termination of a substantial health service provided in or through the facility, or)~~) The establishment of health services not offered on a regular basis within the twelve-month period prior to the time such services are offered or the termination of such services;

(ii) The introduction of a new technology for diagnosis or treatment;

(iii) A change in the level of service; or

(iv) The offering of any of the following health services at a new location not formerly part of the health care facility's campus. Specific substantial changes in services are as follows:

Alcoholism/substance abuse

Burn unit

Cardiac catheterization

Chronic renal dialysis

Kidney lithotripsy

CT-computed tomography

NMR-nuclear magnetic resonance

PET-positron emission tomography

Emergency services including regular outpatient emergency services staffed by physicians at a health care facility, and the provision of ambulance services, including air ambulance, licensed under chapter 18-73 RCW.

- Inpatient psychiatric services
- Neonatal special care-level III
- Obstetrics-level I
- Obstetrics-level II
- Obstetrics-level III
- Organ transplants, including only heart, liver, kidney, bone marrow, brain, and lung transplants
- Open heart surgery
- Pediatrics-level I
- Pediatrics-level II
- Pediatrics-level III
- Radiation therapy-megavoltage, orthovoltage
- Rehabilitation-level I
- Rehabilitation-level II
- Rehabilitation-level III
- Change in the number of dialysis stations in a health care facility,

and

Change from mobile to fixed base CT scanning.

The department may, periodically and on an emergency basis, revise and update specific substantial changes in services.

~~((ii))~~ ~~Which exceeds~~ ~~(c)~~ Any capital expenditure by or on behalf of a health care facility exceeding the expenditure minimum as defined by WAC 248-19-220(16). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services which under generally accepted accounting principles are not properly chargeable as an expense of operation and maintenance) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure. Functional programming and general long-range planning activities, including marketing surveys and feasibility studies, are not to be included when determining whether an expenditure exceeds the expenditure minimum.

~~((c))~~ (d) A change in bed capacity of a licensed health care facility which increases the total number of licensed beds or redistributes beds among facility and service categories of acute care, skilled nursing, intermediate care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months.

~~((d))~~ (e) The obligation of any capital expenditure by or on behalf of a health care facility (~~which is~~) not required to be licensed for a change in bed capacity which increases the total number of beds, or redistributes beds among various categories, by more than ten beds or more than ten percent of total bed capacity as defined by the department, whichever is less, over a two-year period.

~~((e))~~ (f) Acquisition of major medical equipment:

(i) If the equipment will be owned by or located in an inpatient health care facility; or

(ii) If the equipment is not to be owned by or located in a health care facility and the department finds, consistent with WAC 248-19-403, that:

(A) The equipment will be used to provide services for inpatients of a hospital on other than a temporary basis in the case of a natural disaster, a major accident, or equipment failure; or

(B) The person acquiring such equipment did not notify the department of the intent to acquire such equipment at least thirty days before entering into contractual arrangements² for such acquisition.

~~((f))~~ (g) The acquisition of an existing health care facility which the department has determined, in accordance with the provisions of subsection (2) of this section, is subject to review;

~~((g))~~ (h) Any new institutional health services which are offered by or on behalf of a health care facility and which were not offered on a regular basis by or on behalf of such health care facility within the twelve-month period prior to the time such services would be offered.

~~((h))~~ (i) Any expenditure by or on behalf of a health care facility in excess of the expenditure minimum made in preparation for any undertaking under this subsection and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings and specifications.

~~((i))~~ (j) The obligation of any capital expenditure by or on behalf of a health care facility which decreases the total number of licensed beds or relocates beds from one physical facility or site to another by ten beds or ten percent, whichever is less, in any two-year period.

~~((j))~~ (k) Any acquisition by donation, lease, transfer, or comparable arrangement, by or on behalf of a health care facility, if the acquisition would otherwise be reviewable under chapter 248-19 WAC if made by purchase.

(2) At least thirty days before any person acquires or enters into a contract² to acquire an existing health care facility, the person shall provide written notification to the department and the appropriate health systems agency, and in the case of a hospital, the hospital commission, of the person's intent to acquire the facility.

(a) Written notification of intent, to be considered valid, shall be made in a form and manner acceptable to the secretary and shall include:

(i) The name and address of the health care facility to be acquired;

(ii) The name and address of the person (~~who intends~~) intending to acquire the health care facility;

(iii) A description of the means by which the health care facility would be acquired, including the total capital expenditures associated with the acquisition, and the intended date of incurring the contractual obligation to acquire the health care facility;

(iv) The name and address of the person from whom the facility is to be acquired; and

(v) A description of any changes in institutional health services or bed capacity proposed by the person (~~who would acquire~~) acquiring the health care facility.

(b) A certificate of need shall be required for the obligation of a capital expenditure to acquire by purchase, or under lease or comparable arrangement, an existing health care facility if:

(i) A written notification of intent to acquire an existing health care facility is not provided in accordance with WAC 248-19-230(2), or

(ii) The department finds within fifteen working days after receipt of a written notification to acquire a health care facility that the services or bed capacity of the facility will be changed in being acquired.

(c) Within fifteen working days after receipt of a written notification of intent, the department shall send written notice to the person intending to acquire the health care facility, indicating:

(i) Whether the written notification constitutes a valid notification, as prescribed in ~~((subdivision))~~ subsection (2)(a) of this ((subsection)) section and, if such notification is valid,

(ii) Whether such acquisition is subject to certificate of need review.

(d) If the department fails to make a determination within thirty days after receipt of a valid notice, the health care facility may be acquired without a certificate of need.

(3) With respect to ambulatory care facilities and inpatient health care facilities (~~which are~~) controlled (directly or indirectly) by a health maintenance organization or combination of health maintenance organizations, the provisions of chapter 248-19 WAC shall apply only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services, and then only to the extent that such offering, acquisition, or obligation is not exempt under the provisions of WAC 248-19-405.

(4) The extension, on more than an infrequent basis, of the services of a home health agency (~~services~~) or a hospice to a population residing in a county not previously regularly included in the service area of that home health agency or hospice during the preceding twelve months constitutes extension of home health services or hospice services beyond ~~((its))~~ a defined geographic area and shall be considered the development or establishment of a new home health agency or hospice.

(5) No person shall engage in any undertaking (~~which is~~) subject to certificate of need review under the provisions of this chapter unless a certificate of need authorizing such undertaking has been issued and remains valid or an exemption has been granted in accordance with the provisions of this chapter.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7) The department may issue certificates of need permitting predevelopment expenditures only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made.

(8) A certificate of need application, the review of which had begun but upon which final action had not been taken prior to January 1, 1981, shall be reviewed and final action taken based on chapter 70.38 RCW and chapter 248-19 WAC as in effect prior to January 1, 1981.

(9) Certificates of need issued prior to January 1, 1981, shall not be terminated and the periods of validity of such certificates of need shall

not be modified under the provisions of chapter 248-19 WAC which become effective January 1, 1981.

(10) A project for which certificate of need review was waived under the provisions of WAC 248-19-230(8) as in effect January 1, 1980, to January 1, 1981, shall have been completed by January 1, 1981, or, in the case of a construction project, commencement of construction shall have occurred by January 1982. If this requirement is not met, the project shall become subject to the requirements for a certificate of need.

(11) A proposed change in a project associated with a capital expenditure for which a certificate of need has been issued shall be subject to certificate of need review if the change is proposed within one year after the date the activity for which the capital expenditure was approved has been undertaken.

(a) Projects subject to review under this subsection include proposed changes in projects originally subject to review according to the provisions of subsection (1)(b), (c), (d), (e), or ((f)) (j) of this section.

(b) No capital expenditure need be associated with a proposed change in a project subject to review under this subsection.

(c) A proposed change in a project shall include any change in the licensed bed capacity of a facility, and the addition or termination of an institutional health service.

(12) Administrative review.

(a) The secretary shall have the authority to review and take action, on the basis of information submitted on an abbreviated application form acceptable to the secretary, the following categories of expenditures:

(i) The acquisition of land;

(ii) Capital costs associated with the refinancing of existing debt;

(iii) The obligation of any capital expenditure by or on behalf of a health care facility which decreases the total number of licensed beds or relocates licensed beds from one physical facility or site to another by ten beds or ten percent, whichever is less, in any two-year period; and

(iv) A proposed change in a project reviewed in accordance with WAC 248-19-230(11).

(b) Such review shall be completed within ten working days after receipt of an application.

(13) The provision of hospice services by an entity providing the services described in the definition of "hospice" in WAC 248-19-220, when such an entity was providing services as of July 24, 1983, shall not be considered the establishment of a new health facility or service and shall not be subject to certificate of need review. Persons providing hospice services as of July 24, 1983, shall submit information prescribed by the department showing they were providing hospice services as of that date and showing the services provided and the county or counties comprising the service area.

NOTE:

¹Where a hospital is part of a larger institution, such as a university, the components of the larger institution (e.g., a component conducting medical research) not related to the hospital will not be considered part of the hospital, whether or not the hospital is a distinct legal entity. Similarly, when there is a legal entity, the primary activity of which is operating a hospital, but which also operates a distinct research component, the research component will not be considered part of the hospital. In these cases, the component conducting medical research that is distinct from the hospital and that neither provides inpatient services nor uses revenues derived from patient charges at the hospital to finance its operations will not be considered part of the hospital.

Further, expenditures by a component of a larger institution, such as a university, which is distinct from a separate health care facility component, such as the university's hospital, will not be viewed as being "by a health care facility." Thus, a capital expenditure by a university medical school that is a distinct component of the university will not be considered to be "by" the hospital of the university. In finding that the medical school is distinct, the department must find at least that the revenues derived from patient charges at the hospital of the university are not used for operating expenses of the medical school.

If a capital expenditure exceeds the expenditure minimum, for it to be required to be subject to review, the department must find that it is "on behalf of" a health care facility. Such an expenditure is also required to be subject to review if it is for the acquisition of major medical equipment and meets the conditions set forth in

WAC ((~~248-19-230(1)(e))~~) 248-19-230(1)(f). The same analysis would apply to a distinct research component of a legal entity, the primary activity of which is operating a hospital.

²A person may enter into a contractual arrangement at an earlier date, provided such contractual arrangement is contingent upon a determination by the department that a certificate of need is not needed or upon issuance of a certificate of need.

WSR 84-04-027

ADOPTED RULES

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Order PL 454—Filed January 25, 1984]

Be it resolved by the Board of Registration for Professional Engineers and Land Surveyors, acting at Olympia, Washington, that it does adopt the annexed rules relating to the amending of WAC 196-08-085, 196-12-010, 196-12-020, 196-12-030, 196-12-050, 196-12-060, 196-12-085, 196-16-007, 196-16-010, 196-16-020, 196-16-031, 196-20-010, 196-20-030, 196-24-030, 196-24-040, 196-24-050, 196-24-080, adding new sections WAC 196-27-010 and 196-27-020.

This action is taken pursuant to Notice No. WSR 83-22-078 filed with the code reviser on November 2, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.43.035 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED December 9, 1983.

By Quentin H. Gateley, P.E.

Executive Secretary

AMENDATORY SECTION (Amending Rule .08.081, filed 7/6/60)

WAC 196-08-085 HEARINGS ON CHARGES TO BE HEARD WITHIN THREE MONTHS. All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they have been preferred. The date preferred shall be defined as the date of issuance of a formal statement of charges by the board or its designee(s).

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-010 APPLICATIONS. The deadline for receipt of applications properly filled out and accompanied by the application fee is four months before the date of the examination. Verification of the applicant's claimed experience must be in the board office ((two))

three months before the date of the examination. Applications received after the deadline will be held for consideration for a later examination. Lack of verification of experience will also cause the application to be held for a later examination. Those who have previously taken the examination and failed or those who qualified and did not appear for the examination are required to notify the board office in writing ~~((two))~~ three months before the next examination which they intend to take. An entire application is not required where an applicant has taken the examination and failed or who has filed and failed to appear for the previous examination. However, a new application is required every five years, after board approval of the initial application, to reactivate an application or maintain examination eligibility.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-020 EXPERIENCE RECORDS. (1) Evaluation of records: The basic requirement for registration as a professional engineer is a specific record of eight years or more of approved experience in engineering work of a professional grade. The provisions of the law are that any experience by college study, as defined below, must be substantiated by an official transcript, the supplying of which is the responsibility of the applicant.

(a) Graduation in an approved engineering college curriculum of four years is equivalent to four years of the required experience.

(b) Satisfactory completion of each year of such an approved engineering curriculum is equivalent to one year of experience.

(c) Graduation in a curriculum other than engineering will be evaluated by the board.

(d) Postgraduate study in engineering may be given credit up to one year.

(e) Engineering teaching of a character satisfactory to the board may be recognized as engineering experience, up to a maximum of two years.

(2) Colleges recognized by the board: All student's credits from curricula approved by the accreditation board for engineering and technology are accepted. In the state of Washington student's credits from other curricula than those approved by the accreditation board for engineering and technology may be accepted at the discretion of the board.

(3) An applicant must have passed the first stage of the examination and be enrolled as an E.I.T. in accordance with WAC 196-12-050 before applying for the second stage or branch examination.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-030 EXAMINATIONS. (1) The examination ~~((s are))~~ is given in two parts ~~((:-(a) Fundamentals and (b) branch, each of one days duration. The fundamental and branch examinations consists of two sessions, one in the morning and one in the afternoon. An applicant failing either the fundamental or branch~~

~~examinations and passing the other has only to repeat the examination failed. Once approved an applicant may choose to take either the fundamental or branch examination during one examination period. The remaining examination may be taken at a subsequent examination following proper notification)). All examinations are given with open book unless otherwise specified by the board.~~

~~((The engineering fundamentals examination covers mathematics, physical sciences and other general engineering related subjects. A detailed list of the subjects to be tested is available by contacting the board office.))~~

For the specific branch of engineering in which the applicant desires to qualify, and for the times and places of such examinations, see WAC 196-24-050.

(2) The following rules shall apply:

(a) Applicants ~~((who hold Washington))~~ must be enrolled as an engineer-in-training ((certificates)) and are ((only)) required to take the examination in the specific branch of engineering under which they desire to qualify.

(b) Applicants who ~~((hold))~~ are enrolled as E.I.T.s ~~((certificates issued to them by))~~ in other states by virtue of a written examination comparable to that given by the state of Washington may be exempt from taking ~~((either the E.I.T. or))~~ the ~~((fundamental))~~ first stage of the examination.

(c) All qualified applicants are required to take the examination in the specific branch of engineering in which they desire to become registered.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-050 EVALUATION OF CANDIDATES FOR ENGINEERING LICENSES. (1) A candidate who ~~((has received his))~~ is enrolled as an E.I.T. ~~((registration by examination is excused from the fundamentals examination and))~~ is required to write only the ~~((branch))~~ examination ~~((with a minimum grade of seventy percent))~~ in the branch approved by the board.

~~((2))~~ ~~((Candidates who have not passed an E.I.T. examination and who write fundamental and branch examinations, must receive a grade of at least seventy percent in each examination:))~~

~~((3))~~ Candidates holding a baccalaureate degree in an accredited engineering curriculum who have had at least seventeen additional years of experience satisfactory to the board (after the statutory eight years of experience) may ~~((have))~~ request the fundamental examination waived and may be permitted to write the branch examination only. ~~((These candidates must attain seventy percent minimum in this examination:))~~

~~((4))~~ Registration in any additional branch of engineering (see WAC 196-24-050) requires a minimum passing grade of seventy percent on the written examination in that branch.

~~((5))~~ (3) A professional land surveyor seeking registration as a professional engineer should refer to WAC 196-12-020.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-060 (~~((HOLDERS OF E.I.T. CERTIFICATES)) PERSONS ENROLLED AS E.I.T.S. ((1) At)~~) Any time ~~((after the holder of))~~ an individual enrolled as an E.I.T. ~~((certificate))~~ has fulfilled the requirements of ~~((four additional))~~ a total of eight years of approved professional experience, ~~((he may submit))~~ a new application must be submitted for registration completely filled out, notarized and accompanied by the required fee. ~~((The portion of the application, "professional experience", shall be filled out in detail, giving names and addresses of employers and names of those familiar with work performed and indicating level of responsibility in each engagement.))~~ Washington state E.I.T. ~~((s))~~ enrollees are not required to submit a second transcript of college record except for additional post-graduate study claimed as professional experience. IT IS ABSOLUTELY ESSENTIAL FOR THE APPLICANT TO INDICATE CLEARLY IN HIS PROFESSIONAL APPLICATION THE FACT THAT HE ~~((HOLDS))~~ IS ENROLLED AS AN E.I.T. ~~((REGISTRATION))~~, AND THE YEAR AND STATE IN WHICH HE OBTAINED SUCH REGISTRATION ~~((, otherwise he may not receive credit for his E.I.T. examination))~~.

~~((2) Holders of E.I.T. certificates will appear for examination in the specific branch of engineering under which they desire registration.))~~

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-12-085 CORPORATION OR JOINT STOCK ASSOCIATIONS. Corporations or joint stock associations shall file:

(1) A letter of application containing a brief statement of the corporation's origin, activities, and principals. Said letter should also state the type, or types, of engineering practiced, or to be practiced by such corporation. Type or types are limited to the branches currently being issued by the board. Application shall be signed and attested by a corporate officer.

(2) The application for certificate of authorization shall state the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and state the experience of the corporation, if any, in the furnishing of all feasibility and advisory studies made within the state of Washington.

(3) A certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by said corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of said corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in said resolution: PROVIDED, That the filing of such resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract. The designated engineer responsible for the practice of engineering by said corporation shall be a

full-time employee of the corporation. Full-time employee is defined as an individual whose main place of business and major income is derived from said corporation. No individual will be the designated engineer at more than one place of business or one company at any one time.

(4) A designation in writing setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the corporation shall specialize in this state. The engineers in charge of major branch or project shall be full-time employees of the corporation. Full-time employee is defined as an individual whose main place of business and major income is derived from said corporation. No individual will be an engineer in charge of branch or project at more than one place of business or company at any one time. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes.

(5) A certified copy of the section of the by-laws of the corporation containing provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the ~~((specified))~~ designated engineer in responsible charge ~~((or other responsible engineer under his direction or supervision))~~ named in the resolution of the board of directors.

(6) A current certified financial statement accurately reflecting the financial condition of the corporation. Certification shall be by an officer of the corporation or a public accountant.

(7) The professional records of the designated person or persons under (3) above who shall be in responsible charge of ~~((each branch of))~~ all the engineering activities of the corporation.

(8) A copy of the articles of incorporation as filed with the secretary of state for the state of Washington and bearing his acceptance stamp.

(9) A copy of the corporation by-laws and any revisions to the by-laws, that may affect the ability of the designated engineer to make all engineering decisions as set forth in (5) above.

(10) In the case of change or increase in the engineers named as being in responsible charge (subsection (3) above), a certified copy of a resolution of the board of directors of the corporation which shall designate said person or persons shall be filed with the board within thirty days after the effective date of such changes. The professional history of newly named engineers will also be required.

(11) Application fee as determined by the director of the department of licensing.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-16-007 APPLICATIONS. The deadline for receipt of a properly completed application ~~((s properly filled out and))~~ accompanied by the required application fee is four months ~~((before))~~ prior to the date of

the examination. Response from applicant's references must be in hand ~~((two))~~ three months before the date of the examination. Applications received after the deadline will be held for consideration for a later examination. Late responses from references will also cause the application to be held for consideration for a later examination. Those who have previously taken the examination and failed or those who qualified and did not appear for the examination are required to notify the board office in writing ~~((two))~~ three months before the examination which they intend to take. A new application is not required where an applicant has taken the previous examination and failed or ((who)) has filed and failed to appear for the previous examination. However, a new complete application is required every five years after approval by the board until registration in Washington state is obtained.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-16-010 EXPERIENCE RECORDS. The first requirement of the law for registration as a professional land surveyor is a minimum of six years of approved professional experience in land surveying ~~((of which two years must be in boundary surveying in the field)).~~ One year of the required experience must be in responsible charge of boundary surveying in the field and one year must be in a supervisory capacity in the office, which includes but is not limited to preparation of legal descriptions and record documents, survey and description research, computations and client/public contact. The provisions of the law are that:

(1) Graduation in a recognized land surveying curriculum of four years or more from a college recognized by the board is equivalent to four years of the required experience.

(2) Satisfactory completion of each year of such recognized course is equivalent to one year of experience.

(3) Graduation in any curriculum not recognized in (1) or (2) above will be evaluated by the board. It is the responsibility of the applicant to see that the board is furnished an official transcript of his college record when education is claimed as experience.

(4) Teaching of a character satisfactory to the board may be recognized as surveying experience up to a maximum of one year.

(5) Construction staking shall not be applicable toward the required six years of experience.

(6) A registered professional engineer who applies to be examined to become registered as a land surveyor must meet the requirements stated within this section.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-16-020 EXAMINATIONS. ~~((The land surveying examination consists of two full eight hour days given at the regular examination period:))~~ The examinations are given in two parts: (1) Fundamentals and (2) principles and practice, each of one day's duration. The fundamentals and principles and practice consist of

two sessions, one in the morning and one in the afternoon. All examinations will be open book unless otherwise specified by the board. ((The examination is written and consists of two separate parts in two consecutive days. Each day is divided into two sessions, one in the morning and one in the afternoon.

(1) ~~First — Land surveying — Rules and legal questions:~~

(2) ~~Second — Land surveying — Applied surveying problems:))~~

A candidate may elect to sit for the examination in two consecutive days or may sit for one part ~~((at))~~ of one examination and the other part at a subsequent examination.

~~((Each day's examination is graded separately. An applicant))~~ A candidate failing either the ~~((rules))~~ fundamentals or ~~((applied problems))~~ principles and practice and passing the other has only to repeat the part failed.

~~((A candidate must receive a grade of at least 70% in each of the examinations described in (1) and (2) above.))~~

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-16-031 RECIPROCITY. ~~((+))~~ Applicants for registration as a land surveyor by reciprocity, who have been qualified by a written sixteen-hour examination, in a state that gives like consideration to Washington registrants, and are in good standing with the examining state, will be exempt from the ~~((applied surveying test. All applicants are required to sit for rules and legal questions:~~

~~(2) One registration as a professional engineer and/or land surveyor will be issued by reciprocity. Each designation requires an application))~~ Washington state sixteen-hour written examination. All candidates will be required to pass a written examination as prescribed by the board.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-20-010 APPLICATIONS. ~~((+))~~ The deadline for properly completed applications ~~((properly filled out and))~~ accompanied by the statutory fee is four months ~~((before))~~ prior to the date of the examination. Applications received after the deadline will be held for consideration for a later examination.

~~((2) The application for engineer-in-training shall contain:~~

~~(a) General information~~

~~(b) Education~~

~~(c) Technical examinations~~

~~(d) Affidavit~~

~~(e) Membership in societies~~

~~(f) Professional experience (if not a graduate))~~

Official transcripts of college record, if not attached to the application, shall be forwarded to the board office as soon as they are available.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-20-030 EXAMINATIONS. (1) The engineer-in-training examination is given twice each year at times and places as will from time to time be designated by the board. The schedule of future examinations may be obtained from the board office. The examination is of one day's duration and consists of two sessions, one in the morning and one in the afternoon. It covers mathematics, physical sciences, and other general engineering related subjects. ~~((The minimum passing grade is seventy percent.))~~

(2) Persons who may normally expect to graduate within three months after a scheduled E.I.T. examination may sit for that examination. In cases where college graduation is claimed ~~((as a prerequisite no certificate will be issued))~~ an applicant who passes the examination will not be enrolled as an E.I.T. until ~~((a))~~ an official college transcript showing completion of the four-year requirement is filed with the board office.

(3) Those who pass this examination ~~((receive))~~ will be enrolled as engineers-in-training ~~((certificates))~~ and are excused from taking the engineering fundamentals ~~((portion of the regular professional engineering))~~ examination. The E.I.T. passing grade will not be weighted in the professional examination but will be qualifying only.

(4) All examinations will be given with open book unless otherwise specified by the board.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-24-030 RECIPROCITY. ~~((+))~~ The Professional Engineers Registration Act provides that the board for professional engineers and land surveyors may, upon application, and payment of a fee, issue a certificate without further examination as a professional engineer to any person who holds a certificate of qualification of registration issued to him following examination by proper authority, of any state, territory or possession of the United States, the District of Columbia, or of any foreign country, provided:

~~((a))~~ (1) That the applicant's qualifications meet the requirements of the chapter and the rules established by the board;

~~((b))~~ (2) That the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country;

~~((c))~~ (3) That the said state, territory, possession, district, or foreign country gives like consideration on a reciprocal basis to those persons who have been registered by examination in this state; and

~~((d))~~ (4) That the license has been granted on the basis of an examination equivalent to that given by the state of Washington.

~~((2) The board will issue certificates of registration to those who apply in conformance with the act and who have been registered by the proper legal body of the state, territory, possession, district, or country, whose qualifications conform to the law of this state.))~~

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-24-040 APPLICATIONS. (1) All candidates who desire registration in Washington are required to submit their application on a form to be furnished by this board.

(2) This application must be filled out in complete detail and where the applicant desires registration by reciprocity, it is essential that the state where license was issued by exam is given and that said state will verify this registration. ~~((This))~~ It is the responsibility of the applicant to pay any fees required by said state.

(3) The application fee for engineers, land surveyors, engineers-in-training, engineering corporations and engineering partnerships are determined by the director of the department of licensing. A fee schedule can be obtained by contacting the board office.

(4) The applicant must supply the board with an official college transcript of any education listed on his application.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-24-050 EXAMINATIONS. (1) The branches in which certificates of registration are presently issued are: Aeronautical, agricultural, ceramic, chemical, civil, electrical, fire protection, industrial, logging, mechanical, metallurgical, mining, naval architecture and marine engineering, and nuclear. The branches of sanitary and structural engineering are considered to be specialized branches. An applicant for any specialized branch is required to hold a current registration in the state of Washington, in one of the regular branches. ~~((In addition,))~~ Applicants shall have not less than two years of professional experience in the ~~((specialized))~~ additional branch in which the applicant seeks registration, over and above the requirements for professional registration (statutory eight years).

The examination in structural engineering~~((:))~~ shall be of two days duration. Examination in sanitary engineering shall be of one day duration.

Certificates of registration will also be issued in land surveying.

All examinations are given at times and places as will be designated by the board. The schedule of future examinations may be obtained from the board office.

(2) Applicants for registration by reciprocity from states, territories, districts, or countries who have been issued certificates of registration without examination or in instances where such governmental body does not grant certificates of registration to regularly qualified registrants of the state of Washington will be required to sit for an examination to test the skill, knowledge, and other professional attributes of the applicant.

(a) The examination will be given in the branch chosen by the applicant from the list of regular branches given by this board.

(b) Such examinations are given after the board has approved the applicant's request.

(c) In cases where an applicant is issued a certificate of registration by his governmental body in a branch not

included in the list of regular branches (~~((1) of this section))~~ (subsection (1) of this section) the board will examine such an applicant in a regular branch of his choice, presumably the one closest to his specialty.

(3) One designation as professional engineer and/or land surveyor will be issued by reciprocity. Each added designation requires a new application. All added branches will be authorized by passing a regular examination, except applicants who may be granted registration without further examination provided they have successfully passed an examination equivalent to that given in the state of Washington, in a state, territory, possession, district, or country, which grants like reciprocity to the state of Washington registrants.

(4) All examinations are given with open book unless otherwise specified by the board.

AMENDATORY SECTION (Amending Order 81-10, filed 12/18/81)

WAC 196-24-080 FEES. All checks or money orders shall be made payable to the state treasurer. Registration: The application must be accompanied with the required fee; with engineers submitting the certificate fee after passage of the exam. Should the board deny the application, the initial fee will be retained as an application fee. An applicant who fails the first scheduled exam may be re-examined once without payment of an additional fee, provided he notifies the board office in writing of his intention to appear for the examination a second time at least ~~((two))~~ three months prior to said examination. Each subsequent examination will be granted upon payment of an examination fee received at least three months prior to said examination. Applicants ~~(;)~~ who fail to appear for scheduled examinations ~~(;)~~ will forfeit their re-examination privilege or examination fee.

Chapter 196-27 WAC RULES OF PROFESSIONAL CONDUCT

NEW SECTION

WAC 196-27-010 PURPOSE AND DEFINITIONS. (1) In order to safeguard life, health, property and to promote the public welfare, the following rules of professional conduct shall apply to every person holding a certificate of registration together with all corporations, partnerships, or other legal entities authorized to perform engineering or land surveying services under chapter 18.43 RCW.

(2) All persons, corporations, and partnerships registered under the provisions of chapter 18.43 RCW are charged with having knowledge of and being familiar with the provisions of the rules of professional conduct.

(3) Violation of these rules of professional conduct is considered misconduct or malpractice as defined by RCW 18.43.105(11). Registrants found guilty of said misconduct or malpractice are subject to disciplinary powers of the board as provided in RCW 18.43.110.

(4) The word "registrant" in these rules of professional conduct shall mean any person holding a certificate of registration issued by this board.

NEW SECTION

WAC 196-27-020 FUNDAMENTAL CANONS AND GUIDELINES FOR PROFESSIONAL PRACTICE. (1) Registrants shall hold paramount the safety, health, and welfare of the public in the performance of their professional duties.

(a) Registrants shall recognize that the lives, safety, health, and welfare of the general public are dependent upon engineering/land surveying judgments, decisions, and practices incorporated into structures, machines, products, processes, and devices.

(b) Registrants shall approve or seal only those design documents, prepared by them or under their direct supervision, which are determined to be safe for public health and welfare in conformity with accepted standards.

(c) Registrants whose professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered shall inform their clients or employers of the possible consequences.

(d) Registrants who have knowledge or reason to believe that another person or firm may be in violation of any of the provisions of chapter 18.43 RCW or these rules of professional conduct shall present such information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required.

(2) Registrants shall perform services only in areas of their competence.

(a) Registrants shall undertake to perform assignments only when qualified by education or experience in the technical field of engineering or land surveying involved.

(b) Registrants may accept an assignment requiring education or experience outside their own fields of competence, provided their services are restricted to those phases of the project in which they are qualified. All other phases of such project shall be performed by qualified associates, consultants or employees.

(c) Registrants shall not affix their signatures or seals to any plan or document dealing with subject matter in which they lack competence by virtue of education or experience or to any such plan or document not prepared under their supervisory control.

(3) Registrants shall issue public statements only in an objective and truthful manner.

(a) Registrants should endeavor to extend the public knowledge of engineering or land surveying and shall not participate in the dissemination of untrue, unfair, or exaggerated statements regarding said professions.

(b) Registrants shall be objective and truthful in professional reports, statements, or testimony. They shall include all relevant and pertinent information in such reports, statements, or testimony.

(c) Registrants when serving as expert witness, shall express an engineering or land surveying opinion only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction.

(d) Registrants shall issue no statements, criticisms, or arguments on engineering or land surveying matters

which are inspired or paid for by interested parties, unless they indicate on whose behalf the statements are made.

(4) Registrants shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.

(a) Registrants shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business association, interest, or circumstances which could influence their judgment or the quality of their services.

(b) Registrants shall not accept compensation from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to and agreed to, by all interested parties.

(c) Registrants shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with work for which they are responsible.

(d) Registrants in public service as members, advisors, or employees of a governmental body or department shall not participate in considerations or actions with respect to services solicited or provided by them or their organization in private or public engineering/land surveying practice.

(e) Registrants shall advise their employers or clients when, as a result of their studies, they believe a project will not be successful.

(f) Registrants shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers or the public.

(g) Registrants shall not accept professional employment outside of their regular work or interest without the knowledge of their employers.

(5) Registrants shall build their professional reputation on the merit of their services and shall not compete unfairly with others.

(a) Registrants shall not give, solicit or receive either directly or indirectly, any commission, political contribution, or a gift or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) Registrants should negotiate contracts for professional services fairly and on the basis of demonstrated competence and qualifications for the type of professional service required.

(c) Registrants shall not request, propose or accept professional commissions on a contingent basis under circumstances in which their professional judgments may be compromised.

(d) Registrants shall not falsify or permit misrepresentation of their academic or professional qualifications or experience.

(e) Registrants may advertise professional services in a way that does not contain self-laudatory or misleading language.

(6) Registrants shall continue their professional development throughout their careers, and shall provide opportunities for the professional development of those individuals under their supervision.

WSR 84-04-028

ADOPTED RULES

DEPARTMENT OF LICENSING (Board for Registration of Architects)

[Order PL 458—Filed January 25, 1984]

Be it resolved by the Washington State Board for Registration of Architects, acting at Seattle, Washington, that it does adopt the annexed rules relating to the amending of WAC 308-12-031, 308-12-050 and 308-12-110.

This action is taken pursuant to Notice No. WSR 83-24-068 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.08.130 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 18, 1984.

By Robert D. Theriault
Executive Secretary

AMENDATORY SECTION (Amending Order PL 422, filed 2/2/83)

WAC 308-12-031 (~~(LICENSING)~~) REGISTRATION EXAMINATION. The form of the examination required of applicants shall consist of a written and an oral examination. Where RCW 18.08.160 refers to the "entire examination," it means the nine part written examination plus the oral examination.

The board adopts the Architectural Registration Examination prepared in 1983 by the National Council of Architectural Registration Boards to test the applicant's qualifications and minimum competency for registration.

(1) Requirements for admittance to the Architects Registration Examination are found in RCW 18.08.140 and 18.08.150.

(2) Application and fee for examination:

(a) The application for examination must be received by the board prior to April first to be considered for the next scheduled examination.

(b) Applications shall be submitted on forms provided by the board and must be accompanied by education and/or experience verification as per the filing instructions.

(c) An examination fee must accompany all applications.

(d) Notice of acceptance of application will be mailed to all applicants approximately six weeks in advance of the examination along with detailed information as to time, place and extent of examination.

(e) No application fee will be refunded because of withdrawal from the examination.

(3) The examination: The Architectural Registration Examination is divided into nine divisions which will be

administered over a four day period in June of each year. The examinees are tested on their ability to exercise value judgments in actual architectural practice situations. The examination covers the following:

APPROXIMATE HOURS

Division A .. Pre-design	4
Division B .. Site Design	3
Division C .. Building Design	12
Division D .. Structural-General	2 1/2
Division E .. Structural-Lateral Forces	1 1/2
Division F .. Structural-Long Span	1 1/2
Division G .. Mechanical, Plumbing, Electrical and Life Safety Systems	2 1/2
Division H .. Materials and Methods ...	3
Division I .. Construction Documents and Services	2 1/2

To pass the examination, an applicant must achieve a passing grade on each division.

RETAKES: First time examinees must take all nine divisions of the A.R.E. on their first attempt. On subsequent attempts, the examinees must retake all divisions not passed on previous attempts. Examinees transferring from the previous examination series need only take those divisions for which credit has not been received.

(4) The oral examination is given upon the applicant's completion of the written examination, the fulfilling of the experience requirement and submittal of an acceptable written summary of the law.

The purpose of the oral examination is to test in those areas of knowledge and skill not covered in the written examination.

The oral part of the examination shall include a review of the applicant's practical experience, the applicant's understanding of the law and the applicant's responsibility to safeguard life, health and property and to promote the public welfare.

To accomplish the above, the applicant will present to the examining board members examples of drawings and documents completed by the applicant during the required practical experience. The required documents shall include a minimum of two each of schematic site plans, building plans and perspectives or elevations; elevations and details; contract drawings represented by plans, elevations, sections and details; two sets of specifications, the work of the applicant and field reports including field inspection reports, change orders, certificates of payment and lien releases.

To receive a passing score, the applicant must exhibit an acceptable entry level knowledge and execution skill in basic professional documents, and will assure the board that registration of the applicant will not present a hazard to life, health and property and the public welfare.

The oral examination may be conducted by the full board or a member of the board. The board may recommend waiver of full board examination if the examining board member deems the applicant prepared for ((~~license~~)) registration. Such a recommendation shall be circulated to the balance of the board members and must receive approval by a majority of the board before the candidate may be registered. When a single board member conducts the oral examination, one of two recommendations is given. One is a recommendation for registration; the other is to recommend a full board oral examination. ((If such recommendation is not made or approved;)) When the candidate is not recommendation for registration he or she shall be called before the full board for further consideration.

If an applicant does not receive a recommendation for registration, the board will advise the applicant of the areas of deficiency and schedule another oral examination when the board and the examinee determine if it is possible for the examinee to remove the deficiency.

The examinee will be required to retake the entire examination if it is not completed within the five year period per RCW 18.08.160.

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 PL 132, filed 9/25/72)

WAC 308-12-050 ((~~LICENSE~~)) REGISTRATION BY RECIPROCITY. Any architect registered in another state who desires ((~~a license to practice architecture~~)) registration in Washington, shall make formal application on forms provided by the board, accompanied by the reciprocity application fee.

The board will require an oral examination of any candidate for ((~~license~~)) registration by reciprocity, except that oral examination may be waived in cases where documentary or other evidence shows sufficient information for the board to reach judgment ((~~without examination~~)).

Any applicant seeking registration in the state of Washington and originally registered in the applicant's base state in the years beginning in 1978 through 1983, regardless of education, shall be required to have passed the NCARB qualifying examination and parts "A" and "B" of the professional examination. If an applicant has not passed the qualifying examination, the applicant must take and pass parts "D", "E" and "F", the structural divisions of the architects registration examination. If an applicant has not passed part "A" of the professional examination, "Building Design", or or she must take and pass parts "B" and "C", "Site Design" and "Building Design", of the architects registration examination. The examination is given during the second week of June each year. The application deadline is April 1 each year.

A person whose architectural registration examination did not include NCARB approved seismic sections will be required to attend an NCARB approved seismic

seminar or shall be required to write a treatise on seismic forces; details of which can be received upon written request to the board.

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.

AMENDATORY SECTION (Amending Order PL 178, filed 10/23/74)

WAC 308-12-110 ARCHITECT LISTINGS. Any firm or individuals offering to provide architectural services in the state of Washington, through ~~((listings, advertisements, publications or directories is required to))~~ directories, listings, advertisements or publications shall clearly identify the ~~((name or names of the architect or architects registered in Washington who is a principal as defined in WAC 308-12-120.))~~ firm or individual as being engaged in the practice of architecture. And further, when the firm or individual uses an assumed business name, and architect or architects responsible shall be clearly identified with the name of the firm. No firm name shall include the surname of a person who is not presently or was not previously associated in the practice as an architect or engineer with the named entity or its members or predecessors.

WSR 84-04-029

ADOPTED RULES

BOARD OF PHARMACY

[Order 183—Filed January 25, 1984]

Be it resolved by the Washington State Board of Pharmacy, acting at Kirkland, Washington, that it does adopt the annexed rules relating to the amending of WAC 360-12-015.

This action is taken pursuant to Notice No. WSR 83-24-071 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.64.005(1) and 18.64.080 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 18, 1984.

By Donald H. Williams
Executive Secretary

AMENDATORY SECTION (Amending Order 147, filed 3/27/79)

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 percent. In addition, the scores achieved in the jurisprudence and written practice of pharmacy sections of the exam shall be no lower than 75 percent and the scores achieved on the other sections of the exam shall be no lower than 60 percent.

(3) An examinee failing any portion of the examination other than the jurisprudence section shall retake the regularly scheduled full board examination.

(4) An examinee failing the jurisprudence portion of the full board examination shall be allowed ~~((one))~~ to 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.))~~ An examinee who fails the jurisprudence examination three times shall not be eligible for further examination until he or she has satisfactorily completed additional preparation as directed and approved by the board.

WSR 84-04-030

ADOPTED RULES

BOARD OF PHARMACY

[Order 184—Filed January 25, 1984]

Be it resolved by the Washington State Board of Pharmacy, acting at Kirkland, Washington, that it does adopt the annexed rules relating to the amending of WAC 360-18-020.

This action is taken pursuant to Notice No. WSR 83-24-070 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.64.005 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 18, 1984.

By Donald H. Williams
Executive Secretary

AMENDATORY SECTION (Amending Order 175, filed 8/30/83)

WAC 360-18-020 LICENSE FEES. Effective October 1, 1983 the following fees shall be charged by the board of pharmacy:

(a) PHARMACY LOCATION, CSA & PROPHYLACTIC	
Original pharmacy fee	\$125.00
Original CSA fee	35.00
Original prophylactic fee	10.00
Original pharmacy assistant utilization fee	30.00
Renewal pharmacy fee	65.00
Renewal CSA fee	30.00
Renewal prophylactic fee	10.00
Renewal pharmacy assistant utilization fee	30.00
Penalty pharmacy fee	130.00
(b) VENDOR	
Original fee	20.00
Renewal fee	20.00
Penalty fee	20.00
(c) PHARMACIST	
Exam fee (full exam)	100.00
Re-examination fee (jurisprudence portion)	25.00
Original license fee	75.00
Renewal fee	50.00
Penalty fee	(35.00)
	50.00
Reciprocity fee	200.00
Certification of license status to other states	10.00
(d) SHOPKEEPER	
Original fee	20.00
Renewal fee	20.00
Penalty fee	20.00
(i) SHOPKEEPER - 6 or fewer drugs	
Original fee	5.00
Renewal fee	5.00
Penalty fee	5.00
(ii) SHOPKEEPER - with differential hours	
Original fee	20.00
Renewal fee	20.00
Penalty fee	20.00
(e) DRUG MANUFACTURER	
Original fee	175.00
Renewal fee	175.00
Penalty fee	175.00
(f) DRUG WHOLESALER - full line	
Original fee	175.00
Renewal fee	175.00
Penalty fee	175.00
(g) DRUG WHOLESALER - OTC only	
Original fee	125.00
Renewal fee	125.00
Penalty fee	125.00

(h) PHARMACY ASSISTANT - Level "A"	
Original fee	20.00
Renewal fee	20.00
(i) PHARMACY INTERN	
Original registration fee	10.00
Renewal registration fee	10.00

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 84-04-031
EMERGENCY RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Order R-208, Cause No. U-83-38—Filed January 25, 1984]

In the matter of adopting chapter 480-125 WAC relating to telephone company access charges.

On November 23, 1983, the Washington Utilities and Transportation Commission filed with the code reviser an order adopting rules on an emergency basis, together with the text of chapter 480-125 WAC. The filing was assigned code reviser No. WSR 83-23-117. Under RCW 34.04.030, such emergency rules are effective on filing, for a period not to exceed 90 days.

On January 25, 1984, the commission considered the matter of adoption of chapter 480-125 WAC on a permanent basis, pursuant to a notice of intent to adopt rules filed with the code reviser on November 23, 1983. This notice was assigned code reviser Notice No. WSR 83-23-116.

Because tariffs have been filed pursuant to the emergency rule, and because those tariffs have been suspended and are available for commission consideration in an appropriate proceeding, and due to changes announced by the FCC at the federal level as well as other possible changes at the state level, the commission deems it appropriate to repeal the emergency rule at this time on an emergency basis. The commission has determined to take no action on permanent adoption of the rule.

ORDER

WHEREFORE, IT IS ORDERED That chapter 480-125 WAC, as previously adopted on an emergency basis, is hereby repealed on an emergency basis.

Dated at Olympia, Washington this 25th day of January, 1984.

Washington Utilities and Transportation Commission

Robert W. Bratton, Chairman

Mary D. Hall, Commissioner

A. J. "Bud" Pardini, Commissioner

WSR 84-04-032
PROPOSED RULES
INSURANCE COMMISSIONER
 [Filed January 26, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Insurance Commissioner intends to adopt, amend, or repeal rules concerning the assessment of health care service contractors for examination costs, and repeal WAC 284-44-020 pertaining to the licensing and appointment of health care service contractor agents;

that the agency will at 10 a.m., Thursday, March 15, 1984, in the Insurance Commissioner's Office, Insurance Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 22, 1984.

The authority under which these rules are proposed is RCW 48.44.050.

The specific statute these rules are intended to implement is RCW 48.44.145(4).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1984.

Dated: January 25, 1984

By: Robert E. Johnson
 Deputy Commissioner

STATEMENT OF PURPOSE

Title: Adding proposed rules to chapter 284-44 WAC to provide for the assessment of health care service contractors to cover the cost of their examinations.

The statutory authority for the proposed rules is RCW 48.44.050 which directs the commissioner to make reasonable regulations in aid of the administration of chapter 48.44 RCW, and to implement, specifically, RCW 48.44.145(4).

Proposed WAC 284-44-400 sets forth the procedures the commissioner will follow in determining the dollar amount of assessments needed to meet examination costs and in levying such assessments. Proposed WAC 284-44-410 establishes a form upon which each health care service contractor will report to the commissioner the number of persons by months with whom it has contracted to provide services. Such reports will be used by the commissioner in calculating the per person basis for the assessment (which will not exceed one-half cent per eligible person per month), and in determining the final assessment of each of the respective health care service contractors.

A. G. Vande Wiele, Deputy Insurance Commissioner, Insurance Building, AQ-21, Olympia, Washington 98504, (206) 753-7381, is directly responsible for the drafting, implementation and enforcement of the proposed rules, under the supervision of David Rodgers, Chief Deputy Insurance Commissioner, Insurance Building, AQ-21, Olympia, Washington 98504, (206) 753-7302.

The rules are proposed by the insurance commissioner, a state public official.

The proposed rules are not necessary as the result of federal law or federal or state court action.

Small Business Economic Impact Statement: While RCW 48.44.145(4), the statute being implemented by these rules, will cause a slight increase in cost per covered person—no more than one-half cent per month per person, including dependents, entitled to health care services, excluding therefrom such persons who were not residents of this state—these rules, in and of themselves, will have an insignificant impact on health care service contractors regardless of size. The assessment itself may be passed on to the consumers through adjustment of rates as filings are made. Other than to write a check to pay an assessment, a health care service contractor will only have to complete the form created by proposed WAC 284-44-410, thereby providing the commissioner with the number of eligible persons. Such information should already be readily available to the contractors. The proposed rules should not create any new workload on companies, large or small, nor affect the cost per hour of labor nor change the cost per employee.

In connection with the adoption of these rules, notice was also given of the proposed repeal of WAC 284-44-020, pertaining to agents of health care service contractors. Because of the amendment of RCW 48.44.011, in 1983, such rule is obsolete.

NEW SECTION

WAC 284-44-400 ASSESSMENTS FOR EXAMINATION COSTS. Assessments of health care service contractors pursuant to RCW 48.44.145(4) shall be established in the following manner:

(1) The commissioner will determine the amount expected to cover the costs of examinations of health care service contractors during a particular fiscal year, making due allowance for any amounts remaining from previous assessments carried over into a succeeding biennium.

(2) Upon request of the commissioner, each health care service contractor shall furnish the number of persons entitled to health care services pursuant to an agreement under RCW 48.44.020(1), excluding such persons who are not residents of this state, by completing the form set forth in WAC 284-44-410, in accord with instructions accompanying the form, and return such form to the commissioner no later than the date specified in the instructions, which will be at least twenty days after the date of mailing of such instructions.

(3) The commissioner will divide the amount determined pursuant to subsection (1) of this section by the number of resident persons entitled to health care services from all health care service contractors as determined through the use of the completed forms referred to in subsection (2) of this section.

(4) The quotient determined pursuant to subsection (3) of this section will be adjusted to allow a reasonable margin for cost variations and rounded for ease of administration, and the resulting number, which will be the equivalent of one-half cent or less, per eligible person per month, will serve as the multiplier which the commissioner will use in calculating the amount of the assessment for each health care service contractor.

(5) The commissioner will notify each contractor of its assessment, after applying the multiplier obtained pursuant to subsection (4) of this section to the number of persons reported by the contractor pursuant to subsection (2) of this section. Payment of the assessment must be made no later than thirty days after the notice is mailed by the commissioner to the contractor.

(6) The first assessment will be based on the expected costs of examinations during the fiscal year beginning July 1, 1984, and the total number of persons reported pursuant to subsection (2) of this section as entitled to health care services during the twelve-month period ending June 30, 1984. Similarly, future assessments will be for examination costs in particular fiscal years based on numbers of persons measured monthly in the prior fiscal year.

(7) The commissioner anticipates that only one assessment will be made for each fiscal year. However, if additional funds are needed to

cover the costs of examinations, the commissioner may follow the procedures outlined in subsections (1) through (5) of this section to assess the contractors for the necessary additional amounts required. In any case, the portion of the cumulative amount of all assessments attributable to each month used to measure the amount of the assessment will not exceed one-half cent per person entitled to health care services during the month, pursuant to an agreement under RCW 48.44.020(1), excluding such persons who were not residents of this state.

NEW SECTION

WAC 284-44-410 FORM FOR REPORTING NUMBER OF PERSONS ENTITLED TO SERVICES.

ANNUALIZED ASSESSMENT CALCULATIONS FOR EXAMINATION COSTS

(Health Care Service Contractors and Health Maintenance Organizations)

Organization: _____

Indicate number of persons, including dependents, entitled to health care services each month, excluding therefrom such persons who were not residents of this state.

Calendar Year - July _____
August _____
September _____
October _____
November _____
December _____

Calendar Year - January _____
February _____
March _____
April _____
May _____
June _____

Total persons/months

REPEALER

The following section of the Washington Administration Code is repealed:

WAC 284-44-020 AGENTS, LICENSING OR APPOINTMENT REQUIRED.

**WSR 84-04-033
PROPOSED RULES
INSURANCE COMMISSIONER
[Filed January 26, 1984]**

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Insurance Commissioner intends to adopt, amend, or repeal rules concerning the assessment of health maintenance organizations for examination costs;

that the agency will at 10 a.m., Thursday, March 15, 1984, in the Insurance Commissioner's Office, Insurance Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 22, 1984.

The authority under which these rules are proposed is RCW 48.46.200.

The specific statute these rules are intended to implement is RCW 48.46.120(4).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1984.

Dated: January 25, 1984

By: Robert E. Johnson
Deputy Commissioner

STATEMENT OF PURPOSE

Title: Adding proposed rules to Title 284 WAC in new chapter 284-46 WAC, pertaining to health maintenance organizations, to provide for the assessment of health maintenance organizations to cover the cost of their examinations.

The statutory authority for the proposed rules is RCW 48.46.200 which directs the commissioner to make reasonable regulations to carry out the provisions of chapter 48.46 RCW, and to implement, specifically, RCW 48.46.120(4).

Proposed WAC 284-46-010 sets forth the procedures the commissioner will follow in determining the dollar amount of assessments needed to meet examination costs and in levying such assessments. Proposed WAC 284-46-020 establishes a form upon which each health maintenance organization will report to the commissioner the number of persons by months with whom it has contracted to provide services. Such reports will be used by the commissioner in calculating the per person basis for the assessment (which will not exceed one-half cent per eligible person per month), and in determining the final assessment of each of the respective health maintenance organizations.

A. G. Vande Wiele, Deputy Insurance Commissioner, Insurance Building, AQ-21, Olympia, Washington 98504, (206) 753-7381, is directly responsible for the drafting, implementation and enforcement of the proposed rules, under the supervision of David Rodgers, Chief Deputy Insurance Commissioner, Insurance Building, AQ-21, Olympia, Washington 98504, (206) 753-7302.

The rules are proposed by the insurance commissioner, a state public official.

The proposed rules are not necessary as the result of federal law or federal or state court action.

Small Business Economic Impact Statement: While RCW 48.44.145(4), the statute being implemented by these rules, will cause a slight increase in cost per covered person—no more than one-half cent per month per person, including dependents, entitled to health care services, excluding therefrom such persons who were not residents of this state—these rules, in and of themselves, will have an insignificant impact on health maintenance organizations, regardless of size. The assessment itself may be passed on to the consumers through adjustment of rates as filings are made. Other than to write a check to pay an assessment, a health maintenance organization will only have to complete the form created by proposed WAC 284-46-020, thereby providing the commissioner with the number of eligible persons. Such information should already be readily available to the organizations. The proposed rules should not create any new workload on companies, large or small, nor affect the cost per hour of labor nor change the cost per employee.

Chapter 284-46 WAC
HEALTH MAINTENANCE ORGANIZATIONS

Calendar Year _ January _____
February _____
March _____
April _____
May _____
June _____

Total persons/months _____

NEW SECTION

WAC 284-46-010 ASSESSMENTS FOR EXAMINATION COSTS. Assessments of health maintenance organizations pursuant to RCW 48.46.120(4) shall be established in the following manner:

(1) The commissioner will determine the amount expected to cover the costs of examinations of health maintenance organizations during a particular fiscal year, making due allowance for any amounts remaining from previous assessments carried over into a succeeding biennium.

(2) Upon request of the commissioner, each health maintenance organization shall furnish the number of persons entitled to health care services pursuant to a health maintenance agreement as defined in RCW 48.46.020(6), excluding such persons who are not residents of this state, by completing the form set forth in WAC 284-46-020, in accord with instructions accompanying the form, and return such form to the commissioner no later than the date specified in the instructions, which will be at least twenty days after the date of mailing of such instructions.

(3) The commissioner will divide the amount determined pursuant to subsection (1) of this section by the number of resident persons entitled to health care services from all health maintenance organizations as determined through the use of the completed forms referred to in subsection (2) of this section.

(4) The quotient determined pursuant to subsection (3) of this section will be adjusted to allow a reasonable margin for cost variations and rounded for ease of administration, and the resulting number, which will be the equivalent of one-half cent or less, per eligible person per month, will serve as the multiplier which the commissioner will use in calculating the amount of the assessment for each health maintenance organization.

(5) The commissioner will notify each organization of its assessment, after applying the multiplier obtained pursuant to subsection (4) of this section to the number of persons reported by the organization pursuant to subsection (2) of this section. Payment of the assessment must be made no later than thirty days after the notice is mailed by the commissioner to the organization.

(6) The first assessment will be based on the expected costs of examinations during the fiscal year beginning July 1, 1984, and the total number of persons reported pursuant to subsection (2) of this section as entitled to health care services during the twelve-month period ending June 30, 1984. Similarly, future assessments will be for examination costs in particular fiscal years based on numbers of persons measured monthly in the prior fiscal year.

(7) The commissioner anticipates that only one assessment will be made for each fiscal year. However, if additional funds are needed to cover the costs of examinations, the commissioner may follow the procedures outlined in subsections (1) through (5) of this section to assess the organizations for the necessary additional amounts required. In any case, the portion of the cumulative amount of all assessments attributable to each month used to measure the amount of the assessment will not exceed one-half cent per person entitled to health care services during the month, pursuant to an agreement under RCW 48.46.020(6), excluding such persons who were not residents of this state.

NEW SECTION

WAC 284-46-020 FORM FOR REPORTING NUMBER OF PERSONS ENTITLED TO SERVICES.

ANNUALIZED ASSESSMENT CALCULATIONS FOR EXAMINATION COSTS

(Health Care Service Contractors and Health Maintenance Organizations)

Organization: _____

Indicate number of persons, including dependents, entitled to health care services each month, excluding therefrom such persons who were not residents of this state.

Calendar Year _ July _____
August _____
September _____
October _____
November _____
December _____

WSR 84-04-034
ADOPTED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Ordered 84-2—Filed January 26, 1984]

I, Frank B. Brouillet, Superintendent of Public Instruction, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Finance—Conversion of accumulated sick leave, chapter 392-136 WAC.

This action is taken pursuant to Notice No. WSR 84-01-034 filed with the code reviser on December 14, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 28A.21.360 and 28A.58.096 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 26, 1984.

By Frank B. Brouillet
Superintendent of Public Instruction

NEW SECTION

WAC 392-136-003 AUTHORITY. The authority for this chapter as applied to educational service districts is RCW 28A.21.360 which authorizes the superintendent of public instruction to adopt rules and regulations related to a mandatory attendance incentive program for all employees of educational service districts. The authority for this chapter as applied to school districts is RCW 28A.58.096 which authorizes the superintendent of public instruction to adopt rules and regulations related to a permissive attendance incentive program for employees of school districts.

AMENDATORY SECTION (Amending Order 82-6, filed 7/28/82)

WAC 392-136-005 PURPOSE. The purpose of this chapter is to implement RCW ((28A.58.097)) 28A-.58.096 and 28A.21.360 which provide for compensating school district and educational service district employees for accumulated sick leave. The rules set forth in this chapter are not intended to govern the leave policies of a district for other purposes ((or to interpret the provisions of RCW 28A.58.100(2))).

AMENDATORY SECTION (Amending Order 80-23, filed 8/28/80)

WAC 392-136-010 DEFINITIONS. As used in this chapter:

(1) The term "month of employment" shall mean each calendar month during which an individual is considered by a school or educational service district to be an employee of the district by virtue of the existence of an oral or written contractual relationship which either obligates the individual to perform services during the month or thereafter or obligates the district to provide compensation to the individual during the month or thereafter for services provided, or both.

(2) The terms "full day" and "full day of sick leave" shall each mean and be equivalent to one day of full-time employment for each employee or classification of employees as established by policies now or hereafter adopted by each individual school and educational service district board or by the pertinent terms of applicable collective bargaining contracts, or both.

(3) The term "full-time daily rate of compensation" shall mean the salary of an employee or classification of employees for each full day of employment exclusive of supplemental pay such as extracurricular pay, overtime pay, standby pay and premium pay, and exclusive of fringe benefits such as health insurance premiums and other forms of insurance premiums.

(4) The term "sick leave" shall mean leave granted to an employee for the purpose of absence from work with pay in the event of illness or injury, or both.

AMENDATORY SECTION (Amending Order 80-23, filed 8/28/80)

WAC 392-136-015 ANNUAL CONVERSION OF ACCUMULATED SICK LEAVE. (1) Commencing in January 1981, and each January thereafter, each eligible, current employee of a school district and educational service district may elect to convert excess sick leave to monetary compensation as provided in this section.

(2) Eligible employees, excess sick leave and the conversion of excess sick leave to monetary compensation shall be determined as follows:

(a) Eligible employees: In order to be eligible to convert excess sick leave days to monetary compensation, an employee:

(i) Shall be an employee of an educational service district or an employee of a school district that has adopted an attendance incentive program covering such employee pursuant to WAC 392-136-065;

(ii) Shall have accumulated in excess of sixty full days of unused sick leave at a rate of accumulation no greater than one full day per month (a maximum of twelve days per year) as of the end of the previous calendar year; and

~~((ii))~~ (iii) Shall provide written notice to his or her employer during the month of January of his or her intent to convert excess sick leave days to monetary compensation.

(b) Excess sick leave: The number of sick leave days which an eligible employee may convert shall be determined by:

(i) Taking the number of sick leave days in excess of sixty full days that were accumulated by the employee during the previous calendar year at a rate of accumulation no greater than one full day per month of employment as provided by the leave policies of the district(s) of employment (a maximum of twelve days per year); and

(ii) Subtracting therefrom the number of sick leave days used by the employee during the previous calendar year.

The remainder, if positive, shall constitute the number of sick leave days which may be converted to monetary compensation.

(c) Rate of conversion: Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of twenty-five percent of an employee's current, full-time daily rate of compensation for each full day of eligible sick leave. Partial days of eligible sick leave shall be converted on a pro rata basis.

(3) All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(4) Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

AMENDATORY SECTION (Amending Order 82-8, filed 7/28/82)

WAC 392-136-020 CONVERSION OF SICK LEAVE UPON RETIREMENT OR DEATH. (1) Eligible employees: Each ~~((person))~~ eligible employee who is employed by a school district or educational service district as of June 12, 1980, or thereafter and who subsequently terminates employment due to either retirement or death may personally, or through his or her estate in the event of death, elect to convert all eligible, accumulated, unused sick leave days to monetary compensation as provided in this section ~~((: PROVIDED, That "vested out-of-service" employees who terminate employment but leave funds on deposit with a state retirement system shall not be considered to have retired or to be an eligible employee for the purposes of this section))~~. In order to receive reimbursement for unused sick leave, pursuant to this chapter, at the time of separation from a school or educational service district employment due to retirement, an employee must have separated from such employment and have been granted a retirement allowance under the laws governing the teachers' retirement system or the public employees' retirement system, whichever applies; however, it is not necessary that the employee actually file for retirement prior to the date of his or her separation so long as the application is thereafter filed within a reasonable period of time and without the occurrence of any intervening covered employment: PROVIDED, That the maximum number of days that may be converted pursuant to this section for a school district employee shall be one hundred eighty days.

(2) **Eligible sick leave days:** All unused sick leave days that have been accumulated by an eligible employee at a rate of accumulation no greater than one full day per month of employment as provided by the leave policies of the district(s) of employment (a maximum of twelve days per year), less sick leave days previously converted pursuant to WAC 392-136-015 and those credited as service rendered for retirement purposes, may be converted to monetary compensation upon the employee's termination of employment due to retirement or death.

(3) **Rate of conversion:** Sick leave days that are eligible for conversion shall be converted to monetary compensation at the rate of twenty-five percent of an employee's full-time daily rate of compensation at the time of termination of employment for each full day of eligible sick leave. Partial days of eligible sick leave shall be converted on a pro rata basis.

(4) **Deduction of converted days:** All sick leave days converted pursuant to this section shall be deducted from an employee's accumulated sick leave balance.

(5) **Exclusion from retirement allowance:** Compensation received pursuant to this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

NEW SECTION

WAC 392-136-060 APPLICATION TO SCHOOL DISTRICTS. The provisions of this chapter as applied to school districts are applicable only to school district employees included within an incentive attendance program established pursuant to WAC 392-136-065. The provisions of WAC 392-136-060 through 392-136-085 are applicable only to school districts.

NEW SECTION

WAC 392-136-065 SCHOOL DISTRICTS—BOARD AUTHORITY—SUBJECT TO COLLECTIVE BARGAINING IF APPLICABLE. Every school district board of directors may establish an attendance incentive program as provided for in this chapter for any or all certificated and noncertificated employees: PROVIDED, That the terms and conditions of an attendance incentive program for employees represented by a bargaining representative pursuant to either chapter 41.56 or 41.59 RCW, shall be established and implemented in accordance with chapter 41.56 or 41.59 RCW, whichever chapter is applicable.

NEW SECTION

WAC 392-136-070 SCHOOL DISTRICTS—BASIS OF ACCOUNTING FOR ACCUMULATED SICK LEAVE BALANCE FOR BUY OUT PURPOSE. Sick leave for buy out purpose shall be earned, used, and converted to monetary compensation on a last-in first-out (LIFO) basis in accordance with the provisions of this chapter. The reduction to one hundred

eighty days on December 31, 1983 and each year thereafter, as provided in WAC 392-136-075, shall be on a LIFO basis, after the December 31 balance has first been reduced for any front end loaded unearned days which may be posted for sick leave purpose but not earned for sick leave buy out purpose.

NEW SECTION

WAC 392-136-075 SCHOOL DISTRICTS—ANNUAL ONE HUNDRED EIGHTY-DAY LIMITATION ON ACCUMULATED SICK LEAVE BALANCE FOR BUY OUT PURPOSE. The maximum accumulated sick leave balance for buy out purpose shall be controlled as follows:

(1) Commencing at midnight December 31, 1983 and on each midnight December 31 thereafter, and prior to the addition of sick leave earned for January, but after the transactions for sick leave earned and used for December and after reductions of sick leave balance due to conversion of sick leave during January, each employee of a school district shall be limited for sick leave buy out purpose to a maximum earned sick leave balance of one hundred eighty days on such date and time. This balance does not include any front end loaded or other days which may be posted for sick leave purpose but not earned for sick leave buy out purpose.

(2) Commencing on January 31, 1984 and on the end of each month thereafter there shall be added to the accumulated sick leave balance of each employee for sick leave buy out purpose sick leave earned during that month.

(3) Each employee whose sick leave balance for buy out purpose exceeds one hundred eighty days on midnight December 31, computed in accordance with the first paragraph of this section, shall lose days accumulated that are in excess of this maximum in January of each year if such employee fails to exercise the annual buy out option provided for in this chapter or if such employee's sick leave buy out balance exceeds this maximum for any other reason.

NEW SECTION

WAC 392-136-085 SCHOOL DISTRICTS—PREVIOUS PAYMENTS IN CONNECTION WITH EXCESS ACCUMULATIONS OF SICK LEAVE DISREGARDED. Nothing in this chapter shall be construed as requiring or allowing, on account of a previous accumulation of sick leave in excess of one hundred eighty days, the recovery of payments for either used or converted sick leave made during the period of June 13, 1980, through July 23, 1983, to any school district employee who had been allowed by his or her school district of employment to accumulate an unused sick leave balance in excess of one hundred eighty days. And nothing in this chapter shall be construed as requiring or allowing the accumulated unused and unconverted sick leave balance of any employee of a school district to be reduced on account of any such payment.

WSR 84-04-035
ADOPTED RULES
PARKS AND RECREATION
COMMISSION

[Order 75—Filed January 26, 1984]

Be it resolved by the Washington State Parks and Recreation Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to duties and chair and conduct of meetings, WAC 352-04-010.

This action is taken pursuant to Notice No. WSR 83-24-079 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 43.51.060 and 42.30.070 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 19, 1984.

By Jack R. Gustafson
 Vice Chairperson

AMENDATORY SECTION (Amending Order 64, filed 12/21/82)

WAC 352-04-010 DUTIES OF ((CHAIRMAN)) CHAIRPERSON AND CONDUCT OF MEETINGS.

(1) The ((chairman)) chairperson shall call and preside at all regular or special meetings.

(2) The duties of the ((vice-chairman)) vice-chairperson shall be to preside at all regular or special meetings in the absence of the ((chairman)) chairperson. In addition, the ((vice-chairman)) vice-chairperson shall serve as ((chairman)) chairperson upon ((his)) the resignation, death, or incapacitation for any reason of the chairperson, and shall so serve until the next regular election, or until the ((chairman)) chairperson is again able to serve, whichever shall first occur.

(3) The secretary shall cause minutes to be taken and recorded of all regular or special meetings, and shall sign such minutes when transcribed and approved by the commission. In addition, the secretary shall succeed to the offices of ((vice-chairman)) vice-chairperson or ((chairman)) chairperson in the same manner and under the same conditions as set forth above for the ((vice-chairman)) vice-chairperson.

(4) Eight regular meetings shall be held each calendar year, commencing at 9:00 a.m., on the third ((Thursday)) Friday of each month in which a meeting is to be held, unless otherwise called by the ((chairman)) chairperson or a majority of the commissioners. An annual schedule of the months in which meetings are to be held, and their locations, will be adopted by the commission during the last regular meeting of each calendar year, and will be published each January in the Washington state register, in accordance with RCW 42.30.075.

(5) An annual election shall be conducted for the offices of ((chairman, vice-chairman)) chairperson, vice-chairperson, and secretary, at the first regular meeting of every year. The election shall be conducted by written ballot.

(6) The order of business at all regular meetings shall be:

- (a) The call of the roll.
- (b) Minutes of the previous meeting.
- (c) Acceptance of agenda.
- (d) Business of the day.
- (e) Date and location of next meeting.
- (f) Adjournment.

(7) The ((chairman)) chairperson shall be a voting member of the commission. A majority of the authorized commission membership shall constitute a quorum for the transaction of business at all regular and special meetings. A majority vote of the commissioners present shall be sufficient to pass or defeat each measure brought to a vote, unless otherwise required by law. When a unanimous vote of the authorized membership of the commission is required by law to pass any measure brought to a vote, the vote of any absent commissioner may be registered by mail, or by telephone: PROVIDED, That any mailed ballot shall be opened and read, or any telephoned vote shall be communicated during the meeting at which such measure is being considered: AND PROVIDED FURTHER, That the ((chairman)) chairperson shall identify the absent commissioner or commissioners so voting, and that such identification shall be incorporated into the minutes of the meeting.

WSR 84-04-036
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed January 26, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Parks and Recreation Commission intends to adopt, amend, or repeal rules concerning land classification, WAC 352-16-020;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Ocean Shores Community Club, 1016 Catala Avenue S.E., Ocean Shores, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 43.51.040.

The specific statute these rules are intended to implement is RCW 43.51.040 and 43.51.045.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 12, 1984.

This notice is connected to and continues the matter in Notice No. WSR 83-24-081 filed with the code reviser's office on December 7, 1983.

Dated: January 25, 1984
 By: Gary Robinson
 Executive Assistant

the state of Washington to be affixed at Olympia this 24th day of January, nineteen hundred and eighty-four.

John Spellman

Governor of Washington

WSR 84-04-037
PROPOSED RULES
PARKS AND RECREATION
COMMISSION
 [Filed January 26, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Parks and Recreation Commission intends to adopt, amend, or repeal rules concerning timber cutting and sales, chapter 352-28 WAC;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Ocean Shores Community Club, 1016 Catala Avenue S.E., Ocean Shores, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 43.51.040.

The specific statute these rules are intended to implement is RCW 43.51.045.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 12, 1984.

This notice is connected to and continues the matter in Notice No. WSR 83-24-080 filed with the code reviser's office on December 7, 1983.

Dated: January 25, 1984
 By: Gary Robinson
 Executive Assistant

WSR 84-04-038
PROCLAMATION
OFFICE OF THE GOVERNOR

Terminating an Emergency Proclamation

I, John Spellman, Governor of the state of Washington, pursuant to RCW 43.06.210, do hereby terminate my proclamation of January 4, 1984, which declared a state of emergency in Washington State.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 84-04-039
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
 [EO 84-02]

ESTABLISHING THE GOVERNOR'S COUNCIL OF FINANCIAL ADVISORS

The manner in which the state of Washington conducts its fiscal affairs is a matter of public interest and concern. Policies that seek to strike a balance between the funding of necessary state services and maintaining an equitable and affordable tax burden form the very center of public policy. It is important that these policies serve the public interest and are directed towards improving the overall financial condition of the state of Washington.

In order to promote a sound knowledge and understanding of the state's financial condition and to identify and consider policies and issues that can positively contribute to our state's financial well-being, it is desirable to establish a council to advise the Governor on a broad range of fiscal matters.

NOW, THEREFORE, I, John Spellman, Governor of the state of Washington, by virtue of the authority vested in me, do hereby order and direct the following:

- A. An advisory council shall be established to be known as the Governor's Council of Financial Advisors.
- B. Members of the Council shall be appointed by the Governor.
- C. The Governor or the Governor's designee shall serve as the chairperson of the Council.
- D. The Council shall advise the Governor on state financial matters including the state budget, tax policy, the issuance of debt and debt management, cash management, and other fiscal matters that reflect upon the overall financial condition of the state of Washington.
- E. The Office of Financial Management shall provide administrative support to the Council and shall coordinate staff support for the Council with other relevant agencies.

IN WITNESS WHERE-
OF, I have hereunto set my
hand and caused the seal of
the state of Washington to
be affixed at Olympia this
26th day of January, nine-
teen hundred and eighty-
four.

John Spellman

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 84-04-040
NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY
[Memorandum—January 25, 1984]

The board of trustees of Western Washington Uni-
versity will hold a special meeting on Thursday, Febru-
ary 2, 1984, at 1:30 p.m., at Everett Community
College, 801 Wetmore Avenue, Everett, Washington.

WSR 84-04-041
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 24, 1984]

The regular meetings of the board of regents will be held
on the following dates in 1984, subject to change, pro-
viding that due notice is given by the secretary of the
board in accordance with the bylaws of the board of
regents:

- February 17, 1984
- March 23
- April 20
- May 18
- June 8
- July 20
- August 17
- September 21
- October 19
- November 16 (in Spokane—site to be announced)
- December 7

Time: 10:00 a.m. unless public notice is given to the
contrary.

Place: Room 301 Administration Building (except as
otherwise noted).

Any changes in the above schedule will be noted at least
24 hours before the time of the scheduled regular
meeting.

WSR 84-04-042
ADOPTED RULES
HOUSING FINANCE COMMISSION
[Resolution No. 84-1—Filed January 27, 1984]

Be it resolved by the Washington State Housing Fi-
nance Commission, acting at Seattle, Washington, that
it does adopt the annexed rules relating to commission
organization and procedure.

This action is taken pursuant to Notice No. WSR 83-
23-089 filed with the code reviser on November 22,
1983. These rules shall take effect thirty days after they
are filed with the code reviser pursuant to RCW
34.04.040(2).

This rule is promulgated under the general rule-
making authority of the Washington State Housing Fi-
nance Commission as authorized in chapter 43.180
RCW.

The undersigned hereby declares that the agency has
complied with the provisions of the Open Public Meet-
ings Act (chapter 42.30 RCW), the Administrative Pro-
cedure Act (chapter 34.04 RCW), and the State
Register Act (chapter 34.08 RCW) in the adoption of
these rules.

APPROVED AND ADOPTED January 10, 1984.

By James L. Kirschbaum
Chair

Title 262 WAC
WASHINGTON STATE HOUSING FINANCE COMMISSION
Chapter
262-01 Organization and procedures.

Chapter 262-01 WAC
ORGANIZATION AND PROCEDURES

NEW SECTION

WAC 262-01-010 PURPOSE. This rule is
promulgated pursuant to (section 4(3), chapter 161,
Laws of 1983) which directs that the Washington state
housing finance commission has authority to implement
the provisions of chapter 161, Laws of 1983. The
purpose of these rules is to insure compliance by the
Washington state housing finance commission with the
provisions of chapters 34.04 and 42.17 RCW.

NEW SECTION

WAC 262-01-020 DEFINITIONS. (1) "Act"
means chapter 161, Laws of 1983.

(2) "Commission" means the Washington housing
finance commission.

(3) The terms defined in the act shall have the same
meaning when used in these rules.

NEW SECTION

WAC 262-01-030 DESCRIPTION OF
ORGANIZATION. (1) The commission is a public
body, corporate and politic, with perpetual corporate
succession. The commission is an instrumentality of the
state of Washington, exercising essential government
functions and, for the purposes of the United States
Internal Revenue Code, acts as a constituted authority

on behalf of the state of Washington when it issues bonds pursuant to chapter 161, Laws of 1983.

(2) Members. The commission shall consist of the members provided for and appointed in accordance with section 4(2), chapter 161, Laws of 1983.

(3) Officers. The officers of the commission shall be:

(a) A chair of the commission, who shall be appointed by the governor as chair and who shall serve on the commission and as chair of the commission at the pleasure of the governor;

(b) A vice-chair, who shall be selected by the commission from among its membership and shall serve as chair in the absence of the appointed chair;

(c) A secretary, who shall be the state treasurer, who is a member of the commission ex officio, and who shall serve as secretary of the commission by virtue of his or her office;

(d) A treasurer, who shall be selected by the commission from its membership. The treasurer shall have custody of and be responsible for all moneys and obligations of the commission and shall deposit such moneys in such banks or other financial institutions as the commission may designate from time to time; or shall invest such moneys not required for immediate disbursement, as the commission may direct from time to time.

(4) Staff services. The commission may employ such staff or temporary staff as it may from time to time direct by motion or by resolution. The commission may from time to time, by motion or by resolution, employ, contract with, or engage engineers, architects, attorneys, financial advisors, bond underwriters, mortgage lenders, mortgage administrators, housing construction or financing experts, other technical or professional assistants, and such other personnel as are necessary. The commission may delegate to the appropriate persons the power to execute legal instruments on its behalf.

(5) Powers. Except as provided in subsection (6) of this section, the commission may by motion or by resolution exercise any or all of the powers specified in chapter 161, Laws of 1983.

(6) The commission may exercise its powers under section 5, chapter 161, Laws of 1983, only by resolution. In order to be effective, each resolution must be adopted by a majority of the commission present and voting at a duly constituted meeting in accordance with WAC 262-01-040, and must be signed by the chair and attested to by the secretary of the commission.

(7) Minutes. In order to be effective, the minutes of any meeting of the commission must be adopted by a majority of the members of the commission present and voting at a duly constituted meeting of the commission in accordance with WAC 262-01-040, and signed and attested to by the secretary of the commission.

(8) Designees. Subject to the approval of a majority of the commission present and voting at a duly constituted meeting in accordance with WAC 262-01-040, an ex officio member of the commission may appoint a designee to act on his or her behalf until the next public meeting of the commission with full authority to vote or carry out the duties of his or her office.

NEW SECTION

WAC 262-01-040 MEETINGS. (1) The meetings of the commission shall be "special meetings" as that designation is applied in chapter 42.30 RCW. They may be called at any time and place by the chair or by a majority of the members of the commission. At least seven days' notice of all special meetings shall be given by delivering personally or by mail to each member a written notice specifying the time and place of the meeting, and by giving such notice to the public as may be required by law. If the chair deems that an emergency exists, the chair may shorten the notice to not less than twenty-four hours. An executive session may be called by the chair or by a majority of the members of the commission for such purposes as are permitted under chapter 4.30 RCW.

(2) Quorum. A majority of the commission constitutes a quorum.

(3) Meeting procedures. Meetings of the commission shall be held in accordance with Roberts' Rules of Order, current revised edition, whenever requested by any member of the commission. Any contested case before the commission shall be governed by the Uniform Procedural Rules codified in WAC 1-08-005 through 1-08-590, as now or hereafter amended, subject to any additional or revised rules the commission may add from time to time. The commission reserves the right to make whatever determination is fair and equitable should any question not covered by its rules come before the commission, so long as such determination is in accordance with the spirit and intent of the act and conforms to applicable law.

(4) Public participation. Any person or organization may be granted permission by the chair to make a presentation at any public meeting of the commission. The chair may limit remarks by any individual speaking to the commission.

NEW SECTION

WAC 262-01-050 PUBLIC RECORDS. (1) Public records available. All public records of the commission shall be available for public inspection and copying unless exempt from disclosure under chapter 42.17 or 42.30 RCW.

(2) Public records officer. The commission's public records shall be under the charge of a public records officer designated by the chair. The public records officer shall be responsible for implementing the commission's rules and regulations regarding release of public records.

(3) Request for public records. Any member of the public may examine public records of the commission by directing a request to the public records officer. The public records officer shall comply with such request, unless he or she finds that the requested public records should not be disclosed for a reason permissible under chapter 42.17 RCW.

(4) Office hours. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at the office of the commission, or, if no such office exists, at the office of the secretary.

(5) Copying. No fee shall be charged for the inspection of public records. The commission shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for the use of the commission's copying equipment. This charge is the amount necessary to reimburse the commission for its actual costs incident to such copying.

(6) Access to public records. The commission reserves the right to determine that a requested public record is exempt from disclosure under the provisions of chapter 42.17 RCW. In addition, the commission reserves the right to delete identifying details when it makes available or publishes any record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. All denials of public records shall be accompanied by a written statement specifying the reason for withholding the record and a brief explanation of how the exemption applies to the record withheld.

(7) Records index. The secretary, or such staff of the commission designated by the chair, shall make available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated by the commission. The index shall contain such information as is required by RCW 42.17.260.

WSR 84-04-043
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 84-03—Filed January 30, 1984]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, William R. Wilkerson, find that an emergency exists and that this 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 the emergency is harvestable numbers of sturgeon are available, and these rules are adopted pursuant to the Columbia River compact.

These 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 the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 30, 1984.

By William R. Wilkerson
Director

NEW SECTION

WAC 220-32-02200K **LAWFUL GEAR—SEASONS—STRUGEON.** Notwithstanding the provisions of WAC 220-32-022, and WAC 220-32-040, it is unlawful to take, fish for or possess sturgeon taken for commercial purposes with gill net gear in Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D or 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 as provided for in this section:

(1) Lawful fishing periods are:

12:00 noon January 30 to 12:00 noon
February 3

12:00 noon February 6 to 12:00 noon
February 10, 1984

(2) It is unlawful to use gear other than single-wall, drift gill nets no more than 250 fathoms in length on which slackers, defined as a single piece of material or cord not webbing or mesh connected vertically or woven in the mesh of the net between the cork and lead line and used to tie the netting in a shortened state to give the net flexibility, may be used. The minimum mesh size is 9 inches measured from the inside of one knot to the outside of a diagonal knot stretched at no more than a 1 pound pull.

(3) It is unlawful to retain any sturgeon not of lawful size, as provided for in WAC 220-20-020, and all sturgeon in transit must not have head or tail removed.

(4) It is lawful to retain sturgeon for commercial purposes taken incidental to any lawful commercial salmon fishery.

Reviser's note: The spelling error in the above caption occurred in the copy filed by the agency and appears herein pursuant to RCW 34.08.040.

WSR 84-04-044
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 84-02—Filed January 30, 1984]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing rules.

I, William R. Wilkerson, find that an emergency exists and that this 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 the emergency is this regulation provides for interim squid regulations using proposed final wording, pending public hearing and adoption.

These 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 the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 25, 1984.

By William R. Wilkerson
Director

NEW SECTION

WAC 220-52-06600D SQUID FISHERY.
Notwithstanding WAC 220-52-066, effective immediately:

(1) It is lawful at any time to take or fish for squid for commercial purposes with drag seine gear not exceeding 350 feet in length and having meshes of not less than 1-1/4 inches stretch measure, dip bag net, brail, and squid jigging gear. Dip bag net and brail shall not exceed 10 feet in diameter and shall have a minimum stretch mesh of one inch. Other gear may be used to fish for squid when authorized by a permit from the director.

(2) Food fish, other shellfish, and squid eggs caught while fishing for squid shall be returned to the water immediately. It is lawful to retain squid for commercial purposes taken incidental to another lawful commercial fishery.

(3) Each vessel fishing for squid may use a lighting system consisting of lights with a combined power of not more than 10 kilowatts to attract the squid. Lights of 200 watts and greater shall be shielded and may not be directed to any point more than 100 feet from the vessel while fishing.

(4) It is unlawful to fish for squid for commercial purposes within 1/4 mile of the shoreline of an incorporated city or town.

NEW SECTION

WAC 220-52-07500H SHELLFISH HARVEST LOGS. Effective immediately, it is unlawful for any vessel operator engaged in commercial squid fishing to fail to obtain and accurately maintain a squid 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 squid aboard. The vessel operator must submit the log book for inspection upon request by authorized Department of Fisheries representatives. The department's copy of the completed harvest log shall be submitted for each calendar month in which fishing activity occurs. State copies must be received within ten days following any calendar month in which commercial fishing activity occurred and by the tenth day following termination of commercial fishing activity, whichever comes first. Vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, must record before leaving the Marine Fish-Shellfish catch area where taken, the vessel WDF boat registration number, gear type, Marine Fish-Shellfish catch area starting and ending time of fishing, numbers

of other species caught and returned. Weights of squid must be recorded upon landing or sale.

WSR 84-04-045

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 30, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Corrections intends to adopt, amend, or repeal rules concerning the amending of WAC 137-48-020 and 137-48-060.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 26, 1984.

The authority under which these rules are proposed is RCW 72.09.050, 72.08.103, 72.13.080 and 72.15.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 5, 1984.

Any questions regarding these rules should be sent to:

Robert W. Sampson, Administrator
Office of Contracts and Regulations
Division of Management and Budget
Mailstop FN-61
Scan 234-5770

Dated: January 30, 1984

By: Amos E. Reed
Secretary

STATEMENT OF PURPOSE

Title and Number of Rule: Amending WAC 137-48-020 and 137-48-060.

Statutory Authority: RCW 72.09.050, 72.08.103, 72.13.080 and 72.15.040.

Summary and Purpose of Rule Change: Rule changes definition of an indigent inmate as defined in WAC 137-40-020(4) and increases the maximum number of letters indigent inmates are authorized to receive postage for in one week. The rule changes are necessary to comply with the intent of a court order.

Agency Personnel Responsible for Drafting and Adoption: Robert W. Sampson, Administrator, Office of Contracts and Regulations, Division of Management and Budget, Mailstop FN-61, scan 234-5770; Implementation and Enforcement: Walter L. Kautzky, Director, Division of Prisons, Mailstop FN-41, scan 234-6791.

No other person or organization other than the Department of Corrections is proposing this rule.

This rule is necessary to comply with a federal law or a federal or state court decision, *Order in Stokes v. Reed*, Case No. C83-764M (W.D. Wash., Jan. 12, 1984).

This rule does not have an impact on small businesses.

AMENDATORY SECTION (Amending Order 83-09, filed 9/27/83)

WAC 137-48-020 DEFINITIONS. (1) "Contraband" consists of all illegal items, alcoholic beverages, and other items which a resident of a correctional institution may not have in his/her possession, as defined in regulations adopted by the superintendent of an institution and approved by the secretary.

(2) "Emergency situations" are critical illnesses, deaths, emotional crises, or similar situations experienced by members of the inmate's family or the inmate.

(3) "Illegal items" are controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another.

(4) "Indigent inmate" means an inmate who has ~~((not been credited with more than ten dollars total from any source(s) for deposit to the inmate's trust fund during the thirty days preceding a mail request of postage to be paid by the institution or has))~~ less than a ~~((ten))~~ five dollar balance in his/her trust fund account and on the day of the postage request and during the seven days preceding the postage request.

(5) "Inspection of mail" means the physical act of opening, touching, smelling, and/or reading of mail, the use of mechanical or chemical systems and/or the use of animals to determine the presence of contraband or illegal items.

(6) "Legal mail" is correspondence to or from courts and court staff (judges, clerks of the court, judicial law clerks, etc.), attorneys and persons working for attorneys and to established groups involved in the representation of inmates in judicial proceedings (ACLU, legal services groups, etc.), and government officials or agencies. To be considered "legal mail" the correspondence must clearly be marked "legal mail" on the outside of the envelope.

(7) "Letters" consists of personal communications and enclosures to and from inmates including, but not limited to, handwritten or typed communications.

(8) "Mail" consists of letters, publications, or packages delivered by the United States Post Office or by other means.

(9) "Packages" means the immediate container or wrapping and the contents therein in which any item is contained for consumption, use or storage by inmates, and for purposes of this chapter, also means any shipping container or outer wrapping and the contents therein used by retailers to ship or deliver any item to inmates where it is the only such container or wrapping.

(10) "Publications" consists of reproduced handwritten or pictorial materials including books, periodicals, newspapers, and pamphlets.

(11) "Secretary" is the secretary of the department of corrections or his/her designee(s).

(12) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

AMENDATORY SECTION (Amending Order 83-09, filed 9/27/83)

WAC 137-48-060 MAIL COSTS. (1) Except as otherwise stated in this section, mail costs shall be the responsibility of the inmate.

(2) Mail which arrives at the institution with postage due may, at the option of the superintendent, be delivered to the inmate. The institution may pay the postage due in accordance with subsection (3) of this section, or hold the mail for a reasonable period of time so as to allow the inmate to arrange for payment of the postage due. If such arrangements are not made within the time provided, the package may be donated to charity or discarded.

(3) Indigent inmates shall be authorized to receive postage for a maximum of ~~((five))~~ ten letters per week. This postage shall cover both legal and regular correspondence irrespective of the number of letters identified as legal mail. This shall also include costs advanced by the institution for postage due mail.

(4) Any expenditures made by the institution for postage for indigent inmates may be recouped by the institution whenever such indigent inmate has a five dollar or more balance in his/her trust fund account.

WSR 84-04-046 EMERGENCY RULES DEPARTMENT OF CORRECTIONS

[Order 84-01—Filed January 30, 1984]

I, Amos E. Reed, director of the Department of Corrections, do promulgate and adopt at Olympia, Washington, the annexed rules relating to the amending of WAC 137-48-020 and 137-48-060.

Any questions regarding these rules should be sent to:

Robert W. Sampson, Administrator
Office of Contracts and Regulations
Division of Management and Budget
Mailstop FN-61
Scan 234-5770

I, Amos E. Reed, find that an emergency exists and that this 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 the emergency is in order to comply with the intent of a court order.

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

This rule is promulgated under the general rule-making authority of the Department of Corrections as authorized in RCW 72.09.050, 72.08.103, 72.13.080 and 72.15.040.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 30, 1984.

By Amos E. Reed
Secretary

AMENDATORY SECTION (Amending Order 83-09, filed 9/27/83)

WAC 137-48-020 DEFINITIONS. (1) "Contraband" consists of all illegal items, alcoholic beverages, and other items which a resident of a correctional institution may not have in his/her possession, as defined in regulations adopted by the superintendent of an institution and approved by the secretary.

(2) "Emergency situations" are critical illnesses, deaths, emotional crises, or similar situations experienced by members of the inmate's family or the inmate.

(3) "Illegal items" are controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another.

(4) "Indigent inmate" means an inmate who has ~~((not been credited with more than ten dollars total from any source(s) for deposit to the inmate's trust fund during the thirty days preceding a mail request of postage to be paid by the institution or has))~~ less than a ~~((ten))~~ five dollar balance in his/her trust fund account and on the day of the postage request and during the seven days preceding the postage request.

(5) "Inspection of mail" means the physical act of opening, touching, smelling, and/or reading of mail, the use of mechanical or chemical systems and/or the use of animals to determine the presence of contraband or illegal items.

(6) "Legal mail" is correspondence to or from courts and court staff (judges, clerks of the court, judicial law clerks, etc.), attorneys and persons working for attorneys and to established groups involved in the representation of inmates in judicial proceedings (ACLU, legal services groups, etc.), and government officials or agencies. To be

considered "legal mail" the correspondence must clearly be marked "legal mail" on the outside of the envelope.

(7) "Letters" consists of personal communications and enclosures to and from inmates including, but not limited to, handwritten or typed communications.

(8) "Mail" consists of letters, publications, or packages delivered by the United States Post Office or by other means.

(9) "Packages" means the immediate container or wrapping and the contents therein in which any item is contained for consumption, use or storage by inmates, and for purposes of this chapter, also means any shipping container or outer wrapping and the contents therein used by retailers to ship or deliver any item to inmates where it is the only such container or wrapping.

(10) "Publications" consists of reproduced handwritten or pictorial materials including books, periodicals, newspapers, and pamphlets.

(11) "Secretary" is the secretary of the department of corrections or his/her designee(s).

(12) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

AMENDATORY SECTION (Amending Order 83-09, filed 9/27/83)

WAC 137-48-060 MAIL COSTS. (1) Except as otherwise stated in this section, mail costs shall be the responsibility of the inmate.

(2) Mail which arrives at the institution with postage due may, at the option of the superintendent, be delivered to the inmate. The institution may pay the postage due in accordance with subsection (3) of this section, or hold the mail for a reasonable period of time so as to allow the inmate to arrange for payment of the postage due. If such arrangements are not made within the time provided, the package may be donated to charity or discarded.

(3) Indigent inmates shall be authorized to receive postage for a maximum of ~~((five))~~ ten letters per week. This postage shall cover both legal and regular correspondence irrespective of the number of letters identified as legal mail. This shall also include costs advanced by the institution for postage due mail.

(4) Any expenditures made by the institution for postage for indigent inmates may be recouped by the institution whenever such indigent inmate has a five dollar or more balance in his/her trust fund account.

WSR 84-04-047
ADOPTED RULES
DEPARTMENT OF FISHERIES
 [Order 84-04—Filed January 30, 1984]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to hydraulic project approval.

This action is taken pursuant to Notice No. WSR 83-23-110 filed with the code reviser on November 23, 1983. These rules shall take effect thirty days after they

are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 75.08.012, 75.08.080 and 75.20.100 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 10, 1984.

By William R. Wilkerson
 Director

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-010 PURPOSE. This chapter establishes regulations for ~~((hydraulic))~~ the construction of any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream, or that will utilize any of the salt or fresh waters of the state, or materials from the stream beds and require approval under RCW 75.20.100, and establishes procedures for obtaining a hydraulic project approval. This chapter incorporates criteria the departments have developed for the protection of fish life which are ~~((presently))~~ used for project review and conditioning hydraulic project approvals. It is not intended ~~((by adoption of))~~ that the following regulations ~~((to apply))~~ will automatically ~~((the criteria described))~~ apply to each hydraulic project approval ~~((but rather))~~. The regulations are intended to provide ~~((fair))~~ notice ~~((to the public))~~ of the criteria and guidelines generally utilized to administer RCW 75.20.100. This chapter shall be administered ~~((jointly))~~ by the department of fisheries and the department of game as required under RCW 75.20.100.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-020 DEFINITIONS. As used in this chapter, unless the context clearly requires otherwise:

(1) "Beach area" means the beds between the ordinary high water line and extreme low tide.

(2) "Bed" means lands within or below the ordinary high water line.

(3) "Bed materials" means natural-occurring material found in the beds of waters of the state.

(4) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(5) "Departments" means the department of fisheries and the department of game.

(6) "Dredging" means removal of bed material.

(7) "Emergency" means an immediate threat to life, public or private property, or an immediate threat of serious environmental degradation, arising from weather or stream flow conditions or other natural conditions.

(8) "Equipment" means any device powered by internal combustion, hydraulics, ~~((or))~~ electricity, or livestock used as draft animals and the lines, cables, arms, or extensions associated with the device.

~~((8))~~ (9) "Extreme low tide" means the lowest level reached by a receding tide.

~~((9))~~ (10) "Filter blanket" means a layer or combination of layers of pervious materials (mineral or man-made) designed and installed in such a manner as to provide drainage, yet prevent the movement of soil particles due to flowing water.

(11) "Fish life" means all fish species, including but not limited to food fish, shellfish, and game fish.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director of fisheries. The term "food fish" includes all stages of development and the bodily parts of food fish species.

~~((10))~~ (13) "Freshwater area" means those state waters and associated beds below the ordinary high water line that are upstream of river mouths including all lakes, ponds, and streams.

(14) "Game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the state game commission.

~~((11))~~ (15) "General provisions" means those provisions that are contained in every hydraulic project approval.

~~((12))~~ (16) "Hydraulic project" means construction or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream, or that will utilize any of the salt or fresh waters of the state, or materials from the stream beds.

~~((13))~~ (17) "Hydraulic project application" means a form provided by and submitted to the departments accompanied by plans and specifications of the hydraulic project.

~~((14))~~ (18) "Hydraulic project approval" (HPA) means a written approval signed by the director of the department of fisheries ~~((and))~~ or the director of the department of game, or employees ~~((so))~~ designated and authorized to do so. ~~((The approval will provide conditions for protection of fish life.))~~

(15)) (19) "Mean lower low water" or "MLLW" means the 0.0 tidal elevation. It is determined by averaging each days' lowest tide at a particular location over a period of 18.6 years. It is the datum base for tide levels and vertical references in the saltwater area.

(20) "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action and/or;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation and/or;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment and/or;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action and/or;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(21) "Natural conditions" means those conditions which arise in or are found in nature. This is not meant to include artificial or manufactured conditions.

~~((16))~~ (22) "Ordinary high water line" means the mark on the shores of all waters that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: PROVIDED, That in any area where the ordinary high water line cannot be found the ordinary high water line adjoining saltwater shall be the line of mean higher high water and the ordinary high water line adjoining freshwater shall be the line of mean high water.

(23) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.

~~((17))~~ (24) "River or stream" means waters in which fish may spawn, reside, or through which they may pass. This includes watercourses which exist on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This also includes any natural watercourses which have been altered by man. This definition is not meant to include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses except where they exist in a natural watercourse which has been altered by man.

~~((18))~~ (25) "Saltwater area" means those state waters and associated beds below the ordinary high water line and downstream of river mouths.

(26) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director of fisheries. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

~~((19))~~ (27) "Special provisions" means those conditions that are a part of the hydraulic project approval, but are site or project specific, and are used to supplement or amend the technical provisions.

~~((20))~~ (28) "Technical provisions" means those conditions that are a part of the hydraulic project approval and apply to most projects of that nature.

~~((21))~~ (29) "Watercourse" means any portion of a channel, bed, bank, or bottom within the ordinary high water line of waters of the state. This definition is not meant to include irrigation ditches, canals, storm water run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by man.

~~((22))~~ (30) "Waters of the state" means all marine waters and fresh waters within ordinary high water lines and within the territorial ~~((limits))~~ boundaries of the state.

~~((23))~~ (31) "Wetted perimeter" means the areas of a watercourse covered with water, flowing or nonflowing.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-030 **HYDRAULIC PROJECT APPROVALS.** (1) A person(~~(, firm, corporation, state, local, or other government agency))~~ shall secure a hydraulic project approval before conducting a hydraulic project.

(2) (~~(Failure to secure a hydraulic project approval from the departments or carry out any of the requirements or conditions as are made a part of such approval is unlawful:))~~ If a person commences construction on any hydraulic project or other work subject to chapter 220-110 WAC without having first obtained written approval of the appropriate department as to the adequacy of the means proposed for the protection of fish life or if any person fails to follow or carry out any of the requirements or provisions as are made a part of such approval, the person is guilty of a gross misdemeanor.

(3) A person(~~(, firm, corporation, state, local, or government agency))~~ seeking hydraulic project approval shall submit to the (~~(departments full plans and specifications of the proposed hydraulic project. Where a minor portion of the total project is to be conducted below the ordinary high water mark, partial plans and specifications of the total project shall suffice provided that chapter 43.21C RCW, State Environmental Policy Act, is complied with, and the departments are able to make an analysis adequate))~~ department having jurisdiction of the site general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water and complete plans and specifications for the proper protection of fish life.

(4) (~~(Receipt of any one of the following documents at the addresses listed below constitutes))~~ Application for ((a)) hydraulic project approval((:

Department of Fisheries	Department of Game
Habitat Management Division	Habitat Management Division
115 General Administration Bldg.	600 North Capitol Way
Olympia, WA 98504	Olympia, WA 98504

(a) A completed hydraulic project application)) shall be submitted to the ((departments;

(b) A completed forest practice application submitted to the department of natural resources, if the hydraulic project is a part of a forest practice as defined in WAC 222-16-010(19); or

(c) In saltwater areas, for projects investigated by the department of fisheries, a Section 10 or 404 Public Notice circulated by the Army Corps of Engineers)) appropriate department listed below. The department having jurisdiction over a particular site will cooperate with the other department in order to protect all species of fish. If a department receives the application concerning a site not in its jurisdiction, it will transmit the application to the appropriate department within three days, and the applicant will be notified.

(a) For projects located in the following areas, an application shall be submitted to the Department of Fisheries, Habitat Management Division, 115 General

Administration Building, Olympia, WA 98504, (206) 753-6650:

(i) Western Washington, which includes all lands lying west of the summit of the Cascade Mountains;

(ii) All mainstem Snake River projects and all mainstem Columbia River projects downstream from Chief Joseph Dam.

(b) For projects located in the following areas, an application shall be submitted to the Department of Game, Habitat Management Division, 600 North Capitol Way, Olympia, WA 98504, (206) 753-5897:

Eastern Washington, which includes all lands lying east of the summit of the Cascade Mountains, including Klickitat County except those areas in WAC 220-110-030(4)(a)(ii).

(c) The departments reserve the right to exchange jurisdiction on individual projects.

(d) Receipt of any one of the following documents at the addresses listed in (a) and (b) of this subsection constitutes application for a hydraulic project approval:

(i) A completed hydraulic project application submitted to the appropriate department;

(ii) A completed forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC 222-16-010(19); or

(iii) A section 10 or 404 public notice circulated by the Army Corps of Engineers.

(5) The ((processing time for an)) appropriate department shall grant or deny approval within forty-five calendar days of the receipt of a complete application ((is within thirty days of receipt of the application unless extended due to)) and notice of compliance with any applicable requirements of the State Environmental Policy Act. The departments shall strive to process hydraulic applications in less than thirty days. The forty-five day requirement shall be suspended if:

(a) ((Receipt of)) An incomplete application is received;

(b) The site is physically inaccessible for inspection;

(c) ((Mutual agreement between)) After ten working days of receipt of the application, the applicant ((and departments)) remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(d) ((Lack of completion of State Environmental Policy Act requirements; or

(e) The applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project. The applicant shall be notified in writing if the application cannot be processed within thirty days, and the reason(s) therefore stated)) The applicant requests delay.

(6) ((Oral)) Immediately upon determination that the forty-five day period is suspended, the appropriate department shall notify the applicant in writing of the reasons for the delay.

(7) Verbal applications may be accepted in lieu of written applications for emergency work to repair existing structures, ((moving)) move obstructions, ((restoring)) restore banks, or ((protecting)) protect property that is subject to ((imminent)) immediate danger by weather ((or)), flow, or other natural conditions.

~~((7))~~ (8) The departments may accept written or ~~((oral))~~ verbal requests for time extensions, renewals, or alterations of an existing approval.

~~((8))~~ (9) Each approval is specific to a watercourse, stating the exact location of the project site, and consists of general, technical, and special provisions.

~~((9))~~ (10) The hydraulic project approval or exact copy, except ~~((oral))~~ verbal approvals, shall be on the project site when work is being conducted and shall be immediately available for inspection.

~~((10) Unless specifically authorized, approvals are valid for a maximum period of twelve months. Renewals are normally issued upon verbal or written request, provided that the project scope or biological conditions have not changed.))~~

(11) Approvals may be granted for a period of up to five years. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the hydraulic approval within two years of the date of issuance.

(12) A hydraulic project ~~((approval))~~ application will be denied when, in the judgment of ~~((these departments))~~ the department having jurisdiction over the site, the project is directly or indirectly harmful to fish life unless adequate ~~((protection,))~~ mitigation~~((; or restoration))~~ can be assured by conditioning the approval or ~~((altering))~~ modifying the proposal. If ~~((a hydraulic project))~~ approval is denied the appropriate department will provide the applicant, ~~((will be notified))~~ in writing, a statement of the specific reason(s) ~~((for denial))~~ why and how the proposed project would adversely effect fish life.

~~((12))~~ (13) Hydraulic project approvals may have specific time limitations on project activities to protect fish life.

~~((13))~~ (14) Hydraulic project approvals do not exempt the applicant from obtaining the appropriate permits and following the rules or regulations of other local, state, and federal agencies.

~~((14))~~ (15) Administration of this chapter shall be conducted in compliance with the State Environmental Policy Act, chapter 43.21C RCW, chapter 197-10, 220-100 or 232-18 WAC.

~~((15))~~ (16) In addition to hydraulic project approval, placing rock, concrete, tires, or other materials on the beds in the saltwater area for the purpose of improving fish habitat requires a permit under WAC 220-20-040 for artificial reef construction.

~~((16))~~ (17) In addition to hydraulic project approval, mechanical or hydraulic clam harvesters shall be governed by the provisions of WAC 220-52-018 and shall obtain and comply with the provisions of the department of fisheries' permit to operate a clam harvesting machine.

~~((17))~~ (18) The hydraulic code does not apply to the actual exercise of water rights (e.g. the amount of diversion or stream flow) which matters are generally regulated by the Washington department of ecology. However, construction of structures or placement of devices or other work within waters of the state which will use, divert, obstruct or change the natural flow or bed of any river or stream, or that will utilize any of the waters

of the state in order to take water allowed by a water right require hydraulic project approval. Regulation of water flow from a permanent irrigation structure by operating valves, or manipulating stop logs, check boards or head boards, does not require hydraulic project approval.

~~((18))~~ (19) Each approval shall contain the following general provisions:

(a) This approval is to be available on the job site at all times and its provisions followed by the permittee and operator performing the work.

(b) The person(s) to whom this approval is issued may be held liable for any loss or damage to fish life or habitat which results from failure to comply with the provisions of this approval.

(c) Failure to comply with the provisions of this approval is a gross misdemeanor, possibly punishable by fine and/or imprisonment.

(d) The departments reserve the right subject to the holders opportunity to a hearing to contest agency actions as provided by the Administrative Procedure Act, chapter 34.04 RCW, to make additional restrictions or conditions or revoke the approval when new information shows such action is necessary by the departments for the protection of fish life.

(e) These departments cannot be held liable for any property damage which might occur as a result of this project, except where damages are proximately caused by actions of the departments.

(f) This approval pertains only to the provisions of the fisheries and game codes. Additional authorization from other public agencies may be necessary for this project.

~~((19))~~ (20) Cleaning, adjusting, operation and maintenance of existing irrigation diversion structures by use of hand-held tools may be accomplished without first securing a written hydraulic project approval. For these purposes, this subsection shall serve as the hydraulic project approval. This does not include the use of equipment as defined in WAC 220-110-020~~((7))~~ (8). If adverse impacts to fish life occur, the project shall immediately cease, and an application for approval shall be made in accordance with WAC 220-110-030 (1), (2), (3), (4).

(21) Aquatic weed control by hand pulling or hand tools does not require hydraulic project approval. This does not include the use of equipment as defined in WAC 220-110-020(8).

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-110 CULVERT INSTALLATION. The following technical provisions may apply to culvert installation projects:

(1) Culverts shall be installed so that spawning habitat is maintained.

(2) Culverts shall be designed and constructed so as not to impede fish passage.

(3) The culvert shall be of a sufficient size to pass the fifty-year flood level. Exception shall be granted if applicant provides design criteria to support a more appropriate level.

(4) Disturbance of the bed of a watercourse shall be held to a minimum and affected bed areas shall be restored to preproject condition following installation of the culvert.

(5) Fill associated with the culvert installation shall be protected from erosion.

(6) Culverts shall be designed and constructed to avoid inlet and outlet scouring.

(7) When a multiple barrel culvert is utilized the structure shall be designed and constructed to ensure fish passage during low-flow periods.

(8) The culvert facility shall be maintained, in perpetuity, by the owner(s), such that fish passage is not impeded.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-190 WATER DIVERSIONS—GENERAL FISH SCREENING CRITERIA. The following technical provisions may apply to water diversions where fish screens are required. General fish screening criteria are applicable to rotary drum screens, traveling screens, belt screens and stationary flat ((plat)) plate screens.

Screens shall be designed, constructed and located as follows:

(1) Structure placement—flowing waters (rivers and creeks):

(a) Where physically practical, the screen shall be constructed at the diversion entrance parallel to the flow with the screen face continuous with the adjacent bankline. The bankline shall be altered, if necessary, to prevent eddies and maintain parallel velocities past the screen; or

(b) Where site or hydraulic conditions make installation of fish screens at the diversion entrance physically impractical, screens may be located in the conduit or diversion canal at a more suitable location. Such screens shall be provided with bypass systems to efficiently collect juvenile fish and safely transport them back to the flowing water body. Such screens shall also be constructed at an angle not to exceed 45° (degrees) from the approaching flow with the downstream end of the screen terminating at the bypass system entrance.

(2) Structure placement—nonflowing waters (lakes and reservoirs):

In nonflowing waters, diversion structures and associated fish screens will be constructed offshore to minimize fish contact.

(3) Approach velocity (local velocity component perpendicular to the screen face) shall not exceed:

(a) 0.5 feet/second for chinook and coho salmon fry and all fingerling salmon (fingerling minimum length: 60 mm); or

(b) 0.2 feet/second for pink, chum and sockeye salmon and gamefish fry;

(c) When screens are not readily accessible for cleaning, the screens shall be designed with an approach velocity of 0.05 feet/second.

(4) Wetted screen area, excluding area blocked to flow by structural components, required at ordinary low

water shall be calculated by dividing maximum diverted flow by the allowable approach velocity.

(5) In flowing water, the velocity component parallel and adjacent to the screen face shall be at least two times the approach velocity. Screen faces shall be placed flush with adjacent screen bay piers or walls.

(6) Screen openings shall not exceed 1/4 (0.25) inch measured horizontally. Where fish less than 60 mm in length are present the screen openings shall not exceed 1/8 (0.125) inch.

(7) The long axis of slot or rectangular screen openings shall be vertical.

(8) Screens may be constructed of any rigid material, woven or perforated, that physically excludes fish provided that structural integrity and cleaning effectiveness are not impaired.

(9) Screens shall be removed only by written permission of the departments.

(10) Alteration or disturbance of banks or bank vegetation shall be held to a minimum, and all disturbed slopes shall be revegetated or otherwise protected from erosion.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-250 SURF SMELT SPAWNING BEDS. Surf smelt spawning beds are defined as follows:

(1) All beds within Tidal Reference Area 2 between +9.0 feet and +14.0 feet above MLLW in:

(a) Totten Inlet westerly and southerly of a line projected from Windy Point to Gallagher Cove, except Skookum Inlet westerly of a line projected true north from the entrance to Wildcat Cove, and except that part of Oyster Bay westerly of a line projected true south from the Olympia Oyster Company plant;

(b) Eld Inlet from Flapjack Point southerly to Rocky Point, and from Cooper Point south to the line of 47° 3' 36" N. latitude;

(c) Budd Inlet from Cooper Point south to 47° 4' 6" N. latitude, and from Dofflemeyer Point south to 47° 3' 48" N. latitude;

(d) Henderson Inlet from Johnson Point southerly to 47° 7' N. latitude; and

(e) Case Inlet (North Bay) from the mouth of Sherwood Creek north to a point 1/4 mile north of the City of Tacoma's Lake Cushman Transmission Line.

(2) All beds within Tidal Reference Area 4 between +7.0 feet and +11.5 feet above MLLW in Quartermaster Harbor north of a line projected true west from the northern tip of Dockton.

(3) All beds within Tidal Reference Area 5 between +7.0 feet and +11.0 feet above MLLW in:

(a) Sinclair Inlet from the west city limits of Port Orchard west to 122° 40' W. longitude;

(b) Liberty Bay northerly of a line projected from Bolin Point westerly to the southern property line of the United States Naval facility; ((and))

(c) Dyes Inlet from Silverdale south to Chico;

(d) Dyes Inlet along the west shore of Marine Drive Peninsula from its northern terminus south to a point 300 feet south of Madrona Point;

(e) Dyes Inlet along the west shore of Madrona Point from the southern boundary of Section 9 north a distance of 600 feet; and

(f) Dyes Inlet along the southern shore of Elwood Point Peninsula.

(4) All beds within Tidal Reference Area 7 between +7.0 feet and +11.0 feet above MLLW in Port Susan from the entrance to Triangle Cove south to Camano Country Club.

(5) All beds within Tidal Reference Area 8 between +7.0 feet and +11.0 feet above MLLW in:

(a) Saratoga Passage from Onamac Point northerly to Rocky Point, then easterly to Brown Point in Skagit Bay;

(b) Skagit Bay from the mouth of Duguala Bay southeasterly for about 2 miles to 48° 19' 54" N. latitude;

(c) Saratoga Passage from Muellers Park in Penn Cove easterly and southerly to a point on Whidbey Island determined by projecting a line true west from Onamac Point;

(d) Penn Cove from San de Fuca to Penn Cove Park;

(e) Oak Harbor from the boat ramp to Blowers Bluff; and

(f) Crescent Harbor adjacent to the United States Naval Air Station property.

(6) All beds within Tidal Reference Area 9 between +6.0 feet and +8.5 feet above MLLW in:

(a) Fidalgo Bay along the north side of Weaverling Spit; ~~((and))~~

(b) Fidalgo Bay from the tip of Crandall Spit northerly and easterly to the east side of March Point; and

(c) Along the east shore of Fidalgo Bay between a point 1350 feet south of Fidalgo and a point 3900 feet north of Fidalgo.

(7) All beds within Tidal Reference Area 10 between +5.5 feet and +8.0 feet above MLLW in:

(a) Killisut Harbor (Scow Bay) south of a line projected true west from the mouth of Mystery Bay;

(b) Dungeness Harbor from "Gun Club Spit" at Old Town westerly to the boundary of the Dungeness Wildlife Refuge at the base of Dungeness Spit;

(c) The Strait of Juan de Fuca from 300 yards east of the mouth of East Twin River westerly to 300 yards west of the mouth of West Twin River; and

(d) The Strait of Juan de Fuca at the mouth of Deep Creek and easterly for 1,400 yards.

(8) All beds within Tidal Reference Area 11 between +7.0 feet and +11.5 feet above MLLW in Hood Canal east of a line projected true south from the west side of the Tahuya River and west of a line projected from Rose Point to the mouth of Little Mission Creek.

(9) All beach area within Tidal Reference Area 14 below +9.0 feet above MLLW from Cape Johnson south to the Quinault Indian Reservation.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-260 PACIFIC HERRING SPAWNING BEDS. Pacific herring spawning beds are defined as follows:

(1) All beds within Tidal Reference Area 2 between +3.0 feet (above MLLW) and -15.0 feet (below MLLW):

(a) In and at the mouth of Wildcat Harbor (Skookum Inlet);

(b) In Totten Inlet at the west and east entrances to Gallagher Cove between 47° 8' 45" and 47° 9' 18" N. latitude;

(c) In Squaxin Passage south of a line projected true east from the northern tip of Steamboat Island to Hope Island and northerly and westerly of Hunter Point, and in addition, all beds in this described area between -15 feet and -60 feet; and

(d) Along the west side of Squaxin Island from Unsal Point north to 47° 10' 36" N. latitude.

(2) All beds within Tidal Reference Area 3 between +3.0 feet (above MLLW) and -15.0 feet (below MLLW) in the south part of Mayo Cove between 47° 15' 24" and 47° 15' 48" N. latitude.

(3) All beds within Tidal Reference Area 4 between +3.0 feet (above MLLW) and -25.0 feet (below MLLW) beginning near Tahlequah on Vashon Island at 122° 30' W. longitude and extending continuously throughout Quartermaster Harbor to Piner Point on Maury Island, then northeasterly along the east side of Maury Island to 47° 22' 36" N. latitude.

(4) All beds within Tidal Reference Area 5 between +3.0 feet (above MLLW) and -30.0 feet (below MLLW), except as stated otherwise:

(a) In Port Orchard from University Point northerly to Keyport;

(b) In Port Orchard from Battle Point northeasterly to Arrow Point;

(c) In Port Orchard from the north entrance to Manzanita Bay northerly to Seabold;

(d) In Port Orchard from Lemolo southeasterly to Point Bolin, then north to 47° 42' 21" N. latitude in Agate Passage;

(e) In Agate Passage and Port Madison from Agate Pass Bridge northerly to Agate Point, then southerly and easterly to the western tip of Point Monroe, and including the southern extension of Port Madison within these boundaries; ~~((and))~~

(f) In Agate Passage and Port Madison from Agate Pass Bridge northerly to and including lower Miller Bay, then easterly to Indianola; and

(g) In Dyes Inlet, an area oval in shape situated in a northwest to southeast orientation approximately 1700 feet in width between latitudes 47° 38' 21" N. and 47° 37' 46" N. between tidal elevations 0.0 (MLLW) and minus 40.0 feet (below MLLW).

(5) All beds within Tidal Reference Area 7 between elevations 0.0 feet (MLLW) and -20 feet (below MLLW), except as stated otherwise:

(a) Throughout Tulalip Bay and north to a point about 2,800 feet northwest of Hermosa Point;

(b) At Spee-Bi-Dah for a distance of about 1,000 feet between latitudes 48° 04' 52" and 48° 05' 35";

(c) Beginning about 1,500 feet south of Tulare Beach northward to a point 2,500 feet northwest of Kayak Point;

(d) In Port Susan along the east shore of Camano Island from the western boundary of Section 3, Township 30 North, Range 3 East southerly to the western boundary of Section 13, Township 30 North, Range 3 East between tidal elevations 0.0 (MLLW) and minus 10.0 (below MLLW) excluding the area from Tillicum Beach northerly to Sunny Shore Acres;

(e) In Saratoga Passage from a point 2000 feet west of Camano Head easterly and northerly to a point 1400 feet north of Camano Head in Port Susan between tidal elevations 0.0 (MLLW) and minus 10.0 (below MLLW).

(6) All beds within Tidal Reference Area 8 between +3.0 (above MLLW) and -15.0 feet (below MLLW):

(a) In Holmes Harbor south of a line projected from Dines Point 125° true across Holmes Harbor;

(b) At the entrance to Holmes Harbor northerly of Rocky Point in the vicinity of Baby Island;

(c) In northern Skagit Bay, from Hunot Point, Fidalgo Island, south to the dredged entrance to Swinomish Channel, and from Ala Spit, Whidbey Island south through Dugualla Bay to 48° 20' 30" N. latitude; and

(d) On the east side of Similk Bay from 48° 26' N. latitude north to 48° 26' 54" N. latitude in Turners Bay.

(7) All beds within Tidal Reference Area 9 between +3.0 (above MLLW) and -15.0 feet (below MLLW):

(a) In and throughout Fidalgo Bay ((and easterly to the east side of)) from Cap Sante waterway south to the southern boundary of Section 32 then northerly along the west shore of March Point and entirely around March Point to a point 800 feet south of Kavanaugh Road on the east shore of March Point, except the tidal channel draining southern Fidalgo Bay below elevation minus 6.0 (below MLLW);

(b) In Padilla Bay north of a line projected true east through Saddlebag Island, south of William Point, and east of a line projected from Saddlebag Island to William Point;

(c) On the east side of Samish Bay from 48° 35' 30" N. latitude northwesterly to Wildcat Cove;

(d) Along Lummi Island from Village Point northerly to Point Migley, then southeasterly along the west side of Hale Passage to 48° 41' N. latitude;

(e) Surrounding Portage Island and including Portage Bay, and extending northerly up the east side of Hale Passage to Gooseberry Point;

(f) On the east side of the Strait of Georgia beginning southeast of Sandy Point at 48° 46' 15" N. latitude and extending northerly to Point Whitehorn, then northeasterly to 48° 54' 45" N. latitude in Birch Bay;

(g) Along the entire southern border of Sandy Point and extending in a southeasterly direction a distance of 5500 feet;

(h) Along the northwest shore of Lummi Bay from Sandy Point to a point 2500 feet north of the southern boundary of Section 9, Township 38 North, Range 1 East;

(i) Beginning at 122° 47' 6" W. longitude on the north side of Birch Bay and extending northerly to Semiahmoo Bay at the United States-Canadian border;

((††)) (j) In Drayton Harbor; and

((††)) (k) Bordering all of Point Roberts from the Canadian border in the Strait of Georgia to the Canada border in Boundary Bay.

(8) All beds within Tidal Reference Area 10 between +3.0 (above MLLW) and -15.0 feet (below MLLW), except as stated otherwise:

(a) In East Sound (Fishing Bay and Ship Bay) north of a line projected true east from Judd Cove;

(b) In East Sound from Dolphin Bay northwesterly for 0.5 miles;

(c) On the north side of West Sound from Indian Point northerly and easterly around Massacre Bay to the northern entrance to White Beach Bay;

(d) On the west side of West Sound from 48° 37' N. latitude southerly to Caldwell Point, then westerly about 1/2 mile along the north side of Pole Pass to the Beacon;

(e) In Blind Bay, Shaw Island;

(f) In Shoal Bay, Lopez Island;

(g) In Hunter Bay and Mud Bay, Lopez Island;

(h) In Westcott Bay, Garrison Bay, and Horseshoe Bay, San Juan Island;

(i) Off the mouth of Mitchell Bay and northerly to Hanbury Point, and Mosquito Pass northerly to and adjacent to White Point, San Juan Island;

(j) Along the south shore of new Dungeness Harbor from Clark Road to a point 1200 feet east of the base of Dungeness Spit between tidal elevations 0.0 (MLLW) and minus 5.0 (below MLLW);

(k) Along the inner shore of Dungeness Spit between latitudes 48° 09' 20" N. and 48° 09' 35" N. between tidal elevations 0.0 (MLLW) and minus 5.0 (below MLLW);

(l) On the east side of Sequim Bay from Goose Point northerly to Kiapot Point, and on the west side of Sequim Bay from Schoolhouse Point northerly to 48° 3' 24" N. latitude near Pitship Point, and in addition all beds in this described area between -15.0 feet and -40.0 feet;

((††)) (m) On the east side of Discovery Bay from 48° N. latitude near Fairmont northerly to 48° 3' 24" N. latitude, and on the west side of Discovery Bay from 48° N. latitude near Maynard northerly to Carr Point, additionally all beds between -15.0 feet and -40.0 feet in this described area;

((††)) (n) On the west side of Port Townsend from Glen Cove southerly to the mouth of Chimacum Creek and on the east side of Port Townsend from Crane Point northerly outside the entrance to Kilisut Harbor to 48° 5' 36" N. latitude; and

((††)) (o) In Kilisut Harbor (Scow Bay) south of 48° 5' 9" N. latitude, and in addition all beds in this described area between -15.0 feet and -30.0 feet.

(9) All beds within Tidal Reference Area 11 between +3.0 (above MLLW) and -15.0 feet (below MLLW) east of 122° 59' 36" W. longitude and west of 122° 51' 18" W. longitude.

(10) All beds within Tidal Reference Area 12 between +3.0 (above MLLW) and -15.0 feet (below MLLW):

(a) In Quilcene Bay north of 47° 47' 6" N. latitude;

(b) On the west side of Dabob Bay from Whitney Point south to 47° 43' 42" N. latitude in Right Smart Cove near Wawa Point;

(c) On the west side of Hood Canal from 47° 40' 18" N. latitude south to Quatsap Point (including Pleasant Harbor), then west to a line projected true south from the mouth of the Duckabush River; and

(d) On the east side of Hood Canal in Stavis Bay, Seabeck Bay, and on the north side of Misery Point.

(11) All beds within Tidal Reference Area 13 between +3.0 and -15.0 feet on the east side of Hood Canal from Lofall northeasterly to Sheltered Bay and including Port Gamble Bay.

(12) All beds within Tidal Reference Area 17 between +3.0 and -5.0 feet:

(a) On the west side of Willapa Bay from the Nahcotta Dock north to 46° 38' N. latitude; and

(b) Between the mouths of Cedar River and North River.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-300 PIERS, PILINGS, DOCKS, AND FLOATS. The following technical provisions commonly apply to pier, piling, dock, and float projects.

(1) Pile driving in or adjacent to surf smelt and herring spawning beds is permitted only as follows:

Tidal Reference Area	Permitted Times	
	Smelt spawning beds	Herring spawning beds
1	January 1-December 31	January 1-December 31
2	April 1-July 20	April 1-December 31
3	January 1-December 31	January 1-December 31
4	March 1-October 1	April 1-January 10
5	March 1-September 1 in Liberty Bay ((March)) February 15-October 15 in Sinclair-Dyes Inlet	March 20-January 20 in Port Orchard April 10-February 20 in Port Madison March 25-January 10 in Dyes Inlet
6	January 1-December 31	January 1-December 31 ((February 15-April 15))
7	October 15-May 15	April 15-February 15
8	October 15-May 15	April 10-February 10
9	March 15-October 1	June 1-January 31 at Point Roberts June 15-February 10 Blaine-Birch Bay; Point Whitehorn to Sandy Point; and Hale Passage and Portage Bay April 10-February 20 in Samish Bay April 10-February 10 in Padilla Bay, Fidalgo Bay
10	January 15-October 15 in Dungeness Harbor November 10-September 10 in Kilisut Harbor September 1-May 1 at Twin Rivers and Deep Creek	April 15-February 1 West Sound, East Sound, Orcas Island March 15-January 15 Hunter Bay, Lopez Island April 10-January 10 Mosquito Pass, San Juan Islands

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Tidal Reference Area	Permitted Times	
	Smelt spawning beds	Herring spawning beds
		March 20-January 31 New Dungeness Harbor
		April 10-February 1, Discovery Bay
		March 1-January 31 Sequim Bay
		March 20-January 31 Port Townsend, Kilisut Harbor
11	December 1-September 10	March-January 15
12	January 1-December 31	April 15-February 10
13	January 1-December 31	April 1-January 31
14	September 1-April 1	January 1-December 31
15	January 1-December 31	January 1-December 31
16	January 1-December 31	January 1-December 31
17	January 1-December 31	March 15-January 15

(2) In addition to those limitations listed in WAC 220-110-300(1) pile driving may be further restricted to protect juvenile salmonids or other species of fish.

(3) Floats and rafts shall be located and anchored to prevent grounding on smelt and herring spawning beds during periods of low tides.

(4) Anchoring systems for floating structures shall be designed and deployed so that beds are not damaged.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-340 INFORMAL APPEAL OF ADVERSE ADMINISTRATIVE DECISIONS. Any person who, upon proper application, is denied a requested hydraulic project approval or contests a condition placed in a granted approval, may contact the field investigator from the ~~((departments of game and/or fisheries assigned to the project))~~ appropriate department having jurisdiction over the site to discuss the denial or provisions. If the result of this contact with the field investigator does not satisfy the applicant, then that person may contact the field investigator's supervisors up through the chain of command to the ~~((directors))~~ director of the department having jurisdiction over the site. If the applicant is not satisfied by the results of this informal appeal process, then that person may make a formal appeal. We encourage the applicant to exhaust this informal appeal process prior to initiating a formal appeal.

AMENDATORY SECTION (Amending Order 83-25, filed 4/13/83)

WAC 220-110-350 FORMAL APPEAL OF ADVERSE ADMINISTRATIVE DECISIONS. Any person who, upon proper application, is denied a requested hydraulic project approval or contests a condition placed in a granted approval, is entitled to an opportunity for hearing, pursuant to the Administrative Procedure Act, chapter 34.04 RCW. To obtain a hearing, a written request must be filed with ~~((either))~~ the appropriate department having jurisdiction over the site. The mailing

addresses are: Department of Fisheries(⁽¹⁾), Habitat Management Division, Room 115, General Administration Building, Olympia, WA 98504(~~(, or the)~~); Department of (~~(Game's)~~) Game, Habitat Management Division, 600 North Capitol Way, Olympia, WA 98504. Requests must be received within thirty days from the date of denial of a hydraulic approval or issuance of an approval with conditions sought to be contested. Hearings are conducted pursuant to the Uniform Procedure Rules, chapter 1-08 WAC, unless modified in writing or by agreement of the parties. Ordinarily, it is expected an aggrieved party seeking administrative review will waive the notice of hearing requirements provided by RCW 34.04.090(1) in order to provide an expeditious decision. An administrative law judge will be used to hear all evidence, with proposed findings of fact, conclusions of law, proposed order, and exceptions and replies thereto, and written argument, if any, prepared and presented to the directors of the departments, together with a tape of the contested case hearing, for final decision. All final decisions are appealable as provided by the Administrative Procedure Act, chapter 34.04 RCW. Administrative law judges will be provided by the office of administrative hearings.

WSR 84-04-048
PROPOSED RULES
DEPARTMENT OF LICENSING
(Council on Hearing Aids)
 [Filed January 30, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Council on Hearing Aids intends to adopt, amend, or repeal rules concerning the amending of WAC 308-50-010 examinations; 308-50-020 reexamination; 308-50-090 trainees; 308-50-100 trainee sponsors; 308-50-110 minimum standards of equipment; 308-50-120 standards for equipment calibration; and repealing WAC 308-50-050 failure to renew license;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Cascade Room, Aladdin Motor Inn, 900 South Capitol Way, Olympia, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.35.161.

The specific statute these rules are intended to implement is RCW 18.35.161.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 9, 1984.

Correspondence relating to this notice and the proposed rules should be addressed to:

Barbara Johnson
 Executive Secretary
 Washington State Council on Hearing Aids
 P.O. Box 9649
 Olympia, WA 98504

234-1153 scan
 753-1153 comm

Dated: January 30, 1984
 By: Barbara Johnson
 Executive Secretary

STATEMENT OF PURPOSE

Title and Number of Rule Sections or Chapters: WAC 308-50-010 Examinations; 308-50-020 Reexaminations; 308-50-050 Failure to renew license; 308-50-090 Trainees; 308-50-100 Trainee sponsors; 308-50-110 Minimum standards of equipment; and 308-50-120 Standards for equipment calibration.

Statutory Authority: RCW 18.35.161.

Specific Statute That Rule is Intended to Implement: RCW 18.35.161.

Summary of the Rules: WAC 308-50-010 Examinations, this section describes the contents of the examination, the minimum passing grade and the timing requirements for application to take the examination; WAC 308-50-020 Reexamination, this section describes the limitations on and requirements for reexamination; WAC 308-50-050 Failure to renew license, this section describes the relicensure requirements for individuals who have failed to renew their licenses within the allotted time; WAC 308-50-090 Trainees, this section describes the permitted scope of practice and supervision requirements for trainees; WAC 308-50-100 Trainee sponsors, this section describes the procedure for termination of sponsorship; WAC 308-50-110 Minimum standards of equipment, this section describes acceptable equipment standards for the fitting and dispensing of hearing aids; and WAC 308-50-120 Standards for equipment calibration, this section describes calibration requirements for audiometric equipment.

Reasons Supporting the Proposed Actions: The purpose of the amendment to WAC 308-50-010 is to change the guidelines for the state licensing examination from the examination of the national hearing aid society to the home study course of the national hearing aid society. The home study course provides a better learning tool to exam applicants; the purpose the amendment to WAC 308-50-020 is to clarify limitations on reexamination. The amendment is intended to eliminate misunderstanding on the part of the applicants failing to pass the examination; WAC 308-50-050 is to be repealed because it has been superseded by the provisions of RCW 18.35.090 relating to license renewal; the purpose of the amendments to WAC 308-50-090 is to clarify and expand the requirements for supervision of trainees by sponsors. The amendment is intended to eliminate potential harm to members of the public receiving service from inadequately supervised trainees; the purpose of the amendment to WAC 308-50-100 is to provide a title more descriptive of the rule; and the purpose of the amendment to WAC 308-50-110 is to cause the test environment requirements to be a minimum standard of equipment not limited to places of business. The amendment is necessary because tests are given in mobile units and at itinerant locations in addition to official places of business.

Responsible Personnel: In addition to members of the council, and the director of the Department of Licensing, the following individual has knowledge of and responsibility for drafting, implementing and enforcing these rules: Barbara Johnson, Executive Secretary, P.O. Box 9649, Olympia, WA 98504, 234-1153 scan, 753-1153 comm.

Name of the Person or Organization that is Proposing the Rules: Washington State Council on Hearing Aids.

Agency Comments or Recommendations: Rule making and disciplinary authorities under chapter 18.35 RCW were previously delegated to the director of the Department of Licensing. The authorities were newly delegated to the Council on Hearing Aids with the enactment of RCW 18.35.161. The council has undertaken to review existing rules and to propose amendments necessary to fulfill the obligations imposed upon the council by RCW 18.35.161.

These Rules are not necessary to comply with a federal law or a federal or state court decision.

Any Other Information that may be of Assistance in Identifying the Rules or their Purposes: None.

Small Business Economic Impact Statement: A small business economic impact statement is not required and has not been filed since these rules do not impact more than twenty percent of all industries, or more than ten percent of any one industry as that term is defined by RCW 19.85.020(3).

AMENDATORY SECTION (Amending Order PL 190, filed 5/23/75)

WAC 308-50-010 EXAMINATIONS. (1) The examination required of applicants shall be in two parts: Written and practical, each consisting of several sections. (Note: The ~~(examination)~~ home study course prepared by the national hearing aid society will be used as a guideline.)

(2) The minimum passing grade for each section shall be seventy percent with the minimum average grade of seventy-five percent for each part before an applicant shall be considered to have satisfactorily passed the required examination for licensure.

(3) In addition to those subjects listed in RCW 18.35.070, the examination shall test the knowledge of the applicant in the basic act governing hearing aid fitter/dispensers and rules and regulations promulgated pursuant to this act.

(4) Applications for examination shall be received by the department at least sixty days prior to the date of the scheduled examination. If the application is received less than sixty days before the next scheduled examination, the applicant will be scheduled for the second examination following receipt of the application.

AMENDATORY SECTION (Amending Order PL 222, filed 11/5/75)

WAC 308-50-020 REEXAMINATIONS. (1) Should an applicant fail any section, he may apply to the department to be reexamined in such section(s).

(2) All reexaminations shall be conducted at the next regularly scheduled examination.

(3) Any person who fails to qualify for licensure after three consecutive regularly scheduled examinations shall be required to take the entire examination.

AMENDATORY SECTION (Amending Order PL 159, filed 2/8/74)

WAC 308-50-090 TRAINEES. (1) A trainee may not fit and dispense a hearing aid or be in physical contact with a client or patient unless the sponsor ~~((or a person))~~ licensed under this act ~~((other than a trainee))~~ to whom the trainee is registered is physically present ~~((or on the premises))~~ with and supervising his or her actions at all times

during the first ninety days the trainee is testing the hearing or fitting or dispensing hearing aids. The extent of direction and supervision of the trainee after the first ninety days of a trainee licensure shall be at the discretion of his sponsor.

(2) During the first ninety days of his or her licensure, a trainee shall wear an identification badge readily visible to the public which identifies him or her as a trainee.

(3) A trainee ~~((licensed less than ninety days))~~ may not make housecalls and test the hearing or dispense hearing aids unless ~~((a person licensed under chapter 18.35 RCW in a capacity other than a trainee))~~ the licensed fitter/dispenser sponsor under whom he or she is registered is physically present with and supervising his or her actions at all times.

(4) A trainee who loses his or her sponsor for any reason may not continue his or her trainee status with a new sponsor until a new trainee application has been filed and payment of this license fee required by RCW 18.35.060 (1)~~((d))~~~~((c))~~ has been received by the department~~((PROVIDED, That, if a trainee obtains a new sponsor and submits the required application within thirty days of the withdrawal of his previous sponsor, the fee shall only be five dollars))~~.

(5) If a sponsor dies or withdraws from business, it shall be the responsibility of the trainee to report the loss of such sponsorship to the department in writing.

AMENDATORY SECTION (Amending Order PL 159, filed 2/8/74)

WAC 308-50-100 ~~((TRAINEE SPONSORS))~~ TERMINATION OF TRAINEE SPONSORSHIP. (1) The sponsor of a trainee who desires to terminate the responsibilities of sponsorship shall provide the trainee written notice of such termination, giving reasons, and shall immediately notify the department by registered or certified mail, of the termination of such sponsorship.

(2) In the event the trainee quits or terminates for any reason, the sponsor shall notify the department immediately by registered or certified mail.

(3) The sponsor of such terminating trainee shall be responsible for the trainee until such time as the notification of such termination is deposited in the United States mail.

AMENDATORY SECTION (Amending Order PL 159, filed 2/8/74)

WAC 308-50-110 MINIMUM STANDARDS OF EQUIPMENT. Minimum equipment in the fitting and dispensing of hearing aids shall include:

(1) Access to a selection of hearing aid models, and hearing aid supplies and services sufficiently complete to accommodate the various user needs.

(2) Facilities for the personal comfort of customers.

(3) A test environment with background noise no greater than current American National Standards Institute specifications plus 15 dB ~~((in each place of business by January 1, 1975))~~.

(4) Pure tone audiometer calibrated in accordance with WAC 308-50-120.

(5) Equipment appropriate for conducting speech audiometry (testing).

AMENDATORY SECTION (Amending Order PL 159, filed 2/8/74)

WAC 308-50-120 STANDARDS FOR EQUIPMENT CALIBRATION. All electronic equipment utilized by licensees for the determination of audiometric thresholds for pure tones and for speech shall conform to all current standards of the American National Standards Institute (at present, ANSI S3.6 - 1969). Licensees shall insure that all such audiometric equipment has been evaluated electrically and acoustically at least once each year, adjusted or repaired if necessary, and that conformity with such standards was determined at that time. Records of such calibration shall be permanently maintained by licensees and shall be available for inspection at any time by the department. No licensee shall be permitted to certify as to the calibration of his own equipment unless authorized to do so by the department. In addition, all licensees shall utilize ~~((their own))~~ routine procedures for the daily inspection of audiometric equipment, or prior to use if used less often than on a daily basis, to generally determine that it is in normal working order. ~~((These procedures shall be written and known to all licensees in each place of business, and shall be readily available for inspection by the department.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-50-050 FAILURE TO RENEW LICENSE.

WSR 84-04-049

PROPOSED RULES

BELLEVUE COMMUNITY COLLEGE

[Filed January 30, 1984]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that Bellevue Community College, Community College District VIII, intends to adopt, amend, or repeal rules concerning new section WAC 132H-200-110 general policy on sexual harassment, chapter 132H-200 WAC, general operating policies of Community College District VIII;

that the institution will at 1:30 p.m., Tuesday, March 13, 1984, in the Board Room, Bellevue Campus, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.50.140.

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before March 13, 1984.

Dated: January 19, 1984

By: Paul N. Thompson
Secretary, Board of Trustees

STATEMENT OF PURPOSE

Description of Purpose: New section under chapter 132H-200 WAC, General operating policies of Community College District VIII, WAC 132H-200-110, General policy on sexual harassment, to provide an environment free of sexual harassment.

Statutory Authority: RCW 28B.50.140.

Summary of Rule: For general policy purposes, the term sexual harassment may include, without limitation, such behavior as unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct and expressive behavior of a sexual nature. The college recognizes its moral, ethical, and legal responsibilities regarding sexual harassment and will take appropriate action to rid the institution of such conduct.

Reasons for Supporting Proposed Action: Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: The inappropriate introduction of sexual activities or comments into the work or learning situation. Often, sexual harassment involves relationships of unequal power, and contains elements of coercion — as when compliance

with requests for sexual favors becomes a criterion for granting work, study, or grading benefits. Sexual harassment may also involve relationships among equals, as when repeated sexual advances or demeaning verbal behavior have a harmful effect on a person's ability to study or work in the academic setting.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul N. Thompson, President, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 641-2301, scan 334-2301.

Person or Organization Proposing Rule, and Whether Public, Private or Governmental: Board of Trustees, Bellevue Community College.

Institution Comments or Recommendations, if any: None.

Rule Necessary as Result of Federal Law or Federal or State Court Action: No.

WAC 132H-200-110 GENERAL POLICY ON SEXUAL HARASSMENT. It shall be the policy of Bellevue Community College, consistent with effort to respect the dignity and integrity of both employees and students, to provide an environment free of sexual harassment.

Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: the inappropriate introduction of sexual activities or comments into the work or learning situation. Often, sexual harassment involves relationships on unequal power, and contains elements of coercion — as when compliance with requests for sexual favors becomes a criterion for granting work, study, or grading benefits. However, sexual harassment may also involve relationships among equals, as when repeated sexual advances or demeaning verbal behavior have a harmful effect on a person's ability to study or work in the academic setting.

For general policy purposes, the term sexual harassment may include, without limitation, such behavior as unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct and expressive behavior of a sexual nature where: (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education.

(2) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual.

(3) Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or demeaning employment or educational environment.

The college recognizes its moral, ethical, and legal responsibilities regarding sexual harassment and will take appropriate action to rid the institution of such conduct.

WSR 84-04-050

**NOTICE OF PUBLIC MEETINGS
URBAN ARTERIAL BOARD**

[Memorandum—January 30, 1984]

Meeting beginning at 9:30 a.m., Friday, February 17, 1984, Urban Arterial Board, Transportation Building, Olympia, Washington 98504.

Note: Persons wishing to testify at the meeting will be required to contact the UAB in writing prior to February 10, 1984.

WSR 84-04-051
NOTICE OF PUBLIC MEETINGS
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION
[Memorandum—January 31, 1984]

The March 8-9, 1984, regular meeting of the Interagency Committee for Outdoor Recreation will be held in the Council Chambers, Lacey City Hall, 420 College Street S.E., Lacey, Washington, beginning at 9:00 a.m., Thursday, March 8th. (Note that the Friday, March 9, date is held in reserve should it be necessary to extend discussion of agency items. For public convenience, the IAC attempts to keep its meeting to one day.)

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided at this regular IAC meeting if necessary. A request for this type of service, however, must be received by the IAC ten days before the meeting (February 29, 1984). Please contact: Robert L. Wilder, Director, 4800 Capitol Blvd., KP-11, Olympia, Washington 98504, (206) 753-3610. The meeting site is barrier free.

WSR 84-04-052
NOTICE OF PUBLIC MEETINGS
FORT STEILACOOM
COMMUNITY COLLEGE
[Memorandum—January 24, 1984]

Fort Steilacoom Community College, being a state institution of higher education, hereby complies with the Washington Open Public Meetings Act (chapter 42.30 RCW) with regard to advertising the meeting schedule of the student senate meetings of the college. Upon the advice of AGO 1983 1, reference RCW 28B.15.045(4), meetings for the winter quarter 1984 are listed below. This is a revision of the list sent on April 13, 1983.

<u>Dates</u>	<u>Location</u>	<u>Time</u>
January 26	Fort Steilacoom Community College	3:00 p.m.
February 9, 23	Portable 12-Boardroom	
March 14	9401 Farwest Drive S.W. Tacoma, WA 98498	

WSR 84-04-053
ATTORNEY GENERAL OPINION
Cite as: AGO 1984 No. 2
[January 30, 1984]

DISTRICTS—SCHOOLS—TRANSPORTATION—CONTRACTS—COMPETITIVE BIDDING ON SCHOOL DISTRICT TRANSPORTATION CONTRACTS

The provisions of RCW 28A.58.135 do not require school districts to go through a competitive bidding process prior to entering into a contract for pupil transportation services under RCW 28A.58.131.

Requested by:
Honorable Robert V. Graham
State Auditor
Legislative Building
Olympia, Washington 98504

WSR 84-04-054
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed January 31, 1984]

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 388-87-095 Payment—Physicians service.
- Amd WAC 388-95-360 Allocation of income—Institutionalized recipient.
- Amd WAC 388-99-030 Allocation of excess income—Spendsdown;

that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.09 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
Division of Administration and Personnel
Department of Social and Health Services
Mailstop OB 14
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 30, 1984

By: David A. Hogan, Director

Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.
Re: Amending WAC 388-87-095, 388-95-360 and 388-99-030.

Purpose of the Rule Change: To clarify present regulations.

The Reason These Rule Changes are Necessary: For proper administration of the medical assistance program.
Statutory Authority: RCW 74.08.090.

Summary of the Rule Change: Places limitations on EPSDT screenings, allows for higher personal needs allowance for certain SSI recipients.

Person Responsible for Drafting, Implementation and Enforcement of the Rule Change: Jim Sparks, Program Manager, Division of Medical Assistance, Mailstop: LK-11, Phone: 3-7316.

These rules are not necessary as a result of federal law, federal court decision or state court decision.

AMENDATORY SECTION (Amending Order 1684, filed 7/29/81)

WAC 388-87-095 PAYMENT—PHYSICIAN SERVICE. (1) General provisions.

(a) Billing and payment for physician services will be made in accordance with divisional billing instructions and schedule of maximum allowances.

(b) The CSO may request a physician to complete a physical examination as described in WAC 388-86-095(2). In such cases, the local office requests the physician to arrange an appointment for the individual and provides the physician with a preapproved form A-19 for billing. A predetermined fee has been established for the cost of such examination, plus necessary laboratory and x-ray procedures. If the physician completes form 13-21, medical report, from available medical records without conducting an examination, an adjusted fee shall be paid.

(2) Exclusions and limitations.

(a) No payment is made to the physician for mileage.

(b) No payment is made to the physician for prescription refills.

(c) No payment is generally made for medical supplies used in conjunction with an office visit; however, payment may be made for items such as sling and swathe, clavicle and shoulder splints, cervical collars and ace bandages, subject to the limitations of the physician's acquisition cost.

(d) When it comes to the attention of the division of medical assistance that a physician bills the department for inpatient hospitalization visits and the period of hospitalization has been denied, no payment will be made.

(e) EPSDT screenings, as described in WAC 388-86-027, shall be limited to:

(i) A maximum of five screenings for children under the age of one year;

(ii) An average of one screening annually by a provider for children between the ages of one and twenty-one years.

AMENDATORY SECTION (Amending Order 2005, filed 8/23/83)

WAC 388-95-360 ALLOCATION OF INCOME—INSTITUTIONALIZED RECIPIENT. (1) All institutionalized recipients will retain a specified personal needs allowance.

(2) The AFDC related individual in a medical facility is eligible to receive an amount as a cash assistance payment sufficient to bring income up to the personal needs allowance.

(3) SSI related recipients may retain the current personal needs allowance plus wages received for work approved by the department as part of a training or rehabilitative program designed to prepare the individual for less restrictive placement. The total amount of wages received plus the personal needs allowance may not exceed the one person medically needy income level. There are no deductions for expenses of employment. When the total amount of wages received plus the initial personal needs allowance exceeds the one person medically needy income level, the excess wages are applied to the cost of care.

(4) SSI related recipients, who require a higher personal needs allowance because of court ordered requirements, may retain an amount equal to the court ordered requirements not to exceed the one person medically needy income level.

(5) In addition to the allocations in subsections (1), (3) and ((†)) of this section, SSI related individuals residing in a medical facility throughout a calendar month are entitled to the following allocations of income as applicable:

(a) Maintenance needs of spouse not to exceed the one person medically needy income level;

(b) Maintenance needs of family adjusted for number of family members living at home, but not to exceed highest payment standard for a family of same size under AFDC;

(c) Amounts for incurred medical expenses not subject to third-party payment (~~(including but not)~~) and limited to:

(i) Health insurance premiums, co-insurance or deductible charges;

(ii) Necessary medical care recognized under state law but not covered under Medicaid;

(d) For a single person, maintenance of the home where the individual has been certified by a physician to need institutional care for no more than six consecutive months. See WAC 388-95-380 (1) (a) (iv);

(i) Income thus exempted must be used to retain the independent living situation of an individual with no dependents through payment of such requirements as rent or mortgages, real estate taxes, insurance, gas, electricity, oil, water or sewer necessary to maintain the home. Also see chapter 388-28 WAC;

(ii) Up to one hundred eighty dollars per month may be exempted from the individual's actual income based on the verified actual cost to retain the home during six consecutive months;

(iii) The six-month period begins on the first of the month following date of admission for Medicaid eligible recipients or the date of eligibility for individuals changing from private to Medicaid, and ceases when the patient is discharged to an independent living arrangement or at the end of six months if the recipient has not been discharged;

(iv) CSO social service staff shall document initial need for the income exemption and review the individual's circumstances after ninety days. Also see chapter 388-28 WAC.

~~((5))~~ (6) Income remaining in subsections (1), (2), (3) ((or))₂ (4) or (5) of this section, will be used to compute payment of the participation amount (that income remaining after allocation of income) at the department rate.

AMENDATORY SECTION (Amending Order 1725, filed 12/3/81)

WAC 388-99-030 ALLOCATION OF EXCESS INCOME—SPENDDOWN. (1) On initial or subsequent applications previously incurred medical expenses are deducted from excess countable income subject to the following restrictions.

(a) The medical expense must be a current liability of the individual or financially responsible relative in the same household. See WAC 388-92-025(4).

(b) The medical expenses have not been used at any other time to reduce excess countable income on a medical application which resulted in eligibility.

(c) The portion of the medical expense paid or covered by third-party liability can not be considered toward spenddown.

(d) Only medical services provided by practitioners recognized under state law will be considered. ~~((See WAC 388-87-005.~~

~~(e) Certain services recognized under state law will not be considered.~~

~~(f) Medical services recognized for purposes of reducing excess countable income are stated in chapters 388-86 and 388-91 WAC, and shall include chiropractic and adult dental services.)~~

(2) If the incurred medical bills equal or exceed the excess countable income at the time of application, the applicant is certified eligible.

(3) If the incurred medical bills are less than the excess countable income, the application is not approved and the individual is required to spenddown the remaining excess countable income. The applicant is certified eligible only when excess countable income has been completely spenddown. Medical expenses incurred during the spenddown period are deducted in the following order:

(a) Medicare and other health insurance premiums, deductibles, co-insurance charges, enrollment fees, or copayments.

(b) Expenses for necessary medical and remedial care not covered by the limited casualty program.

(c) Expenses for necessary medical and remedial care covered by the limited casualty program which have been paid by the applicant.

(d) Expenses for necessary medical and remedial care covered by the limited casualty program which have not been paid.

(4) The applicant is responsible for providing complete documentation of incurred medical expenses. Once medical eligibility has been approved, expenses which were not listed or which were omitted will not be considered. Such expenses may be used to reduce excess countable income on a subsequent application provided the conditions in subsection (1) of this section are met.

(5) The applicant is liable for any expenses incurred prior to the spenddown satisfaction date.

WSR 84-04-055
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed January 31, 1984]

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 Medical care services—General assistance, amending WAC 388-86-120.

It is the intention of the secretary to adopt these rules on an emergency basis on February 1, 1984;

that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 74.08.090.

The specific statute these rules are intended to implement is chapter 74.09 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
 Division of Administration and Personnel
 Department of Social and Health Services
 Mailstop OB 14
 Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 27, 1984

By: David A. Hogan, Director

Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: WAC 388-86-120.

Purpose of the Rule or Rule Change: To remove the prohibition on hearing aids for GAU recipients.

The Reason(s) These Rules are Necessary: A change in the department's policy.

Statutory Authority: RCW 74.08.090.

Summary of the Rule or Rule Change: Will provide for hearing aids for GAU recipients.

Person or Persons Responsible for the Drafting, Implementation and Enforcement of the Rule: Jim Sparks, Program Manager, Division of Medical Assistance, Phone: 3-7316, Mailstop: LK-11.

These rules are not necessary as a result of federal law, federal court decision or state court decision.

AMENDATORY SECTION (Amending Order 1996, filed 8/5/83)

WAC 388-86-120 MEDICAL CARE SERVICES (GAU). A recipient of a continuing general assistance grant is eligible to receive the same scope of care (WAC 388-86-005) as a recipient of medicaid, except that no care will be provided outside the state of Washington other than in designated bordering cities as specified in chapter 388-82 WAC, and shall be subject to the following additional limitations.

(1) Prescribed drugs are limited to specific therapeutic classifications. Lists are published through the Drug Formulary and/or official memoranda.

(2) Mental health services will be provided only in community mental health centers.

(3) (~~Hearing aids are not provided.~~
 (4)) Eligibility for medical care services shall commence with the date of certification for general assistance. There shall not be retroactive certification for medical care received prior to the initial date of eligibility for the general assistance program.

WSR 84-04-056
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Institutions)
 [Filed January 31, 1984]

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 maximum allowable compensation of certain administrative personnel, amending WAC 275-38-730;

that the agency will at 2:00 p.m., Wednesday, March 7, 1984, in the Third Floor Conference Room, H-19, Office Building #2, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1984.

The authority under which these rules are proposed is RCW 74.09.120.

The specific statute these rules are intended to implement is RCW 74.09.120.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1984.

Correspondence concerning this notice and proposed rules attached should be addressed to:

David A. Hogan, Director
 Division of Administration and Personnel
 Department of Social and Health Services
 Mailstop OB 14
 Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact William B. Pope, Chief, Office of Administrative Regulations, at State Office Building #2, 12th and Franklin, Olympia, Phone (206) 753-7015, by February 22, 1984. The meeting site is in a location which is barrier free.

Dated: January 30, 1984

By: David A. Hogan, Director

Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 275-38-730.

Purpose of the Rule Change: To revise maximum allowable total compensation for licensed administrators.

The Reason These Rules are Necessary: To reflect maximum allowable compensation.

Statutory Authority: RCW 74.09.120.

Summary of the Rule Change: Revises maximum allowable total compensation for licensed administrators.

Person Responsible for Drafting, Implementation and Enforcement of the Rule Change: Roger Gantz, Manager, Reimbursement Section, Division of Developmental Disabilities, Mailstop: OB 42C, Phone: 753-4449.

These rules are not necessary as a result of federal law, federal court decision or state court decision.

AMENDATORY SECTION (Amending Order 1853, filed 8/3/82)

WAC 275-38-730 MAXIMUM ALLOWABLE COMPENSATION OF CERTAIN ADMINISTRATIVE PERSONNEL. (1) Compensation for administrative personnel shall be an allowable cost, subject to the limits contained in this section.

(2) Total compensation of the licensed administrator for services actually rendered to an IMR facility on a full-time basis (at least forty hours per week, including reasonable vacation, holiday, and sick time) will be allowable at the lower of:

(a) Actual compensation received((:)); or

(b) ~~The maximum amount ((in the table in subsection (5) of this section corresponding to))~~ allowed by the department based on the number of set-up beds in the IMR facility. Compensation of the licensed administrator will only be allowable if the department is given written notice of his or her employment within ten days after the employment begins.

(3) Total compensation of not more than one full-time licensed assistant administrator will be allowable if there are at least eighty set-up beds in the IMR, at the lower of:

(a) Actual compensation received((:)); or

(b) ~~Seventy-five percent of the ((appropriate)) maximum amount ((in the table in subsection (5) of this section))~~ allowed.

(4) Total compensation of not more than one full-time registered administrator-in-training will be allowable at the lower of:

(a) Actual compensation received((:)); or

(b) ~~Sixty percent of the ((appropriate)) maximum amount ((in the table in subsection (5) of this section))~~ allowed.

(5)

((TABLE

Maximum Allowable Total Compensation for Licensed Administrators—Calendar Year 1982

SET-UP BEDS

16—39	\$27,000
40—79	\$29,700
80—119	\$32,800
120—159	\$35,900
160—239	\$39,500
240—319	\$43,500
320—399	\$47,800
400 and up	\$52,600

(6)) If the licensed administrator, licensed assistant administrator, or registered administrator-in-training regularly works fewer than forty hours per week, allowable compensation shall be the lower of:

(a) Actual compensation received, or

(b) The ((appropriate)) maximum amount ((in the table in subsection (5) of this section)) allowed multiplied by the percentage derived ((from the division of the)) by dividing actual hours worked by forty hours. Further discounting is required if the person was licensed or registered and/or worked for less than the entire report period.

((7)) (6) The contractor shall maintain time records for the licensed administrator and for an assistant administrator, administrator-in-training, or QMRP, if any.

((8)) (7) The cost of a licensed administrator, assistant administrator, or administrator-in-training is not an allowable expense in IMR facilities of fifteen beds or less. Administrative services will be provided by the QMRP in these facilities. Total compensation of wages and salaries for the QMRP will be allowable at the lower of:

(a) Actual compensation received; or

(b) The hourly cost of wages and salaries of QMRP in level C and D IMR contracting with the department multiplied by the QMRP regularly worked hours per week, not to exceed forty hours per week.

WSR 84-04-057

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health)

[Order 2069—Filed January 31, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to certificate of need, amending chapter 248-19 WAC.

I, David A. Hogan, find that an emergency exists and that this 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 the emergency is these rules are necessary to implement chapter 235, Laws of 1983.

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

This rule is promulgated pursuant to RCW 70.38.135 which directs that the Department of Social and Health Services has authority to implement the provisions of chapter 70.38 RCW.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 31, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-220 DEFINITIONS. For the purposes of chapter 248-19 WAC, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Affected persons" means the applicant, the health systems agency for the health service area ((in which)) where the proposed project is to be located, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area ((in which)) where the project is proposed to be located

~~((which provide))~~ providing services similar to the services under review, health care facilities and health maintenance organizations, which, prior to receipt by the department of the proposal being reviewed, have formally indicated an intention to provide similar services in the future, third-party payers ~~((who reimburse))~~ reimbursing health care facilities for services in the health service area ~~((in which))~~ where the project is proposed to be located, any agency ~~((which establishes))~~ establishing rates for health care facilities or health maintenance organizations located in the health service area ~~((in which))~~ where the project is proposed to be located, any person residing within the geographic area served or to be served by the applicant, and any person ~~((who))~~ regularly ~~((uses))~~ using health care facilities within that geographic area.

(3) "Ambulatory care facility" means any place, building, institution, or distinct part thereof ~~((which is))~~ not a health care facility as defined in this section and ~~((which is))~~ operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

(4) "Ambulatory surgical facility" means a facility, not a part of a hospital, ~~((which provides))~~ providing surgical treatment to patients not requiring inpatient care in a hospital. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice.

(5) "Applicant," except as used in WAC 248-19-390, means any person ~~((who proposes))~~ proposing to engage in any undertaking ~~((which is))~~ subject to review under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

"Applicant," as used in WAC 248-19-390, means any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity ~~((that engages))~~ engaging in any undertaking ~~((which is))~~ subject to review under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(6) "Annual implementation plan" means a description of objectives which will achieve goals of the health systems plan and specific priorities among the objectives. The annual implementation plan is for a one-year period and must be reviewed and amended as necessary on an annual basis.

(7) "Board" means the Washington state board of health.

(8) "Capital expenditure" means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person

makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, such acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a health care facility, which if acquired directly by such facility, would be subject to review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review.

(9) "Certificate of need" means a written authorization by the secretary for a person to implement a proposal for one or more undertakings.

(10) "Certificate of need unit" means that organizational unit of the department ~~((which is))~~ responsible for the management of the certificate of need program.

(11) "Commencement of construction" means whichever of the following occurs first: Giving notice to proceed with construction to a contractor for a construction project; beginning site preparation or development; excavating or starting the foundation for a construction project; or beginning alterations, modification, improvement, extension, or expansion of an existing building.

(12) "Construction" means the erection, building, alteration, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

(13) "Council" means the state health coordinating council established under the provisions of chapter 70.38 RCW and Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(14) "Days," except when called "working days," means calendar days ~~((which are))~~ counted by beginning with the day after the date of the act, event, or occurrence from which the designated period of time begins to run. If the last day of the period so counted should fall on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period shall run until the end of the first working day ~~((which follows))~~ following the Saturday, Sunday, or legal holiday.

"Working days" exclude all Saturdays and Sundays, January 1, February 12, the third Monday in February, the last Monday of May, July 4, the first Monday in September, November 11, the fourth Thursday in November, the day immediately following Thanksgiving day, and December 25. Working days are counted by beginning with the first working day after the date of the act, event, or occurrence from which a designated period of time begins to run.

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

(16) "Expenditure minimum" means one hundred fifty thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period, in an index established by rules and regulations by the department for the purpose of making such adjustment.

(17) "Health care facility" means hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, both skilled nursing facilities and intermediate care facilities, kidney disease treatment centers including freestanding hemodialysis units, ambulatory surgical facilities, rehabilitation facilities, hospices and home health agencies, and includes such facilities when owned and operated by the state or a political subdivision or instrumentality of the state and such other facilities as required by Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 93-641 and implementing regulations, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts.

(18) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, Section 1310(d) of the Public Health Service Act, or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subsection (18)(b)(i) of this ((subsection)) section to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily:

(A) Directly through physicians who are either employees or partners of such organization, or

(B) Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(19) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

(20) "Health systems agency" means a public regional planning body or a private nonprofit corporation (~~(which is))~~ organized and operated in a manner (~~(that is))~~ consistent with the laws of the state of Washington and ~~((Public Law))~~ P.L. 93-641 and ~~((which is))~~ capable of performing each of the functions described in RCW 70.38.085, and is capable as determined by the secretary of the United States Department of Health and Human Services, upon recommendation of the governor or the council, of performing each of the functions described in the federal law, Title XV of the Public Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

"Appropriate health systems agency" means the health systems agency for the health service area (~~(in which))~~ where a particular project is to be located.

(21) "Health systems plan" means a plan established by a health systems agency which is a detailed statement of goals and resources required to reach those goals as described in the federal law, Title XV of the Public

Health Service Act as amended by ~~((Public Law))~~ P.L. 96-79.

(22) "Home health agency" means any entity which is or is to be certified as a provider of home health services in the Medicaid or Medicare program.

(23) "Hospice" means any public or private entity, center, institution, or distinct part or parts thereof certified or to be certified as a hospice provider in the Medicare program or licensed or certified by the state of Washington to provide hospice services or providing a coordinated program of home and inpatient services for the terminally ill. Services provided by a hospice are primarily palliative and supportive rather than curative in nature, including bereavement care to the family after the patient's death, and provided by an interdisciplinary team. The services are designed to meet the physiological, psychological, social, and spiritual needs of the patient and his or her family.

~~((23))~~ (24) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or any state-owned and operated institution (~~(which is))~~ primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services of injured, disabled, or sick persons. Such term includes tuberculosis hospitals but does not include psychiatric hospitals.

~~((24))~~ (25) "Hospital commission" means the Washington state hospital commission established pursuant to chapter 70.39 RCW.

~~((25))~~ (26) "Inpatient" means a person (~~(who receives))~~ receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

~~((26))~~ (27) "Institutional health services" means health services provided in or through health care facilities and entailing annual direct operating costs of at least seventy-five thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period in an index established by rules and regulations by the department.

~~((27))~~ (28) "Intermediate care facility" means any institution or distinct part thereof (~~(which is))~~ certified as an intermediate care facility for participation in the Medicaid (Title XIX of the Social Security Act) program.

~~((28))~~ (29) "Kidney disease treatment center" means any place, institution, building or agency or a distinct part thereof (~~(which is))~~ equipped and operated to provide services, (~~(which include))~~ including dialysis services, to persons who have end-stage renal disease.

~~((29))~~ (30) "Long-range health facility plan" means a document prepared by each hospital (~~(which contains))~~ containing a description of (~~(its))~~ the hospital's plans for substantial changes in (~~(its))~~ the facilities and services for three years.

~~((30))~~ (31) "Major medical equipment" means a single unit of medical equipment or a single system of components (~~(which is)~~) used for the provision of medical and other health services and (~~(which costs)~~) costing in excess of one hundred fifty thousand dollars, except that such term does not include dental equipment or medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital, and ~~((it))~~ the clinical laboratory has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such act. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

~~((31))~~ (32) "May" means permissive or discretionary.

~~((32))~~ (33) "Nursing home" means any home, place, institution, building or agency or distinct part thereof (~~(which operates)~~) operating or (~~(maintains)~~) maintaining 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. The term "nursing home" includes any such entity (~~(which is)~~) owned and operated by the state or (~~(which is)~~) licensed or required to be licensed under the provisions of chapter 18.51 RCW and any other intermediate care facility or skilled nursing facility as these terms are defined in this section. The term "nursing home" does not include: General hospitals or other places (~~(which provide)~~) providing care and treatment for the acutely ill and (~~(maintain)~~) maintaining and (~~(operate)~~) operating facilities for major surgery or obstetrics or both; psychiatric hospitals as defined in this section; private establishments, other than private psychiatric hospitals, licensed or required to be licensed under the provisions of chapter 71.12 RCW; boarding homes licensed under the provisions of chapter 18.20 RCW; or any place or institution (~~(which is)~~) operated to provide only board, room, and laundry to persons not in need of medical or nursing treatment or supervision.

~~((33))~~ (34) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person proposing such capital expenditure on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

(b) A formal internal commitment of funds by a health care facility for a force account expenditure (~~(which constitutes)~~) constituting a capital expenditure; or

(c) In the case of donated property, the date on which the gift is completed in accordance with state law.

~~((34))~~ (35) "Offer," when used in connection with health services, means the health facility provides or holds itself out as capable of providing or as having the means for the provision of one or more specific health services.

~~((35))~~ (36) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

~~((36))~~ (37) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, (~~(which are)~~) made for architectural designs, plans, drawings or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which may be considered the "commencement of construction" as this term is defined in this section.

~~((37))~~ (38) "Project" means any and all undertakings which may be or are proposed in a single certificate of need application or for which a single certificate of need is issued.

~~((38))~~ (39) "Psychiatric hospital" means any institution or distinct part thereof (~~(which is)~~) primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons and (~~(which is)~~) licensed or required to be licensed under the provisions of chapter 71.12 RCW, or is owned and operated by the state or by a political subdivision or instrumentality of the state.

~~((39))~~ (40) "Rehabilitation facility" means an inpatient facility (~~(which is)~~) operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other health services (~~(which are)~~) provided under competent professional supervision.

~~((40))~~ (41) "Secretary" means the secretary of the Washington state department of social and health services or his or her designee.

~~((41))~~ (42) "Shall" means compliance is mandatory.

~~((42))~~ (43) "Skilled nursing facility" means any institution or distinct part thereof (~~(which is)~~) certified as a skilled nursing facility for participation in the Medicare (Title XVIII) or Medicaid (Title XIX) program.

~~((43))~~ (44) "State health plan" means a document, described in Title XV of the Public Health Service Act, developed by the department and the council in accordance with RCW 70.38.065.

~~((44))~~ (45) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

~~((45))~~ (46) "Undertaking" means any action which, according to the provisions of chapter 248-19 WAC, is subject to the requirements for a certificate of need or an exemption from the requirements for a certificate of need.

AMENDATORY SECTION (Amending Order 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-230 APPLICABILITY OF CHAPTER 248-19 WAC. (1) The following undertakings shall be subject to the provisions of chapter 248-19 WAC, with the exceptions provided for in this section.¹

(a) The construction, development, or other establishment of a new health care facility.

(b) Any capital expenditure by or on behalf of a health care facility ((which)) substantially changing the health services of the facility. Substantial changes in services shall be limited to the following:

(i) ((Is associated with the addition of a substantial health service not provided by or on behalf of the facility within the previous twelve months or which is associated with the termination of a substantial health service provided in or through the facility, or)) The establishment of health services not offered on a regular basis within the twelve-month period prior to the time such services are offered or the termination of such services;

(ii) The introduction of a new technology for diagnosis or treatment;

(iii) A change in the level of service; or

(iv) The offering of any of the following health services at a new location not formerly part of the health care facility's campus. Specific substantial changes in services are as follows:

Alcoholism/substance abuse

Burn unit

Cardiac catheterization

Chronic renal dialysis

Kidney lithotripsy

CT-computed tomography

NMR-nuclear magnetic resonance

PET-positron emission tomography

Emergency services including regular outpatient emergency services staffed by physicians at a health care facility, and the provision of ambulance services, including air ambulance, licensed under chapter 18.73 RCW.

Inpatient psychiatric services

Neonatal special care-level III

Obstetrics-level I

Obstetrics-level II

Obstetrics-level III

Organ transplants, including only heart, liver, kidney, bone marrow, brain, and lung transplants

Open heart surgery

Pediatrics-level I

Pediatrics-level II

Pediatrics-level III

Radiation therapy-megavoltage, orthovoltage

Rehabilitation-level I

Rehabilitation-level II

Rehabilitation-level III

Change in the number of dialysis stations in a health care facility, and

Change from mobile to fixed base CT scanning.

The department may, periodically and on an emergency basis, revise and update specific substantial changes in services.

~~((ii) Which exceeds))~~ (c) Any capital expenditure by or on behalf of a health care facility exceeding the expenditure minimum as defined by WAC 248-19-220(16). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services which under generally accepted accounting principles are not properly chargeable as an expense of operation and maintenance) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure. Functional programming and general long-range planning activities, including marketing surveys and feasibility studies, are not to be included when determining whether an expenditure exceeds the expenditure minimum.

~~((c))~~ (d) A change in bed capacity of a licensed health care facility which increases the total number of licensed beds or redistributes beds among facility and service categories of acute care, skilled nursing, intermediate care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months.

~~((d))~~ (e) The obligation of any capital expenditure by or on behalf of a health care facility ((which is)) not required to be licensed for a change in bed capacity which increases the total number of beds, or redistributes beds among various categories, by more than ten beds or more than ten percent of total bed capacity as defined by the department, whichever is less, over a two-year period.

~~((e))~~ (f) Acquisition of major medical equipment:

(i) If the equipment will be owned by or located in an inpatient health care facility; or

(ii) If the equipment is not to be owned by or located in a health care facility and the department finds, consistent with WAC 248-19-403, that:

(A) The equipment will be used to provide services for inpatients of a hospital on other than a temporary basis in the case of a natural disaster, a major accident, or equipment failure; or

(B) The person acquiring such equipment did not notify the department of the intent to acquire such equipment at least thirty days before entering into contractual arrangements² for such acquisition.

~~((f))~~ (g) The acquisition of an existing health care facility which the department has determined, in accordance with the provisions of subsection (2) of this section, is subject to review;

~~((g))~~ (h) Any new institutional health services which are offered by or on behalf of a health care facility and which were not offered on a regular basis by or on behalf of such health care facility within the twelve-month period prior to the time such services would be offered.

~~((h))~~ (i) Any expenditure by or on behalf of a health care facility in excess of the expenditure minimum made in preparation for any undertaking under this subsection and any arrangement or commitment made for financing such undertaking. Expenditures of

preparation shall include expenditures for architectural designs, plans, working drawings and specifications.

~~((f))~~ (j) The obligation of any capital expenditure by or on behalf of a health care facility which decreases the total number of licensed beds or relocates beds from one physical facility or site to another by ten beds or ten percent, whichever is less, in any two-year period.

~~((f))~~ (k) Any acquisition by donation, lease, transfer, or comparable arrangement, by or on behalf of a health care facility, if the acquisition would otherwise be reviewable under chapter 248-19 WAC if made by purchase.

(2) At least thirty days before any person acquires or enters into a contract² to acquire an existing health care facility, the person shall provide written notification to the department and the appropriate health systems agency, and in the case of a hospital, the hospital commission, of the person's intent to acquire the facility.

(a) Written notification of intent, to be considered valid, shall be made in a form and manner acceptable to the secretary and shall include:

(i) The name and address of the health care facility to be acquired;

(ii) The name and address of the person (~~(who intends)~~) intending to acquire the health care facility;

(iii) A description of the means by which the health care facility would be acquired, including the total capital expenditures associated with the acquisition, and the intended date of incurring the contractual obligation to acquire the health care facility;

(iv) The name and address of the person from whom the facility is to be acquired; and

(v) A description of any changes in institutional health services or bed capacity proposed by the person (~~(who would acquire)~~) acquiring the health care facility.

(b) A certificate of need shall be required for the obligation of a capital expenditure to acquire by purchase, or under lease or comparable arrangement, an existing health care facility if:

(i) A written notification of intent to acquire an existing health care facility is not provided in accordance with WAC 248-19-230(2), or

(ii) The department finds within fifteen working days after receipt of a written notification to acquire a health care facility that the services or bed capacity of the facility will be changed in being acquired.

(c) Within fifteen working days after receipt of a written notification of intent, the department shall send written notice to the person intending to acquire the health care facility, indicating:

(i) Whether the written notification constitutes a valid notification, as prescribed in ~~((subdivision))~~ subsection (2)(a) of this ((subsection)) section and, if such notification is valid,

(ii) Whether such acquisition is subject to certificate of need review.

(d) If the department fails to make a determination within thirty days after receipt of a valid notice, the health care facility may be acquired without a certificate of need.

(3) With respect to ambulatory care facilities and inpatient health care facilities (~~(which are)~~) controlled

(directly or indirectly) by a health maintenance organization or combination of health maintenance organizations, the provisions of chapter 248-19 WAC shall apply only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services, and then only to the extent that such offering, acquisition, or obligation is not exempt under the provisions of WAC 248-19-405.

(4) The extension, on more than an infrequent basis, of the services of a home health agency (~~(services))~~ or a hospice to a population residing in a county not previously regularly included in the service area of that home health agency or hospice during the preceding twelve months constitutes extension of home health services or hospice services beyond ~~((its))~~ a defined geographic area and shall be considered the development or establishment of a new home health agency or hospice.

(5) No person shall engage in any undertaking (~~(which is))~~ subject to certificate of need review under the provisions of this chapter unless a certificate of need authorizing such undertaking has been issued and remains valid or an exemption has been granted in accordance with the provisions of this chapter.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7) The department may issue certificates of need permitting predevelopment expenditures only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made.

(8) A certificate of need application, the review of which had begun but upon which final action had not been taken prior to January 1, 1981, shall be reviewed and final action taken based on chapter 70.38 RCW and chapter 248-19 WAC as in effect prior to January 1, 1981.

(9) Certificates of need issued prior to January 1, 1981, shall not be terminated and the periods of validity of such certificates of need shall not be modified under the provisions of chapter 248-19 WAC which become effective January 1, 1981.

(10) A project for which certificate of need review was waived under the provisions of WAC 248-19-230(8) as in effect January 1, 1980, to January 1, 1981, shall have been completed by January 1, 1981, or, in the case of a construction project, commencement of construction shall have occurred by January 1982. If this requirement is not met, the project shall become subject to the requirements for a certificate of need.

(11) A proposed change in a project associated with a capital expenditure for which a certificate of need has been issued shall be subject to certificate of need review if the change is proposed within one year after the date the activity for which the capital expenditure was approved has been undertaken.

(a) Projects subject to review under this subsection include proposed changes in projects originally subject to review according to the provisions of subsection (1)(b), (c), (d), (e), or ~~((f))~~ (j) of this section.

(b) No capital expenditure need be associated with a proposed change in a project subject to review under this subsection.

(c) A proposed change in a project shall include any change in the licensed bed capacity of a facility, and the addition or termination of an institutional health service.

(12) Administrative review.

(a) The secretary shall have the authority to review and take action, on the basis of information submitted on an abbreviated application form acceptable to the secretary, the following categories of expenditures:

(i) The acquisition of land;

(ii) Capital costs associated with the refinancing of existing debt;

(iii) The obligation of any capital expenditure by or on behalf of a health care facility which decreases the total number of licensed beds or relocates licensed beds from one physical facility or site to another by ten beds or ten percent, whichever is less, in any two-year period; and

(iv) A proposed change in a project reviewed in accordance with WAC 248-19-230(11).

(b) Such review shall be completed within ten working days after receipt of an application.

(13) The provision of hospice services by an entity providing the services described in the definition of "hospice" in WAC 248-19-220, when such an entity was providing services as of July 24, 1983, shall not be considered the establishment of a new health facility or service and shall not be subject to certificate of need review. Persons providing hospice services as of July 24, 1983, shall submit information prescribed by the department showing they were providing hospice services as of that date and showing the services provided and the county or counties comprising the service area.

NOTE:

¹Where a hospital is part of a larger institution, such as a university, the components of the larger institution (e.g., a component conducting medical research) not related to the hospital will not be considered part of the hospital, whether or not the hospital is a distinct legal entity. Similarly, when there is a legal entity, the primary activity of which is operating a hospital, but which also operates a distinct research component, the research component will not be considered part of the hospital. In these cases, the component conducting medical research that is distinct from the hospital and that neither provides inpatient services nor uses revenues derived from patient charges at the hospital to finance its operations will not be considered part of the hospital.

Further, expenditures by a component of a larger institution, such as a university, which is distinct from a separate health care facility component, such as the university's hospital, will not be viewed as being "by a health care facility." Thus, a capital expenditure by a university medical school that is a distinct component of the university will not be considered to be "by" the hospital of the university. In finding that the medical school is distinct, the department must find at least that the revenues derived from patient

charges at the hospital of the university are not used for operating expenses of the medical school.

If a capital expenditure exceeds the expenditure minimum, for it to be required to be subject to review, the department must find that it is "on behalf of" a health care facility. Such an expenditure is also required to be subject to review if it is for the acquisition of major medical equipment and meets the conditions set forth in WAC (~~248-19-230(t)(e)~~) 248-19-230(1)(f). The same analysis would apply to a distinct research component of a legal entity, the primary activity of which is operating a hospital.

²A person may enter into a contractual arrangement at an earlier date, provided such contractual arrangement is contingent upon a determination by the department that a certificate of need is not needed or upon issuance of a certificate of need.

WSR 84-04-058

PROPOSED RULES

BOARD OF

INDUSTRIAL INSURANCE APPEALS

[Filed January 31, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Board of Industrial Insurance Appeals intends to adopt, amend, or repeal rules relating to rules of practice and procedure before the Board of Industrial Insurance Appeals, WAC 263-12-115.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 27, 1984.

The authority under which these rules are proposed is RCW 51.52.020, chapter 23, Laws of 1961.

The specific statute these rules are intended to implement is chapter 52.52 [51.52] RCW and chapter 301, Laws of 1983.

This notice is connected to and continues the matter in Notice Nos. WSR 83-22-067 and 84-04-025 filed with the code reviser's office on November 2, 1983, and January 25, 1984.

Dated: January 31, 1984

By: Michael L. Hall
Chairman

WSR 84-04-059

EMERGENCY RULES

BOARD OF

INDUSTRIAL INSURANCE APPEALS

[Order 16—Filed January 31, 1984]

Be it resolved by the Board of Industrial Insurance Appeals, acting at Olympia, Washington, that it does adopt the annexed rules relating to rules of practice and procedure before the Board of Industrial Insurance Appeals, WAC 263-12-115.

We, the Board of Industrial Insurance Appeals, find that an emergency exists and that this 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 the emergency is a question has arisen concerning the meaning and intent of certain rules and immediate clarification is necessary and desirable to avoid unnecessary expense and delay to agency users and to set forth more specifically the duties and responsibilities of agency employees.

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

This rule is promulgated under the general rule-making authority of the Board of Industrial Insurance Appeals as authorized in RCW 51.52.020.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 31, 1984.

By Michael L. Hall
Chairman

AMENDATORY SECTION (Amending Order 12, filed 12/2/82)

WAC 263-12-115 PROCEDURES AT HEARINGS. (1) Industrial appeals judge. All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) Order of presentation of evidence.

(a) In any appeal under either the Industrial Insurance Act or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief.

(b) In all appeals under the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order.

Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) Objections and motions to strike. Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) Rulings. The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) Interlocutory appeals to the Board — Confidentiality of trade secrets. (~~Rulings on evidence or other interlocutory rulings of the industrial appeals judge shall~~

~~not be subject to direct appeal to the board, with the exception that a)) A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.~~

~~(6) Interlocutory review by the chief industrial appeals judge.~~

~~(a) Except as provided in WAC 263-12-115(5) interlocutory rulings of the industrial appeals judge are not subject to direct review by the Board. A party to an appeal may within three working days of receiving an adverse ruling from an industrial appeals judge request a review of such ruling by the chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support thereof setting forth the grounds therefor, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within ten working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.~~

~~(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.~~

~~(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings, nor shall any scheduled proceedings be canceled pending a response to the request.~~

~~(d) The time limits set forth herein may be extended in the discretion of the chief industrial appeals judge or his or her designee.~~

~~((6)) (7) Recessed hearings. Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "Notice of Hearing" shall be required as to any recessed hearing.~~

~~((7)) (8) Failure to present evidence when due. If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to present thereat all of such evidence, ((it shall be discretionary with the industrial appeals judge as to whether to)) the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or ((to)) recess or set over the proceedings to further hearing for the receipt of such evidence((, or to require its presentation by way of deposition to be taken and published within prescribed time limits, with each party bearing its own costs, which time limits may be extended by the industrial appeals judge for good cause)).~~

~~((8)) (9) Evidence by deposition. When a hearing is recessed or set over pursuant to WAC 263-12-115(7) or~~

(8), or ((#)) if a party volunteers or desires to take the testimony of any witness in a proceeding by deposition, or if the admission of evidence cannot otherwise be accomplished in a reasonably timely manner, the industrial appeals judge may permit or require the perpetuation of testimony by deposition regardless of the witness' availability to testify at the hearing or at a future recessed hearing. Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) The complexity of the issues raised by the appeal, (b) ~~((the need for the industrial appeals judge to personally observe the witness and evaluate the witness' demeanor and credibility;))~~ the desirability of having the witness' testimony presented at a hearing, (c) the costs incurred by the parties in complying with the ruling, and (d) the fairness to the parties in complying with the ruling. The industrial appeals judge may require that depositions be taken and published within prescribed time limits, with each party bearing its own costs, which time limits may be extended by the industrial appeals judge for good cause.

(10) Offers of proof in colloquy. When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

WSR 84-04-060
EMERGENCY RULES
DEPARTMENT OF FISHERIES
 [Order 84-05—Filed January 31, 1984]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, William R. Wilkerson, find that an emergency exists and that this 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 the emergency is harvestable numbers of sturgeon are available and these regulations conform state regulations with the Columbia River compact adopted regulations.

These 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 the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 31, 1984.

By William R. Wilkerson
 Director

NEW SECTION

WAC 220-32-04000U SEASON AND AREA—STURGEON SETLINE. Notwithstanding the provisions of WAC 220-32-040, effective 12:01 a.m. February 1, 1984, until further notice it is unlawful to take, fish for, or possess sturgeon taken for commercial purposes with setline gear in Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the seasons, in the areas, at the times and with the gear and under the provisions designated below:

(1) 12:00 noon March 1 until further notice in Areas 1A, 1B, 1C and 1D; 12:00 noon March 1 to 12:00 noon March 31, 1984 in that portion of Area 1E downstream from a line due north from the mouth of Oneota Creek on the Oregon shore to a fishing boundary marker on the Washington shore; 12:00 noon March 31 until further notice in that portion of Area 1E downstream from the Interstate 205 Bridge.

(2) Setline gear is limited to 4 lines per fisherman, not more than 300 hooks per line, with buoys which must float visibly at all times attached to each end of each setline on which buoys must be written in a legible manner the fishing license number of the fisherman operating the setline gear.

(3) Minimum hook gap inside shank to point is 1 15/16 inches for standard hooks or 1 inch for circle-type hooks, and only single hooks are permitted.

(4) Gangions must contain an in-line swivel between the groundline and the hook.

(5) Setlines must be attended once every 48 hours, weather permitting.

(6) All sturgeon under 48 inches in length and over 72 inches in length must be released immediately and all sturgeon in transit must not have head or tail removed.

(7) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon on board.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 1, 1984:

WAC 220-32-04000T SEASON AND AREA—STURGEON SETLINE. (84-01)

WSR 84-04-061
PROPOSED RULES
HORSE RACING COMMISSION
 [Filed January 31, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Horse

Racing Commission intends to adopt, amend, or repeal rules concerning:

Amd	WAC 260-70-010	Definitions of terms "bleeder" and "bleeder list."
Amd	WAC 260-70-021	Prohibition of medication in two-year old horses.
New	WAC 260-70-025	Creation of a "bleeder list."
New	WAC 260-70-026	Bleeder treatment.
New	WAC 260-70-027	Reciprocity of the bleeder list.
New	WAC 260-70-028	Use of a detention stall.
New	WAC 260-70-029	Use of a receiving barn.
New	WAC 260-70-031	Reporting to a receiving barn.
New	WAC 260-70-032	Exclusion from receiving barn.
Amd	WAC 260-70-090	Specifying other permitted medication.
Amd	WAC 260-70-100	Penalty for furosemide use if horse is not on the official bleeder list;

that the agency will at 3:00 p.m., Tuesday, March 6, 1984, in the Marriott Hotel, Sea-Tac, 3201 South 176th Street, Seattle, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 67.16.020 and 67.16.040.

The specific statute these rules are intended to implement is RCW 67.16.020.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 2, 1984.

Dated: January 30, 1984

By: Robert G. Earley
Executive Secretary

STATEMENT OF PURPOSE

In the matter of amending WAC 260-70-010, 260-70-021, 260-70-090, 260-70-100, and adopting WAC 260-70-025, 260-70-026, 260-70-027, 260-70-028, 260-70-029, 260-70-031 and 260-70-032, relating to the rules of horse racing.

WAC 260-70-010, 260-70-021, 260-70-090, 260-70-100, 260-70-025, 260-70-026, 260-70-027, 260-70-028, 260-70-029, 260-70-031 and 260-70-032 are proposed for amendment and adoption as indicated in the notice of intention to adopt rules filed this date with the code reviser.

These new rules and the amendments to the existing rules are proposed pursuant to RCW 67.16.020 and 67.16.040 under the general rule-making authority of the Washington Horse Racing Commission.

The proposed new rules and the amendments of the existing rules are for the reasons set forth below: The proposed amendment to WAC 260-70-010 is intended to define what horses would qualify as a "bleeder" under the rules of racing and it would set up a "bleeder list" by which the Horse Racing Commission can keep track of which horses are approved for that designation. The proposed amendment to WAC 260-70-021 is intended to further define the area of medication in regard to two-year old horses. The proposed amendment to WAC 260-70-090 is intended to further specify both medications that are permitted and the amount of the medications that may be allowed in a specific horse. The proposed amendment to WAC 260-70-100 is intended to clarify that furosemide is permitted only where the

horse has qualified and been placed on the "bleeder list" of the Horse Racing Commission. The adoption of WAC 260-70-025 is intended to specify the procedures that must be utilized for the Horse Racing Commission or the commission veterinarian to approve a horse for placement on the official bleeder list. The adoption of WAC 260-70-026 is intended to specify that horses which qualify for the bleeder list may be treated with bleeder medication which may be furosemide. It must be administered only in a manner approved by the commission veterinarian. The adoption of WAC 260-70-027 is intended to deal with the standards that a horse shipped into Washington from another jurisdiction must meet in order to qualify for the bleeder list. The adoption of WAC 260-70-028 is intended to specify the procedure that must be followed by the trainer so that a horse which has been administered bleeder medication is kept in a detention stall, apart from unauthorized personnel. The adoption of WAC 260-70-029 is intended to direct three tracks, Longacres, Playfair and Yakima Meadows, to set aside a receiving barn for the horses, as approved by the commission. The adoption of WAC 260-70-031 is intended to specify the requirements for horses reporting to the receiving barn as designated by the stewards, which must be reported to the commission veterinarian. The adoption of WAC 260-70-032 is intended to specify which horses are excluded from the receiving and detention barn and, which persons are excluded from the receiving and detention barn. It defines the authority of the commission veterinarian in maintaining that exclusion.

Robert Earley, Executive Secretary, Suites B and C, 210 East Union Avenue, Olympia, Washington 98504, telephone number: 753-3741, and members of the commission staff were responsible for the drafting of the proposed amendments and the proposed new rules and are to be responsible for its implementation and enforcement.

The proponent of the rules is the Washington Horse Racing Commission, Will Bachofner, Chairman.

The Washington Horse Racing Commission recommends the adoption of the rules. They were drafted with participation by various representatives of the horse racing industry and they are similar to rules existing in California.

The rules are not necessary as the result of any federal law, state law or court action.

This certifies that copies of this statement are on file with the commission, are available for public inspection, and that three copies of this statement are this date being forwarded to the Secretary of the Senate and to the Chief Clerk of the House of Representatives.

Small Business Economic Impact Statement: The amendments to WAC 260-70-010, 260-70-090, 260-70-100, 260-70-021, and the adoption of WAC 260-70-025, 260-70-026, 260-70-027, 260-70-028, 260-70-029, 260-70-031 and 260-70-032 are not anticipated to affect more than twenty percent of all industries, nor more than ten percent of any one industry as defined by section 2(3), chapter 6, Laws of 1982. Therefore, a small business economic impact statement has not been prepared.

AMENDATORY SECTION (Amending Order 75.5, filed 10/17/75)

WAC 260-70-010 DEFINITIONS APPLICABLE TO CHAPTER 260-70 WAC. As used in this chapter (~~(260-70 WAC)~~), unless the context clearly requires a different meaning, the following terms shall have the following meanings:

(1) "Permitted medication" or "medication" (~~(shaff)~~) means and include any substance used to treat, cure, and prevent disease, relieve pain, or improve or preserve health, including vitamins, food additives, minerals, and domestic remedies.

(2) "Prohibited drugs" (~~(shaff)~~) means ~~((+))~~ (a) any medication or metabolic derivatives thereof which is a narcotic, or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse; or ~~((-2))~~ (b) any interfering substance; or ~~((3))~~ (c) Phenylbutazone carried in the body of a two year old horse in violation of WAC 260-70-090.

(3) "Interfering substance" or "interfere" (~~(shaff)~~) means and refer to any medication which might mask or screen the presence of prohibited drugs or prevent or delay testing procedures. Such terms include permitted medication when used in quantities which might mask or screen the presence of prohibited drugs or prevent or delay testing procedures.

(4) "Phenylbutazone" (~~(shaff)~~) means phenylbutazone, oxyphenylbutazone, or their derivatives or metabolites thereof.

(5) "Bleeder" means a horse which hemorrhages from the respiratory tract during a race or within one hour-post race or during exercise or within one hour of such exercise.

(6) "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

AMENDATORY SECTION (Amending Order 82-01, filed 1/20/82)

WAC 260-70-021 MEDICATION STANDARDS. (1) No horse shall have in its body any prohibited drug while participating in a race.

(2) No person shall administer, attempt to administer, or aid or abet in the administration of, any medication or drug to a horse on the day of a race in which the horse is entered prior to the race except in accordance with this rule.

(3) Subject to the provisions of this rule, medication calculated to improve or protect the health of a horse may be administered to a horse in training.

(4) The administration of medication to any horse on race day, except as hereinafter provided, is prohibited. For the purpose of this rule, the day of the race shall be deemed to commence at 9:00 p.m. on the day preceding the race.

(5) Nutritional aids, administered orally only, will be permitted at any time.

(6) Approved nonsteroidal anti-inflammatory drugs (NSAIDS) may be administered to a horse, but not on race day. No more than one of the NSAIDS may be used on or carried in a horse's body at any one time.

(7) Notwithstanding any other provision of this rule, no two-year old horse shall carry in its body while participating in a race any medication, including medications defined in WAC 260-70-010 (1) through (4) and 260-70-090 (1) through (5). Vitamins are permitted, however. The finding of any medication prohibited herein in a two-year old horse participating in a race shall disqualify the owner of such horse from participating in the purse distribution; and in addition the stewards may take any authorized action they may consider necessary to preserve the integrity of racing.

(8) In the case of delayed-release substances, the time of administration shall be deemed that time at which such medication, drug, or substance is released within the body of a horse.

NEW SECTION

WAC 260-70-025 BLEEDER LIST. A horse which during the race or following the race, or which during exercise or following exercise is found to be hemorrhaging from one or both nostrils or is found to have bled internally, is eligible to be placed on a bleeder list and treated on race day to prevent bleeding during its race. In order to obtain authorization for race day treatment of the bleeder, the trainer must obtain a certificate of examination from the commission veterinarian and the horse is then placed on the official bleeder list. The commission veterinarian must, by examination, and/or in consultation with the stewards, establish that the horse did in fact hemorrhage from one or both nostrils or that an endoscopic examination in the test barn

of the horse showed observable amounts of free blood in the respiratory tract. When confirmed by the commission veterinarian, the horse shall be placed on the bleeder list which is maintained by the commission veterinarian. Once on the list, a horse shall be removed from the bleeder list only upon the directions of the commission veterinarian, who must certify in writing to the commission his recommendation for removal of the horse from the list. The list is a state-wide list and applies at all race meetings at Longacres, Playfair, and Yakima Meadows.

Once a horse is placed on the bleeder list, the horse must be assigned to a pre-race security stall, to be known as a detention stall, no later than four hours prior to the scheduled post time for any race in which it is entered to start. The detention stall is assigned by the commission veterinarian and may at his discretion be the stall regularly assigned that horse for its customary stabling. Once placed in the detention stall, a horse must remain there until it is taken to the receiving barn or to the paddock to be saddled or harnessed for the race, except that the stewards may permit horses to leave the secured stall to engage in exercise blowouts or warm-up heats. If the horse on the bleeder list is assigned as a detention stall its regular stall, that stall must be posted and the stall must be under direct observation of a responsible, licensed employee of the trainer or the owner.

Where facilities permit, the commission veterinarian may designate a secured area and assign stalls within that secured area to those horses on the bleeder list who are entered to race that day or night.

NEW SECTION

WAC 260-70-026 BLEEDER TREATMENT. A horse on the bleeder list must be treated at least four hours prior to post time with bleeder medication, which may be furosemide. No other medication is permitted for bleeder treatment unless or except as approved by the commission. Bleeder medication must be administered in the manner approved by the commission veterinarian, and furosemide by oral administration is NOT PERMITTED for such purposes. The bleeder medication shall be administered by the horse's regular veterinarian, and may be witnessed by the commission veterinarian or his designee.

NEW SECTION

WAC 260-70-027 RECIPROCITY OF BLEEDER LIST. A bleeder horse shipped into Washington from another racing jurisdiction must comply with Washington rules. However, a horse on a bleeder list in another racing jurisdiction may be automatically placed on the Washington bleeder list provided that the jurisdiction from which it was shipped qualified it as a certified bleeder using the criteria of the National Association of State Racing Commissioners, and a current certificate from the jurisdiction where it was confirmed on the bleeder list is presented.

NEW SECTION

WAC 260-70-028 DETENTION STALL. Every trainer whose horse is on the bleeder list and is to be administered bleeder medication in accordance with the rules, must obtain a detention stall assignment from the commission veterinarian and will be provided a detention stall sign. The trainer must post the detention stall sign in a readily visible location at the detention stall to be used and the trainer must have a responsible, licensed person remain in close proximity to that stall between the time the horse has been administered the bleeder medication and the time it leaves for the receiving barn or paddock in preparation for a race. Close proximity means that the licensed person must be in a position to observe and to prevent any unauthorized person from approaching the horse. If the horse is found to be unattended during that period or found to have been tampered with during that period, the trainer will be deemed negligent in the performing of required duties.

No unauthorized person shall approach the posted detention stall. If any unauthorized person does approach the posted detention stall, a report of the incident is to be made immediately to the commission veterinarian or to the stewards.

NEW SECTION

WAC 260-70-029 RECEIVING BARN. Longacres, Playfair, and Yakima Meadows shall set aside a receiving barn area approved by the commission.

NEW SECTION

WAC 260-70-031 REPORTING TO RECEIVING BARN. A horse shall not be qualified to start in a race unless his presence at the receiving barn at the time designated by the stewards is reported to the commission veterinarian, and no trainer shall fail to cause a horse in his care to report to the receiving barn at the designated time.

NEW SECTION

WAC 260-70-032 EXCLUSION FROM RECEIVING AND DETENTION BARN. The commission veterinarian shall exclude from the receiving and detention barn all horses not participating in a race or being schooled to race and all persons who are not required for attendance on such horses. No person shall enter the stall in the receiving barn of a horse scheduled to race except with permission of the custodian of the barn or the commission veterinarian. No person shall inspect any horse in the receiving barn which is not owned, trained or cared for by him, nor refuse to leave when ordered to do so by the custodian or the commission veterinarian.

AMENDATORY SECTION (Amending Order 79-03, filed 5/7/80)

WAC 260-70-090 PERMITTED MEDICATION. Horses using permitted medication are subject to all rules governing such medication plus these additional rules:

(1) ~~((No horse while participating in a race shall carry in its body more than 165 micrograms per milliliter of urine of phenylbutazone.)) PHENYLBUZAZONE and OXYPHENYLBUZAZONE shall be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites and analogs per milliliter of blood plasma or more than 165 micrograms of the drug substance, its metabolites and analogs per milliliter of urine.~~

(2) ~~NAPROXEN shall be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites or analogs per milliliter of blood plasma or more than 165 micrograms of the drug substance, its metabolites or analogs per milliliter of urine.~~

(3) ~~FLUNIXIN shall be administered in such dosage amount that the test sample shall not contain more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma.~~

(4) ~~MECLOFENAMIC ACID shall be administered in such dosage amount that the test sample shall contain not more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma.~~

~~((2))~~ (5) No horse on a program of permitted medication shall be permitted to race without such medication unless authorized to do so by the stewards or their representative.

AMENDATORY SECTION (Amending Order 83-04, filed 9/19/83)

WAC 260-70-100 PENALTIES RELATING TO MISUSE OF PERMITTED MEDICATION. Should the laboratory analysis of urine or blood taken from a horse, other than a two-year old, show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of WAC 260-70-021, or the presence of phenylbutazone in excess of the quantities authorized by WAC 260-70-090, or, the presence of furosemide without permission from the commission veterinarian, the stewards or commission shall levy the following penalties against each person found responsible:

- (1) For a first offense within any calendar year, a fine of \$300;
- (2) The second offense, within any calendar year, \$1,000;
- (3) For a third offense, within any calendar year, license suspension for one year.

If any NSAID or other permitted medication is found in the body of a horse which alone or in combination with a second medication is of such a quantity so as to interfere with the testing process the penalties for use of a prohibited drug or medication shall apply irrespective of the provisions of this rule. The finding of any diuretic, including Lasix (furosemide), in the body of a horse shall constitute the presence of an interfering substance and the penalties for use of a prohibited drug or medication shall apply, unless the horse is on the official commission bleeder list.

WSR 84-04-062

PROPOSED RULES

BELLEVUE COMMUNITY COLLEGE

[Filed January 31, 1984]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that Bellevue Community College, Community College District VIII, intends to adopt, amend, or repeal rules concerning the repeal of WAC 132H-116-800, parking fees of parking and traffic regulations of Community College District VIII, chapter 132H-116 WAC;

that the institution will at 1:30 p.m., Tuesday, March 13, 1984, in the Board Room, Bellevue Campus, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.50.140.

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before March 13, 1984.

By: Paul N. Thompson
Secretary, Board of Trustees

STATEMENT OF PURPOSE

Description of Purpose: Repeal of WAC 132H-116-800, parking fees, is necessary to eliminate duplication of information.

Statutory Authority: RCW 28B.50.140.

Summary of Rule: Parking fees, as now filed under parking and traffic regulations of Community College District VIII, are itemized for all faculty, staff and students.

Reasons Supporting Proposed Action: The reason for repealing this WAC section is due to the fact that the parking fees are covered in a statement listed under WAC 132H-116-340, "modification of parking and traffic regulations." The board of trustees reserves the right to add, delete or modify portions of these regulations including the appended fee and fine and penalty schedules in accordance with its regulations and applicable laws.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paul N. Thompson, President, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 641-2301, scan 334-2301.

Person or Organization Proposing Rule, and Whether Public, Private or Governmental: Board of Trustees, Bellevue Community College, public.

Institution Comments or Recommendations, if any: None.

Rule Necessary as Result of Federal Law or Federal or State Court Action: No.

REPEAL OF SECTION (Repealing Order 51, filed 4/8/77)

~~((WAC 132H-116-800 PARKING FEES:~~

- ~~(1) Automobile permit~~
- ~~(a) Annual - faculty/staff only 528.00~~
- ~~(b) Quarterly - faculty/staff full-time 7.00~~

(c) Quarterly—faculty/staff—part-time	4.00
(d) Quarterly—student—full-time	7.00
(e) Quarterly—student—part-time	4.00
(2) Motorcycle permit:	
(a) Annual—faculty/staff only	20.00
(b) Quarterly—faculty/staff/student— full-time	5.00
(c) Quarterly—faculty/staff/student— part-time	3.00
(3) Car pool permit:	
(a) Quarterly—faculty/staff/student	10.00
(4) Miscellaneous permits:	
(a) Daily permit—faculty/staff/ student/visitor	0.25
(b) Second car permit (and each additional car)	
(i) Quarterly—faculty/staff/student	2.00
(c) Replacement permit (per vehicle)	
(i) With signed certificate of destruction, theft, or sale of vehicle	0.50
(ii) Without certificate of destruction, theft or sale of vehicle	2.00
(d) Temporary permit	No charge
(5) Impound fee	At cost))

**WSR 84-04-063
EMERGENCY RULES
STATE EMPLOYEES
INSURANCE BOARD**

[Resolution No. 1-84—Filed February 1, 1984]

Be it resolved by the State Employees Insurance Board, acting at the Department of Personnel Board Room, 600 South Franklin, Olympia, WA, that it does adopt the annexed rules relating to:

New	WAC 182-08-195	Retroactive employer and employee contributions restricted.
Amd	WAC 182-12-125	Employee or dependents become ineligible for state group coverage.
Rep	WAC 182-08-140	New dependents' life coverage after enrollment.
Rep	WAC 182-08-150	Reduction or cancellation of optional insurance coverages.

We, the State Employees Insurance Board, find that an emergency exists and that this 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 the emergency is early effective date is needed to implement the changes on a timely basis.

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

This rule is promulgated under the general rule-making authority of the State Employees Insurance Board as authorized in chapter 41.05 RCW.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 23, 1984.

By C. H. Shay
Group Insurance Analyst

NEW SECTION

WAC 182-08-195 RETROACTIVE EMPLOYER AND EMPLOYEE CONTRIBUTIONS RESTRICTED. Withdrawals from the SEIB revolving fund will not be allowed without written approval of the trustee or his designee. Withholding of previously paid employee or employer contribution from transmittals will be similarly restricted.

AMENDATORY SECTION (Amending Order 5646, filed 2/9/76)

WAC 182-12-125 EMPLOYEE OR DEPENDENTS BECOME INELIGIBLE FOR STATE GROUP COVERAGE. ((All of the state)) The state's medical and life plans have a conversion privilege. However, under the individual conversion plans, coverage and/or premiums will be different than the state plan with the same carrier. Persons wishing to convert must enroll in the appropriate conversion plan within 31 days after state group coverage ends. If a person converts within 31 days, conversion coverage will be effective the day after state coverage ends.

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 182-08-140 **NEW DEPENDENTS LIFE COVERAGE AFTER ENROLLMENT.**

(2) WAC 182-08-150 **REDUCTION OR CANCELLATION OF OPTIONAL INSURANCE COVERAGES.**

WSR 84-04-064

**NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION**

[Memorandum—January 31, 1984]

The regular meetings of the Washington State Transportation Commission will be held on the third Thursday of each month in Room 1D2, Transportation Building, Olympia, Washington, beginning at 9:30 a.m.

WSR 84-04-065

**EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)**

[Order 2070—Filed February 1, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Medical care services—General assistance, amending WAC 388-86-120.

I, David A. Hogan, find that an emergency exists and that this 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 the emergency is these rules will result in substantially improved services to clients.

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

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 1996,
filed 8/5/83)

WAC 388-86-120 MEDICAL CARE SERVICES (GAU). A recipient of a continuing general assistance grant is eligible to receive the same scope of care (WAC 388-86-005) as a recipient of medicaid, except that no care will be provided outside the state of Washington other than in designated bordering cities as specified in chapter 388-82 WAC, and shall be subject to the following additional limitations.

(1) Prescribed drugs are limited to specific therapeutic classifications. Lists are published through the Drug Formulary and/or official memoranda.

(2) Mental health services will be provided only in community mental health centers.

(3) ~~((Hearing aids are not provided.~~

(4)) Eligibility for medical care services shall commence with the date of certification for general assistance. There shall not be retroactive certification for medical care received prior to the initial date of eligibility for the general assistance program.

WSR 84-04-066
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2071—Filed February 1, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to community alternatives program (CAP) project, new WAC 388-83-210.

This action is taken pursuant to Notice No. WSR 84-01-032 filed with the code reviser on December 13, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By David A. Hogan, Director
Division of Administration and Personnel

NEW SECTION

WAC 388-83-210 COMMUNITY ALTERNATIVES PROGRAM (CAP) PROJECT. (1) Eligible persons for the CAP project are individuals who:

(a) Meet the requirements and are eligible for services of the Division of Developmental Disabilities and are disabled according to SSI rules.

(b) Meet the Title XIX categorically needy eligibility requirements for SSI related institutionalized individuals. See chapter 388-95 WAC. Income and resources of parents or spouses will not be considered available when determining eligibility or participation for a CAP applicant or recipient.

(c) Are assessed by the department to require the level of care provided in an intermediate care facility for the mentally retarded (IMR).

(d) Have a plan of care approved by the department and the total cost for this plan of care including the medically needy income level for one person is eighty percent or less than the cost of IMR care as demonstrated in the client's services budget.

(e) Are able and choose to live in the community with community support services according to a CAP service plan.

(2) Income disregarded in determining eligibility is not available for participation in CAP services.

(3) Available income (total income less amounts disregarded in determining eligibility) of a CAP participant shall be allocated as follows:

(a) An amount equal to the medically needy income level for one person shall be protected for the maintenance needs of the recipient; or

(b) For an individual with a spouse or dependent children at home, an amount shall be protected equal to the medically needy income level adjusted for the appropriate family size;

(c) Amounts for incurred medical expenses not subject to third party payment shall be protected, including:

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical care recognized under state law but not covered under Medicaid;

(d) Income remaining after deductions in (a), (b), and (c) of this subsection will be the participation amount for CAP services.

(4) Income of a CAP participant living in an adult family home shall be allocated as for other eligible categorically needy persons in similar living situations.

WSR 84-04-067
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2072—Filed February 1, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to food stamps, amending chapter 388-54 WAC.

This action is taken pursuant to Notice No. WSR 84-01-079 filed with the code reviser on December 21, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 74.04.510 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By David A. Hogan, Director
 Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 1814, filed 5/19/82)

WAC 388-54-737 ~~INCOME—ENERGY ALLOWANCE.~~ (1) ~~((Effective April 1, 1982,))~~ The following energy allowance included in AFDC, continuing general assistance and refugee assistance standards is excluded as food stamp income:

Household Size	Monthly Energy Allowance
1	\$21
2	27
3	32
4	39
5	44
6	50
7	59
8 or more	64

(2) An energy allowance is not included in assistance standards for households receiving:

- (a) Board and room payments;
- (b) Supplied shelter; or
- (c) Supplemental Security Income (SSI).

(3) Energy allowance payments treated as vendor payments shall not be counted as income or deducted as a utility deduction for the household.

AMENDATORY SECTION (Amending Order 2023, filed 9/14/83)

WAC 388-54-740 ~~INCOME—DEDUCTIONS.~~ In computing net income, only the following deductions shall be allowed:

(1) A standard deduction of ~~((eighty-five))~~ eighty-nine dollars per household per month.

(2) An earned income deduction of eighteen percent of gross earned income. Earnings excluded in WAC 388-54-735 shall not be included in gross earned income for purposes of computing earned income deductions.

(3) Payments for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment, or attend training or education preparatory to employment.

The amount to be deducted for child care shall be the amount actually paid not to exceed one hundred ~~((fifteen))~~ twenty-five dollars. The dependent care deduction in combination with the shelter deduction shall not exceed one hundred ~~((fifteen))~~ twenty-five dollars.

(4) Shelter costs in excess of fifty percent of the household's income after deducting standard, earned income, and dependent care deductions. The shelter deductions alone or in combination with the dependent care deduction shall not exceed one hundred ~~((fifteen))~~ twenty-five dollars.

(a) "Shelter costs" mean rent or mortgage payment plus taxes on a dwelling and property, insurance on the structure only, unless the costs for insuring the structure and its contents cannot be separated, assessments, and utility costs such as heat and cooking fuel, electricity, water, garbage, sewage disposal, and basic service fee for one telephone (plus tax), and initial installation fees for utility services. One-time deposits shall not be included as shelter costs.

Shelter costs shall also include continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(b) Shelter costs for a home not occupied because of employment, training away from home, illness, or abandonment caused by casualty loss or natural disaster shall be allowed if:

- (i) The household intends to return to the house;
- (ii) The current occupants, if any, are not claiming shelter costs for food stamp purposes; or
- (iii) The home is not being leased or rented during the household's absence.

(c) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood.

(d) Standardized utility amounts include utilities such as heating and cooling costs, cooking fuel, electricity not used to heat or cool the residence, water, garbage, sewage disposal, and telephone. Cooling costs are defined as central air conditioners or operation of a room air conditioner.

Persons in Household

Annualized Utility Standards

~~((May))~~ October 1, 1983

1	\$ ((+2)) <u>120</u>
2	((+2+)) <u>128</u>
3	((+29)) <u>137</u>
4	((+36)) <u>144</u>
5	((+45)) <u>154</u>
6	((+53)) <u>162</u>
7	((+59)) <u>168</u>

Persons in Household	Annualized Utility Standards
	((May)) <u>October 1, 1983</u>
8	((+64)) 174
9	((+71)) 181
10 or more	((+79)) 190

(e) Households not incurring any separate utility charges for heating or cooling costs shall not be entitled to claim the standard utility allowance.

(f) If a household is not entitled to the standard utility allowance, the household may claim actual utility expenses for any utility which the household does pay separately, except the telephone.

(i) The telephone standard, for families incurring telephone costs, but not entitled to claim the single standard, is ten dollars.

(ii) The telephone allowance applies to households not entitled to claim the overall standard, but which have telephone expenses.

(g) If a household requests and can verify the household's utility bills are higher than the standards, the actual utility costs shall be used.

~~((i) The telephone standard, for families incurring telephone costs, but not entitled to claim the single standard, is ten dollars.~~

~~((ii)) (h) A household shall not be allowed to switch between actual utility costs and the utility standard ((once during the household's certification period)) for a period of twelve months following initial certification and no more frequently than once every twelve months thereafter.~~

~~((h) The telephone allowance applies to households not entitled to claim the overall standard, but which have telephone expenses:))~~

(i) Where the household shares a residence and utility costs with other individuals, the standard allowance shall be divided equally among the ~~((parties))~~ individuals contributing to meeting the utility costs. The household shall only be permitted to use the household's prorated share of the standard allowance.

(j) Households living in a public housing unit or other rental housing unit having central utility meters and charging the household only for excess utility costs shall not be permitted to use the standard utility allowance including a heating or cooling cost component. Payment of excess heating or cooling costs shall not qualify the household for the standard utility allowance including a heating or cooling component.

(5) Households containing one or more members ~~((sixty years of age or older, receiving Supplemental Security Income (SSI), or receiving Social Security disability payments under Titles I, II, X, XIV, or XVI of the Social Security Act, or is a veteran or surviving disabled spouse or surviving disabled child))~~ who are elderly or disabled, as defined in WAC 388-54-665(2)(b), shall be authorized ((effective February 1, 1983)):

(a) A dependent care deduction up to one hundred ~~((fifteen))~~ twenty-five dollars as specified in WAC 388-54-740(3), and

(b) An excess shelter deduction as specified in WAC 388-54-740(4) for the monthly amount exceeding fifty

percent of the household's monthly income after all applicable deductions have been made.

~~(6) An individual ((sixty years of age or older, or receiving Supplemental Security Income (SSI), or receiving Social Security disability, or has received emergency SSI from the Social Security Administration or is a veteran or surviving disabled spouse or surviving disabled child)) who is elderly or disabled, as defined in WAC 388-54-665(2)(b), shall be authorized ((effective February 1, 1983,)) a deduction for unreimbursable monthly medical expenses over thirty-five dollars.~~

(a) Allowable medical expenses are:

(i) The cost of maintaining an attendant, homemaker, home health aide, housekeeper, and/or child care service. These expenses, which could be claimed either as a medical or child care expense, must be considered as medical expenses;

(ii) The cost of medical insurance;

(iii) Medicare premiums related to coverage under Title XVIII of the Social Security Act;

(iv) Any cost-sharing on spend-down expenses incurred by Medicaid (medical only) recipients;

(v) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or licensed nursing home;

(vi) Prescription drugs and other over-the-counter medication (including insulin) when prescribed or approved by a licensed practitioner or other qualified health professional;

(vii) The cost of medical supplies, sick-room equipment (including rental), or other prescribed equipment;

(viii) Dentures, hearing aids, prosthetics, and eyeglasses prescribed by an optometrist or physician skilled in eye disease;

(ix) Securing and maintaining a seeing eye dog including the cost of dog food and veterinarian bills;

(x) Reasonable cost of transportation and lodging to obtain medical treatment or services.

(b) Nonallowable expenses are:

(i) The cost of health and hospital insurance which pays in lump-sum settlements or which continue mortgage or loan payments while the beneficiary is disabled; and

(ii) The cost of special diets.

AMENDATORY SECTION (Amending Order 1956, filed 4/6/83)

WAC 388-54-785 ISSUANCE—MONTHLY ALLOTMENTS. (1) ~~((Effective February 1, 1983,))~~ Based upon a thirty-day month, the department shall issue to households making initial application a coupon allotment valued in direct proportion to the number of days remaining from the date of application to the end of the initial month of eligibility except no allotment shall be issued at less than ten dollars.

(2) The department shall determine the value of the allotment a household receives (taking into consideration the requirement within subsection (1) of this section to prorate the initial month's allotment) by multiplying the household's net monthly income by thirty percent,

rounding the product up to the next whole dollar if it ends with one through ninety-nine cents, and subtract the result from the thrifty food plan for the appropriate household size. If the computation results in an allotment of one dollar, three dollars or five dollars, the amount shall be rounded up to two dollars, four dollars or six dollars, respectively.

Household Size	Thrifty Food Plan Amounts <small>((Effective 10/1/82))</small>
1	\$ ((75)) 76
2	139
3	199
4	253
5	((300)) 301
6	((360)) 361
7	((398)) 399
8	((455)) 457
9	((512)) 514
10	((569)) 571
Each additional member	+57

(3) All one- and two-person households shall receive a minimum monthly allotment of ten dollars except in the initial benefit month where no household may receive a pro rata allotment of less than ten dollars.

WSR 84-04-068
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2073—Filed February 1, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to medical assistance, amending chapters 388-81 and 388-92 WAC.

This action is taken pursuant to Notice No. WSR 84-01-080 filed with the code reviser on December 21, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By David A. Hogan, Director
 Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 1897, filed 11/4/82)

WAC 388-81-052 RECEIPT OF RESOURCES WITHOUT GIVING ADEQUATE CONSIDERATION. (1) Any person who knowingly and wilfully receives nonexempt resources transferred or assigned for less than fair market value after December 1, 1981, and within two years preceding the application for medical care, to enable an applicant or recipient to qualify or continue to qualify for Title XVI related medical assistance or the limited casualty program for the medically needy, is liable for a civil penalty and is subject to referral for criminal prosecution for commission of a gross misdemeanor.

(2) Definitions:

(a) ~~((^u))~~ Transfer(~~((^u))~~) shall mean any act or omission to act whereby title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resource occurs by:

(i) An intentional act or transfer; or

(ii) Failure to act to preserve title to the resource.

(b) Fair market value means the reasonable value of a resource at the time of transfer or assignment.

(c) Uncompensated value means the fair market value of a resource minus the amount of compensation received in exchange for the resource.

(d) Value of compensation received means the consideration paid or agreed to be paid by the purchaser.

(e) Compensation includes:

(i) All money, real or personal property, food, shelter, or services received by the individual:

(A) At or after the time of transfer in exchange for the resource if the compensation was provided pursuant to a binding (legally enforceable) agreement in effect at the time of transfer; or

(B) Prior to the actual transfer if they were provided pursuant to a binding (legally enforceable) agreement whereby the eligible individual would transfer the resource or otherwise pay for such item.

(ii) The payment or assumption of a legal debt owed by the individual in exchange for the resource.

(3) WAC 388-28-461, 388-28-462, and 388-28-465 are incorporated by reference and apply to this section, with the exception to the reference therein to WAC 388-28-460.

(4) The voluntary transfer or assignment of resources between spouses is permitted without affecting eligibility or continued eligibility of the spouse who transfers(ed) or assigns(ed) the resources.

(5) The amount of the civil penalty shall be equal to the uncompensated value of the cash or resources transferred or assigned at less than fair market value.

(6) The civil penalty shall not exceed the cost of assistance rendered by the department to the recipient.

(7) Written notice of imposition of the civil penalty shall be provided by personal service or certified mail to the individual or entity subject to the civil penalty.

(8) The person or entity alleged to be subject to the civil penalty under this section has the right to request a hearing to appeal the determination, and said hearing shall be in accordance with the administrative procedures in chapter 388-08 WAC except as modified by this section.

(a) There is a rebuttable presumption that a person who received cash or other nonexempt resources from an applicant or recipient for less than fair market value within two years preceding the date of application for medical care, did so knowingly and wilfully for the purpose of enabling the applicant or recipient to qualify or continue to qualify for assistance.

(b) The person has the right to offer evidence to rebut the presumption that the transfer or assignment was made for purposes of enabling the applicant or recipient to qualify or continue to qualify for assistance and that the person knowingly and wilfully received the resource for such purpose.

(c) The prevailing party in such an action shall be awarded reasonable attorney fees.

AMENDATORY SECTION (Amending Order 1929, filed 12/29/82)

WAC 388-92-015 ELIGIBILITY DETERMINATION—SSI. (1) For the purposes of medical assistance related to SSI, the applicant must be:

(a) Age 65 or over; or

(b) Blind, with central visual acuity of 20/200 or less in the better eye with the use of a correcting lens, or with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or

(c) Disabled, that is, unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity. Decisions on SSI related disability are the responsibility of the office of disability insurance benefits, division of medical assistance.

(d) The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse is not eligible for medicaid.

(2) A resident of Washington who requires medical assistance outside the United States will be provided care according to chapter 388-82 WAC.

(3) The applicant and/or recipient must be resource eligible (see WAC 388-92-050) on the first day of the month to be eligible for any day or days of that month. The resource determination is made as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

AMENDATORY SECTION (Amending Order 1897, filed 11/4/82)

WAC 388-92-043 TRANSFER OF RESOURCES WITHOUT ADEQUATE CONSIDERATION. (1) This section is to implement Second Substitute House Bill No. 557 effective December 1, 1981.

(2) An individual is ineligible for Title XVI categorical medical assistance or the medically needy component of the limited casualty program for a period determined under this section if the person knowingly and wilfully assigns or transfers nonexempt resources at less than fair market value after December 1, 1981, for the purpose of qualifying or continuing to qualify for such medical care within two years preceding the date of application for such care.

(3) Definitions:

(a) ((^a))Transfer((^a)) shall mean any act or omission to act whereby title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resource occurs by:

(i) An intentional act or transfer; or

(ii) Failure to act to preserve title to the resource.

(b) Fair market value means the reasonable value of a resource at the time of transfer or assignment.

(c) Uncompensated value means the fair market value of a resource at the time of transfer minus the amount of compensation received in exchange for the resource.

(d) Value of compensation received means the consideration paid or agreed to be paid by the purchaser.

(e) Compensation includes:

(i) All money, real or personal property, food, shelter, or services received by the individual:

(A) At or after the time of transfer in exchange for the resource if the compensation was provided pursuant to a binding (legally enforceable) agreement in effect at the time of transfer; or

(B) Prior to the actual transfer if they were provided pursuant to a binding (legally enforceable) agreement whereby the eligible individual would transfer the resource or otherwise pay for such item.

(ii) The payment or assumption of a legal debt owed by the individual in exchange for the resource.

(4) WAC 388-28-461, 388-28-462, and 388-28-465 are incorporated by reference and apply to this section, with the exception to the reference therein to WAC 388-28-460.

(5) The voluntary transfer or assignment of resources between spouses is permitted without affecting eligibility or continued eligibility of the spouse who transfers(ed) or assigns(ed) the resources.

(6) The uncompensated fair market value of the resource assigned or transferred and the corresponding periods of ineligibility from the date of transfer are as follows:

(a) Dollar Amount of Uncompensated Value	Months of Ineligibility
\$ 0 - \$ 1,000	1
1,001 - 2,000	2
2,001 - 3,000	3
3,001 - 4,000	4
4,001 - 5,000	5
5,001 - 6,000	6
6,001 - 7,000	7
7,001 - 8,000	8
8,001 - 9,000	9
9,001 - 10,000	10
10,001 - 11,000	11
11,001 - 12,000	12
12,001 - 13,500	13
13,501 - 15,000	14
15,001 - 16,500	15
16,501 - 18,000	16
18,001 - 19,500	17
19,501 - 21,000	18
21,001 - 22,500	19
22,501 - 24,000	20
24,001 - 25,500	21
25,501 - 27,000	22
27,001 - 28,500	23
28,501 - 30,000	24
30,001 - 31,667	25
31,668 - 33,333	26
33,334 - 35,000	27
35,001 - 36,667	28
36,668 - 38,333	29
38,334 - 40,000	30
40,001 - 41,667	31
41,668 - 41,333	32
41,334 - 45,000	33
45,001 - 46,667	34
46,668 - 48,333	35
48,334 - 50,000	36
Over \$ 50,000	48

(b) The period of ineligibility shall not include partial months.

(7) If a transferred resource is returned to the individual, the uncompensated value is no longer counted as of the date of return. The returned asset will be treated as a resource as of the first day of the following month.

(8) If the individual receives additional compensation in the form of cash for the transferred resource the uncompensated value will be reduced by the amount of the additional compensation as of the date the additional compensation is received. The additional compensation will be treated as a resource as of the first day of the following month.

(9) The period of ineligibility may be waived if it is determined that the application of the period of ineligibility shall cause undue hardship.

~~((8))~~ (10) A person determined to be ineligible for medical care under this section has the right to request a hearing to appeal the determination, except as modified by this section, the procedure for the hearing is chapter 388-08 WAC.

(a) At a hearing the burden of proving that the person knowingly and wilfully assigned or transferred cash or other resource(s) at less than fair market value for the purpose of qualifying or continuing to qualify for assistance is on the department and the burden of proof is a preponderance of the evidence.

(b) When the appellant is the prevailing party in the hearing, the appellant shall be awarded reasonable attorney fees.

~~((9))~~ (11) See WAC 388-81-052 for civil penalties to be applied to persons who have received nonexempt resources and did not give the recipient adequate consideration.

WSR 84-04-069
ADOPTED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 2074—Filed February 1, 1984]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

Amd WAC 388-82-115 Special categories eligible for medical assistance.

Amd WAC 388-83-028 Eligibility factors for special categories.

This action is taken pursuant to Notice No. WSR 84-01-081 filed with the code reviser on December 21, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Department of Social and Health Services as authorized in RCW 74.08.090.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By David A. Hogan, Director
 Division of Administration and Personnel

AMENDATORY SECTION (Amending Order 1995, filed 8/5/83)

WAC 388-82-115 SPECIAL CATEGORIES ELIGIBLE FOR MEDICAL ASSISTANCE. (1) Persons who, in August 1972, received OAA, AB, AFDC, or APTD, and also received RSDI benefits, and who became ineligible for OAA, AB, AFDC or APTD solely because of the twenty percent increase in Social Security benefits under Public Law 92-336, shall be eligible for medicaid as categorically needy. The provision applies to both current cash applicants and recipients.

(2) Applicants for SSI or AFDC who were entitled to RSDI benefits in August 1972, and would have been ineligible solely because of the Social Security benefits under Public Law 92-336 shall have the twenty percent increase disregarded in determining financial eligibility.

(3) An AFDC family unit which becomes ineligible solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided that:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility.

(b) A member of such family continues to be employed, and

(c) The family is otherwise eligible for AFDC except for increased hours or increased income from employment.

(d) Earned Income Tax Credits (EITC) must be considered as income for purposes of this subsection.

(4) Current recipients who become ineligible for SSI benefits and/or state supplementary payments after April 1, 1977, solely because of OASDI cost-of-living benefit increases under Public Law 94-566, section 503, shall remain categorically eligible for medical assistance (MA). Any subsequent OASDI cost-of-living benefit increase shall be disregarded for eligibility. For institutionalized recipients, the amount subsequently is considered in the cost of institutional care. This disregard does not apply to:

(a) New applicants (i.e., who were not receiving SSI/SSP prior to increase).

(b) Persons who were not actually receiving SSI/SSP payments for some other reason.

(c) Persons who would have received SSI/SSP if they had applied.

(d) Persons who would have received SSI/SSP if they were not living in a medical or intermediate care facility.

(5) Certain recipients of SSI, after January 1, 1981, will continue to be eligible for medical assistance (MA) under Public Law 96-265.

(6) Pregnant women, with no other eligible children, ineligible for AFDC cash assistance solely because they have not reached the sixth month of pregnancy shall be eligible for Medicaid as categorically needy.

(7) Individuals who are denied AFDC cash payments solely by reason of recovery of overpayment shall be eligible for Medicaid as categorically needy.

AMENDATORY SECTION (Amending Order 1995, filed 8/5/83)

WAC 388-83-028 ELIGIBILITY FACTORS FOR SPECIAL CATEGORIES. (1) Cash recipients of OAA, AB or APTD who became ineligible because of the twenty percent increase in RSDI benefits in August 1972, must have that increase disregarded in determining current eligibility. If the sole reason for their income exceeding the cash standard is the August 1972, increase, then they are categorically eligible for Medicaid. Medicaid eligibility determinations for this group must include this factor.

(2) Persons who were eligible under federal cash assistance programs (AFDC, OAA, AB or APTD) but were not receiving assistance, and would have been ineligible solely because of the August 1972, RSDI twenty percent increase shall have the twenty percent increase disregarded in determining financial eligibility.

(3) An AFDC family unit which becomes ineligible solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided that:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility,

(b) A member of such family continues to be employed, and

(c) The family is otherwise eligible for AFDC except for increased hours or increased income from employment.

(d) Earned Income Tax Credits (EITC) must be considered as income for purposes of this subsection.

(4) Current recipients who become ineligible for SSI benefits and/or state supplementary payments solely because of OASDI cost-of-living benefit increases received after April 1977, shall remain categorically eligible for medical assistance (MA). Any subsequent OASDI cost-of-living benefit increase shall be disregarded for eligibility. For institutionalized recipients, the amount subsequently is considered in the cost of institutional care. This disregard does not apply to:

(a) New applicants (i.e., who were not receiving SSI/SSP prior to increase).

(b) Persons who were not actually receiving SSI/SSP payments for some other reason.

(c) Persons who would have received SSI/SSP if they had applied.

(d) Persons who would have received SSI/SSP if they were not living in a medical or intermediate care facility, etc.

(5) Persons who were "grandfathered" into SSI January 1, 1974, and continue to meet the definition in chapter 388-80 WAC are eligible for medical assistance. Termination and reapplication does not reinstate the "grandfathered" status. Program and eligibility factors are described in chapter 388-93 WAC.

**WSR 84-04-070
PROPOSED RULES
HIGHER EDUCATION
PERSONNEL BOARD
[Filed February 1, 1984]**

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Higher Education Personnel Board intends to adopt, amend, or repeal rules concerning in December 1983, the board adopted rules to provide for permanent classified employee movement between institutions/related boards (WAC 251-18-347). The changes to the following rules are needed to facilitate implementation of the interinstitutional movement rule:

- Amd WAC 251-04-020 Definitions (layoff seniority, probationary period, reversion, trial service).
- Amd WAC 251-10-045 Layoff—Veterans retention preference.
- Amd WAC 251-10-055 Layoff lists—Institution—wide.
- Amd WAC 251-18-180 Eligible lists—Definition—Composition.
- Amd WAC 251-18-320 Appointment—Probationary.

Amd WAC 251-18-330 Trial service period.
 Amd WAC 251-18-340 Appointment—Permanent status.
 Amd WAC 251-22-070 Vacation leave—Use;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Board Room, Olympia Technical Community College, Olympia, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 28B.16.100.

The specific statute these rules are intended to implement is chapter 28B.16 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 16, 1984.

Dated: February 1, 1984
 By: Dennis Carlson
 for Director

STATEMENT OF PURPOSE

This statement is related to the notice filed with the code reviser on February 1, 1984, and is filed pursuant to RCW 34.04.025.

In December 1983, the board adopted rules to provide for permanent classified employee movement between institutions/related boards (WAC 251-18-347). The changes to the following rules are needed to facilitate implementation of the interinstitutional movement rule. In January 1984, the board adopted the changes on an emergency basis effective February 1, 1984, and will take action to adopt them on a permanent basis in March 1984.

WAC 251-04-020 Definitions.

Purpose of Existing Rules: To define various terms used within the rules.

Summary of Proposed Changes: Layoff seniority, to delete reference to "institution" service; probationary period, to delete reference to employment with an "institution"; reversion, to add reference to the institution at which permanent status was achieved; and trial service, to change a reference to a rule number which has been modified in WAC 251-18-330.

WAC 251-10-045 Layoff—Veterans retention preference.

Purpose of Existing Rule: To establish the conditions for receiving veterans retention preference.

Summary of Proposed Change: To remove the reference to institutional service and replace it with "classified service."

WAC 251-10-055 Layoff lists—Institution-wide.

Purpose of Existing Rule: To establish the conditions for placement on the institution wide layoff lists.

Summary of Proposed Change: To add a new subsection which provides for placement of names of former employees who have not successfully completed a trial service period following appointment as a result of movement between institutions.

WAC 251-18-180 Eligible lists—Definition—Composition.

Purpose of Existing Rule: To define the various kinds of eligible lists.

Summary of Proposed Change: To remove identification of credits granted to employees moving between institutions as being a "preference."

WAC 251-18-320 Appointment—Probationary.

Purpose of Existing Rule: To identify when probationary appointments are applicable.

Summary of Proposed Change: To clarify that employees appointed as a result of movement between institutions will not serve a probationary period.

WAC 251-18-330 Trial service period.

Purpose of Existing Rule: To establish the conditions under which a trial service period will be required.

Summary of Proposed Change: To add reference to trial service following an appointment made as a result of movement between institutions.

WAC 251-18-340 Appointment—Permanent status.

Purpose of Existing Rule: To establish the conditions under which permanent status appointments will be made.

Summary of Proposed Change: To clarify that permanent status is granted only upon transfer within a class at an institution and not as a result of transfer from another institution.

WAC 251-22-070 Vacation leave—Use.

Purpose of Existing Rule: To establish the conditions for use of vacation leave.

Summary of Proposed Change: To add reference to trial service periods resulting from employee movement between institutions.

Statutory Authority: RCW 28B.16.100 to implement the provisions of that section.

Agency Person Responsible for Rule: John Spitz, Director, HEPB, 1202 Black Lake Boulevard, FT-11, Olympia, 98504, scan 234-3730, (206) 753-3730.

Organization Proposing Change: HEPB staff.

The agency makes no additional comments/recommendations.

The change is not the result of federal law or state court action.

AMENDATORY SECTION (Amending Order 110, filed 12/30/83, effective 2/1/84)

WAC 251-04-020 DEFINITIONS. Unless the context clearly indicates otherwise, the words used in these rules shall have the meanings given in this section.

"ADMINISTRATIVE ASSISTANT EXEMPTION" - A president or vice president may have individual(s) acting as his/her administrative assistant(s). The employee normally performs supportive work for his/her superior as an individual contributor without subordinates.

"ADMINISTRATIVE EMPLOYEES" - Personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

- (1) Primary duty is office or nonmanual work directly related to the management policies or general business operations; and
- (2) Must have the authority to make important decisions, customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures; and
- (3) Must regularly assist an executive or administrative employee, or perform work under, only general supervision along specialized or technical lines requiring special training, experience or knowledge; and
- (4) Must be paid at a rate of at least \$672 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if the primary duty consists of responsible office or nonmanual work directly related to management policies or general business operations.

"AGRICULTURAL EMPLOYEES" – Employees performing work which includes farming and all its branches, including cultivating the soil, or growing or harvesting crops, or raising livestock, bees, fur-bearing animals, or poultry; or doing any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

"ALLOCATION" – The assignment of an individual position to an appropriate class on the basis of the kind, difficulty, and responsibility of the work of the position.

"APPOINTING AUTHORITY" – A person or group of persons lawfully authorized to make appointments.

"AVAILABILITY" – An estimate of the number of women, minorities, and handicapped persons who have the skills and abilities required for employment in a particular job group as determined from an analysis of relevant data.

"BOARD" – The higher education personnel board established under the provisions of the higher education personnel law.

"CERTIFICATION" – The act of providing an employing official or appointing authority with the names of the appropriate eligibles to be considered for appointment to fill a vacancy.

"CHARGES" – A detailed statement of the specific incidents alleging cause for dismissal or disciplinary action.

"CLASS" – One or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with propriety to designate each position allocated to the class; that the same general qualification requirements are needed for performance of the duties of the class; that the same tests of fitness may be used to select employees; and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

"CLASSIFIED SERVICE" – All positions in the higher education institutions which are subject to the provisions of the higher education personnel law.

"COLLECTIVE BARGAINING" – The performance of the mutual obligation of the appointing authority and the certified exclusive bargaining representative to meet at reasonable times, to confer and bargain in good faith, and to execute a written agreement with respect to those personnel matters over which the appointing authority may lawfully exercise discretion.

"COMPETITIVE SERVICE" – All positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

"CORRECTIVE EMPLOYMENT PROGRAM" – A program designed to increase the employment of handicapped persons and of women and minorities who are underutilized in certain job groups because of present or past practices or other conditions which resulted in limited employment opportunities.

"COUNSELING EXEMPTION" – Individuals in counseling-exempt positions are responsible for directing and/or participating in providing academic, athletic, medical, career, financial aid, student activity and/or personal counseling to students. Such activities include, but are not limited to, providing individual and group guidance services using recognized professional techniques and practices.

"CYCLIC YEAR POSITION" – A position scheduled to work less than twelve full months each year, due to known, recurring periods in the annual cycle when the position is not needed.

"DEMOTION" – The change of an employee from a position in one class to a position in another class which has a lower salary range maximum.

"DEVELOPMENT" – The attainment through work experience and training of proficiency in skills which will enable the employee to perform higher level duties.

"DIRECTOR" – The personnel director of the higher education personnel board.

"DISMISSAL" – The termination of an individual's employment for just cause as specified in these rules.

"ELIGIBLE" – An applicant for a position in the competitive service who has met the minimum qualifications for the class involved, has been admitted to and passed the examinations, and has met all requirements for eligibility as stated on the bulletin board posting; or an applicant for a position in the noncompetitive service who has met all requirements for eligibility as stated on the bulletin board posting.

"ELIGIBLE LIST" – A list established by the personnel officer, composed of names of persons who have made proper application, met the

minimum qualifications, and successfully completed the required examination process to be certified for vacancies in a class at the institution.

"EMPLOYEE" – A person working in the classified service at an institution.

"EMPLOYEE ORGANIZATION" – Any lawful association, labor organization, federation, council, or brotherhood, having as one of its purposes the improvement of working conditions among employees, and which has filed a notice of intent to represent employees with the director, and which has been authorized in accordance with WAC 251-14-020.

"EMPLOYING OFFICIAL" – An administrative or supervisory employee designated by the appointing authority to exercise responsibility for requesting certification, interviewing eligibles, and employing classified employees.

"EXECUTIVE EMPLOYEES" – Management personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

- (1) Primary duty must be management of a recognized department or subdivision; and
- (2) Must customarily and regularly direct the work of two or more employees; and
- (3) Must have the authority to hire and fire, or to recommend with authority on these and other actions affecting employees; and
- (4) Must customarily and regularly exercise discretionary powers; and
- (5) Must be paid at a rate of at least \$672 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if he/she regularly directs the work of at least two other employees and the primary duty is management of a recognized department or subdivision.

"EXECUTIVE HEAD EXEMPTION" – Executive heads of major academic or administrative divisions are analogous in the hierarchy to vice presidents, deans and chairmen. Directors may be executive heads as determined by the higher education personnel board. An executive head is in charge of a separate budget unit and directs subordinates.

"EXEMPT POSITION" – A position properly designated as exempt from the application of these rules as provided in WAC 251-04-040. (Also see separate definitions of "administrative assistant exemption," "executive head exemption," "research exemption," "counseling exemption," "extension and/or continuing education exemption," "graphic arts or publication exemption," and "principal assistant exemption.")

"EXTENSION AND/OR CONTINUING EDUCATION EXEMPTION" – Individuals considered exempt in this category are responsible for originating and developing formal education programs for the general public, usually involving close contact with faculty and staff or training or consulting with specific groups in the community to enable them to provide specialized training and/or services to the community.

"FRINGE BENEFITS" – As used in the conduct of salary surveys, the term shall include but not be limited to compensation for leave time, including vacation, civil, and personal leave; employer retirement contributions; health insurance payments, including life, accident, and health insurance, workmen's compensation, and sick leave; and stock options, bonuses, and purchase discounts where appropriate.

"FULL-TIME EMPLOYMENT" – Work consisting of forty hours per week.

"GRAPHIC ARTS OR PUBLICATION EXEMPTION" – Individuals qualifying for exemption under this category will be involved in performing selected graphic arts or publication activities requiring prescribed academic preparation or special training. Positions of this type are those which use special visual techniques, require original design and layout and/or can be distinguished from positions associated with the standard editorial functions.

"GRIEVANCE" – A dispute filed in accordance with a grievance procedure of a signed collective bargaining agreement.

"HANDICAPPED PERSON" – Any person with physical, mental or sensory impairments that would impede that individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight, static and permanent in that they are seldom fully corrected by medical replacement, therapy, or surgical means.

"HEARING EXAMINER" – An individual appointed by the board to preside over, conduct and make recommended decisions including findings of fact and conclusions of law in all cases of employee appeals to the board.

"INSTITUTIONS OF HIGHER EDUCATION" – The University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges. For purposes of application of these rules, the term shall be considered to include the various related boards as defined in this section, unless specifically indicated to the contrary.

"JOB GROUP" – For affirmative action goal-setting purposes, a group of jobs having similar content, wage rates and opportunities. An EEO job category may consist of one or more job groups.

"JOB CATEGORIES" – Those groupings required in equal employment opportunity reports to federal agencies.

"LATERAL MOVEMENT" – Appointment of an employee to a position in another class which has the same salary range maximum as the employee's current class.

"LAYOFF" – Any of the following management initiated actions caused by lack of funds ~~((, curtailment) [or lack] of work, or good faith reorganization for efficiency purposes)), curtailment or lack of work, or good faith reorganization for efficiency purposes:~~

- (1) Separation from service to an institution;
- (2) Separation from service within a class;
- (3) Reduction in the work year; and/or
- (4) Reduction in the number of work hours.

"LAYOFF SENIORITY" – The last period of unbroken service in the classified service. Authorized leave of absence or leave without pay shall not constitute a break in service; however, the time spent on such leave shall not be included in computing seniority except where required by statute and except in the case of cyclic year positions. Permanent employees who are veterans or their unmarried widows/widowers as identified in WAC 251-10-045 shall have added to their unbroken ~~((institution))~~ service the veteran's active military service to a maximum of five years' credit.

"LAYOFF UNITY" – A clearly identified structure within an institution, which is approved by the director, and within which employment/layoff options are determined in accordance with the reduction in force procedure.

"LEAD" – An employee who performs the same duties as other employees in his/her work group and in addition regularly assigns, instructs and checks the work of the employees.

"NONCOMPETITIVE SERVICE" – All positions in the classified service for which a competitive examination is not required.

"ORGANIZATIONAL UNIT" – A clearly identified structure, or sub-structure of persons employed to achieve a common goal or function under the direction of a single official. An organizational unit may consist of either an administrative entity or a geographically separated activity.

"PART-TIME EMPLOYMENT" – Work of twenty or more hours per week but less than full time employment with an understanding of continuing employment for six months or more.

"PERIODIC INCREMENT DATE" – ("P.I.D.") – The date upon which an employee is scheduled to move to a higher salary step within the range for his/her current class, as provided in WAC 251-08-090 and 251-08-100.

"PERMANENT EMPLOYEE" – An employee who has successfully completed a probationary period at the institution within the current period of employment or trial service period resulting from promotion, transfer, lateral movement, or voluntary demotion from another institution or related board.

"PERSONNEL OFFICER" – The principal employee in each institution/related board responsible for administrative and technical personnel activities of the classified service.

"P.I.D." – Commonly used abbreviation for periodic increment date.

"POSITION" – A set of duties and responsibilities normally utilizing the full or part time employment of one employee.

"PRINCIPAL ASSISTANT EXEMPTION" – Individuals qualifying for exemption under this category function as second-in-command in importance levels. The individual may perform many of the functions of his/her superior in the superior's absence, or alternatively may have major administrative or program responsibilities. Reporting relationships will not be below that of the executive head. In some institutions an executive head may have more than one principal assistant as determined by the higher education personnel board.

"PROBATIONARY PERIOD" – The initial six-month period of employment in a class following appointment from an eligible list of a non-permanent employee ~~((of the institution))~~. However, upon prior approval by the board, the probationary period for selected classes may

be established for a period in excess of six months but not to exceed twelve months.

"PROBATIONARY REAPPOINTMENT" – Appointment of a probationary employee from an eligible list to a position in a different class.

"PROFESSIONAL EMPLOYEES" – Personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

(1) Primary duty must involve work that requires knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study or work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on invention, imagination, or talent; and

(2) Must consistently exercise discretion and judgment; and

(3) Must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties; and

(4) Must be paid at a rate of at least \$737 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if the primary duty consists of work requiring knowledge of an advanced type in a field of science or learning which requires consistent exercise of discretion and judgment.

"PROMOTION" – The appointment as a result of recruitment, examination and certification, of a permanent employee to a position in another class having a higher salary range maximum.

"PROVISIONAL APPOINTMENT" – Appointment made prior to establishment of an eligible list, per the provisions of WAC 251-18-300. A person so appointed is required to apply through the competitive process to be considered for the position on a permanent basis.

"PUBLIC RECORDS" – Any writing containing information relating to conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

"REALLOCATION" – The assignment of a position by the personnel officer to a different class.

"REASSIGNMENT" – A management initiated movement of a classified employee from one position to another in the same class.

"RELATED BOARDS" – The state board for community college education, the council for postsecondary education, the higher education personnel board, and such other boards, councils and commissions related to higher education as may be established. For purposes of application of these rules, the term "institution" shall be considered to include these related boards, unless specifically indicated to the contrary.

"RESEARCH EXEMPTION" – Individuals in research-exempt positions spend the majority of their time in one or more of the following activities: Identification and definition of research problems, design of approaches or hypotheses and methodology to be used, design of specific phases of research projects, analysis of results, development of conclusion and hypothesis, presentation of research results in publishable form.

"RESIGNATION" – A voluntary termination of employment.

"REVERSION" – The return of a permanent employee from trial service to the most recent class in which permanent status was achieved at the institution.

"SUPERVISOR" – Any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"SUSPENSION" – An enforced absence without pay for disciplinary purposes.

"TEMPORARY APPOINTMENT" –

(1) Work performed in the absence of an employee on leave for:

(a) Less than ninety consecutive calendar days (WAC 251-18-350(4));

(b) Ninety or more consecutive calendar days (WAC 251-18-350(2)); or

(2) Formal assignment of the duties and responsibilities of a higher level class for a period of less than ninety consecutive calendar days;

(3) Performance of extra work required at a work load peak, a special project, or a cyclic work load which does not exceed one hundred seventy-nine consecutive calendar days.

"TRAINING" – Formal and systematic learning activities intended to provide employees with the knowledge and skills necessary to become proficient or qualified in a particular field.

"TRANSFER" - An employee initiated change from one classified position to another in the same class without a break in service.

"TRIAL SERVICE" - The initial period of employment following promotion, transfer, demotion, or lateral movement into a class in which the employee has not held permanent status at the institution, beginning with the effective date of the change and continuing for six months, unless interrupted as provided in these rules or extended as provided in WAC 251-18-330((5))~~(6)~~.

"UNDERUTILIZATION" - Having fewer minorities, women, or handicapped persons in a particular job group than would reasonably be expected by their availability.

"UNION SHOP" - A union membership provision which, as a condition of employment, requires all employees within a bargaining unit to become members of an employee organization.

"UNION SHOP REPRESENTATIVE" - An employee organization which is the exclusive representative of a bargaining unit that has been certified by the director as the union shop representative following an election wherein a majority of employees in the bargaining unit voted in favor of requiring membership in the employee organization as a condition of employment.

"UNION SHOP REPRESENTATION FEE" - Employees who are granted a nonassociation right based on religious tenets or teachings of a church or religious body of which they are members, must pay a representation fee to the union shop representative. Such fee is equivalent to the regular dues of the employee organization minus any monthly premiums for union sponsored insurance programs.

"WRITING" - Handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation including letters, words, pictures, sounds; or symbols or combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-10-045 LAYOFF-VETERANS RETENTION PREFERENCE. (1) For the purpose of this section veteran means any permanent employee who has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(2) Veterans as defined in subsection (1) of this section shall have added to their unbroken service in ~~((an institution of higher education))~~ the classified service, their total active military service, not to exceed five years. The combined total of unbroken ~~((institutional employment))~~ service in the classified service and active military service will constitute the veterans' layoff seniority.

(3) The unmarried widow/widower of an eligible veteran is entitled to veterans retention benefits as outlined in subsections (1) and (2) of this section regardless of the veteran's length of active military service.

(4) For the purpose of this rule "veteran" does not include any person who as a veteran retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

AMENDATORY SECTION (Amending Order 102, filed 9/20/82, effective 10/25/82)

WAC 251-10-055 LAYOFF LISTS-INSTITUTION-WIDE.

(1) The names of persons identified in subsection (6) of this section, permanent and probationary employees who are scheduled for layoff, who have been laid off from service within a class or service to the institution, or who have accepted a lower option in lieu of layoff shall be placed on the institution-wide layoff list(s) for those class(es) in which they have held permanent status, probationary (if within the same class series as the list), or trial service appointment status within the current period of employment at the institution provided that:

- (a) The employee has requested placement on the list;
- (b) The employee has not been rejected, reverted, demoted or dismissed from such class(es); and
- (c) The class has the same or lower salary range maximum as the class from which laid off.

In addition such employees shall be placed on institution-wide layoff list(s) for all lower class(es) in these same class series.

(2) Upon request, employees shall be placed on these lists at the completion of the three day option period or upon selection of an option, whichever is sooner.

(3) Layoff lists shall be institution-wide with eligibles ranked according to layoff seniority as defined in WAC 251-04-020.

(4) Eligibles certified from such lists shall be referred in preference to all other eligibles.

(5) Removal from the institution-wide layoff list shall be as provided below:

(a) Acceptance of a layoff option or appointment from a layoff list shall cause removal from the list(s) for all classes with the same or lower salary range maximum; except that, unless the employee so requests, he/she may not be removed via this procedure from the layoff list for the class from which laid off.

(b) Retirement, resignation, or dismissal from the institution shall cause removal from the list(s).

(c) Declination of appointment to three positions on shifts for which the employee has formally indicated availability.

(6) In addition to persons identified in subsection (1) of this section, institution-wide layoff lists shall also contain the names of former employees of the institution/related board who have not successfully completed a trial service period resulting from movement identified in WAC 251-18-347. Such employees shall only have access to the list for the class in which they held permanent status prior to moving via WAC 251-18-347.

AMENDATORY SECTION (Amending Order 110, filed 12/30/83, effective 2/1/84)

WAC 251-18-180 ELIGIBLE LISTS-DEFINITION-COMPOSITION. The various eligible lists are defined as follows:

(1) Institution-wide layoff lists shall be established by class and shall contain the names of:

(a) All permanent and probationary employees laid off or scheduled for layoff in accord with WAC 251-10-030 and 251-10-055. Ranking of eligibles shall be in order of layoff seniority.

(b) Former permanent employees of the institution who (i) have transferred, promoted, voluntarily demoted or laterally moved to positions at other institutions/related boards, and (ii) have not successfully completed their trial service periods at the institution to which they moved. Ranking of eligibles shall be in order of layoff seniority.

(2) Organizational unit promotional lists shall be established by class and shall contain the names of all permanent employees of the organizational unit for which the list is established, who have successfully completed the examination for the class. Ranking of eligibles shall be in order of their final earned rating on the examination, plus any preference credits.

(3) Institution-wide promotional lists shall be established by class and shall contain the names of all permanent employees who have successfully completed the examination for the class, ranked in order of their final earned rating on the examination, plus any preference credits.

(4) Special employment program layoff lists shall be established by class and shall contain the names of permanent employees laid off, scheduled for layoff or removed from service within a class due to layoff conditions in special employment programs as provided in WAC 251-10-035. Ranking of eligibles shall be in order of layoff seniority.

(5) State-wide layoff lists shall be established by class and shall contain the names of permanent employees laid off or scheduled for layoff who have exercised their option per WAC 251-10-060. Ranking of eligibles shall be in order of layoff seniority as provided in WAC 251-10-060(2).

(6) Open competitive/noncompetitive lists:

(a) Open competitive lists shall be established by class and shall contain the names of all candidates who have successfully completed the examination for the class, ranked in order of their final earned rating on the examination, plus any veterans ~~((retention))~~ preference credits or credits resulting from being in permanent status at another institution/related board. ~~((Preference))~~ Credits resulting from movement indicated above shall be equal to five percent of the employee's final earned rating and will be added to the employee's final passing score.

(b) Noncompetitive lists shall be established by class where the class has been previously approved by the director to be part of the non-competitive service at a particular higher education institution. They

shall contain the names of applicants who meet the minimum requirements for the class for which the list is established. The eligibles shall be ranked by priority in time of filing application.

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-18-320 APPOINTMENT—PROBATIONARY. (1) Probationary appointment shall be made only upon appointment of eligibles from the:

(a) Open-competitive or noncompetitive list except those identified in WAC 251-18-347.

(b) Institution-wide layoff list - when the employee was in probationary status at the time of layoff.

(c) State-wide layoff list.

(d) Combined eligible list as provided in WAC 251-18-181 and 251-18-240(4) when the person appointed is ~~((not))~~ neither a permanent employee of the institution nor an employee moving pursuant to WAC 251-18-347.

(2) The probationary period will continue for the length of time as determined under WAC 251-06-090, unless interrupted as provided in these rules. All positions in a class shall require the same probationary period. In the event an employee is on leave without pay for more than ten work days during the probationary period, the completion date of the probationary period shall be extended by an amount of time equal to the period of leave without pay.

(3) Qualified probationary employees may be reappointed during the probationary period to other classes. Upon such reappointment the following shall apply:

(a) The employee shall begin a probationary period in the new class;

(b) The salary in the new class shall be established as provided in WAC 251-08-080;

(c) The former periodic increment date shall be abolished and a new periodic increment date established in the same manner as provided in WAC 251-08-100(2).

AMENDATORY SECTION (Amending Order 91, filed 11/4/81)

WAC 251-18-330 TRIAL SERVICE PERIOD. (1) A trial service period of six months shall be required upon appointment of a permanent employee to a new class at the institution, unless

(a) during the current period of employment at the institution, permanent status has been held in the class to which the employee is moving, or

(b) the class is lower in that same class series, or

(c) the employee is being reallocated per the provisions of WAC 251-06-080(1)(a), or

(d) the employee is moving to the class as part of a recognized apprenticeship program as provided in WAC 251-18-400(5).

(2) A trial service period of six months shall be required upon employee movement as specified in WAC 251-18-347.

(3) The trial service period provides the employing official an opportunity to observe and evaluate the new employee's work. Employees who do not perform satisfactorily during the trial service period may be reverted as follows:

(a) With preemptive rights to the former position in which permanent status was last held, or to a vacant position in that class (except when reversion is from a position the appointment to which was a result of disciplinary demotion or employee movement as specified in WAC 251-18-347.) The personnel officer shall determine which position to preempt. However, if the employee was in a trial service appointment in another class prior to the current trial service period, the personnel officer may provide the employee the opportunity to complete the first interrupted trial service period.

(b) Reversion must be preceded by written notice at least one work day (eight hours), before the effective date.

(c) If the former position to which the employee has preemptive rights has been abolished and a vacant position in the class is not available, or if there is no class to which the reverted employee has preemptive rights, the affected employee shall be accorded such bumping rights and placement on layoff lists as would be provided in layoff from his/her former class.

~~((3))~~ (4) Reversion from trial service must be preceded by:

(a) Written notice detailing deficiencies in performance, which shall include the specific changes required; and

(b) A reasonable opportunity to overcome identified deficiencies.

~~((4))~~ (5) An employee who is reverted may appeal to the board regarding:

(a) Whether the employer complied with the requirements of WAC 251-18-330~~((3))~~(4)(a) and (b); and

(b) Whether the claimed deficiencies existed at the time of reversion.

~~((5))~~ (6) The board may uphold the reversion action, extend the trial service period, overturn the reversion, grant permanent status or order such other actions as may be determined appropriate pursuant to the best standards of personnel administration.

~~((6))~~ (7) In the event an employee is on leave without pay status for more than ten work days during the trial service period, the completion date of the trial service period shall be extended by an amount of time equal to the period of leave without pay.

~~((7))~~ (8) Successful completion of the trial service period shall result in permanent status in the class.

~~((8))~~ (9) Salary and periodic increment date shall be determined as follows:

(a) Upon promotional trial service appointment, the salary shall be established as provided in WAC 251-08-110; and the existing periodic increment date shall be eliminated and a new date established to be effective the date of completion of trial service;

(b) Upon trial service reversion the salary shall be established as provided in WAC 251-08-115(4) and the former periodic increment date shall be reestablished;

(c) Upon trial service appointment to a class at the same salary level, the salary and periodic increment date shall remain unchanged.

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-18-340 APPOINTMENT—PERMANENT STATUS. Permanent status appointments shall be made under the following conditions:

(1) Upon successful completion of a probationary period or trial service period.

(2) Demotion, either voluntary or involuntary, when made to a class in which the employee has held permanent status during the current period of employment at the institution.

(3) Transfer within a class at the institution.

(4) Certification from a layoff list for a class in which the employee had permanent status at the time of layoff or lower classes in the same class series for which the employee is qualified.

(5) Conversion, per the provisions of WAC 251-18-420, of the incumbent of an exempt position which is converted to classified status, provided the incumbent has been employed for at least six months in the exempt position.

AMENDATORY SECTION (Amending Order 108, filed 9/23/83, effective 10/24/83)

WAC 251-22-070 VACATION LEAVE—USE. (1) Vacation leave may not be taken until an employee has completed six months of continuous employment. An employee bringing an accrued balance from another state agency may use the previously accrued vacation leave during the institutional probationary or trial service period.

(2) All requests for vacation leave must be approved by the employing official or designee in advance of the effective date.

(3) Vacation leave shall be scheduled by the employing department at a time most convenient to the work of the department, the determination of which shall rest with the employing official. As far as possible, leave will be scheduled in accordance with the wishes of the employee in any amount up to the total of his/her earned leave credits.

(4) Paid vacation leave may not be used in advance of its accrual.

WSR 84-04-071

EMERGENCY RULES

HIGHER EDUCATION

PERSONNEL BOARD

[Order 111—Filed February 1, 1984]

Be it resolved by the Higher Education Personnel Board, acting at Centralia College, Centralia, Washington, that it does adopt the annexed rules relating to:

Amd	WAC 251-04-020	Definitions (layoff seniority, probationary period, reversion, trial service).
Amd	WAC 251-10-045	Layoff—Veterans retention preference.
Amd	WAC 251-10-055	Layoff lists—Institution-wide.
Amd	WAC 251-18-180	Eligible lists—Definition—Composition.
Amd	WAC 251-18-320	Appointment—Probationary.
Amd	WAC 251-18-330	Trial service period.
Amd	WAC 251-18-340	Appointment—Permanent status.
Amd	WAC 251-22-070	Vacation leave—Use;

We, the Higher Education Personnel Board, find that an emergency exists and that this 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 the emergency is in December 1983, the board adopted rules to provide for employee movement between institutions to be effective February 1, 1984. The above rules were adopted on an emergency basis to facilitate implementation of the permanent rules.

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

This rule is promulgated under the general rule-making authority of the Higher Education Personnel Board as authorized in RCW 28B.16.100.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By Dennis Carlson
Assistant Director
for Director

AMENDATORY SECTION (Amending Order 110, filed 12/30/83, effective 2/1/84)

WAC 251-04-020 **DEFINITIONS.** Unless the context clearly indicates otherwise, the words used in these rules shall have the meanings given in this section.

"ADMINISTRATIVE ASSISTANT EXEMPTION" – A president or vice president may have individual(s) acting as his/her administrative assistant(s). The employee normally performs supportive work for his/her superior as an individual contributor without subordinates.

"ADMINISTRATIVE EMPLOYEES" – Personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

(1) Primary duty is office or nonmanual work directly related to the management policies or general business operations; and

(2) Must have the authority to make important decisions, customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures; and

(3) Must regularly assist an executive or administrative employee, or perform work under, only general supervision along specialized or technical lines requiring special training, experience or knowledge; and

(4) Must be paid at a rate of at least \$672 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if the primary duty consists of responsible office or nonmanual work directly related to management policies or general business operations.

"AGRICULTURAL EMPLOYEES" – Employees performing work which includes farming and all its branches, including cultivating the soil, or growing or harvesting crops, or raising livestock, bees, fur-bearing animals, or poultry, or doing any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

"ALLOCATION" – The assignment of an individual position to an appropriate class on the basis of the kind, difficulty, and responsibility of the work of the position.

"APPOINTING AUTHORITY" – A person or group of persons lawfully authorized to make appointments.

"AVAILABILITY" – An estimate of the number of women, minorities, and handicapped persons who have the skills and abilities required for employment in a particular job group as determined from an analysis of relevant data.

"BOARD" – The higher education personnel board established under the provisions of the higher education personnel law.

"CERTIFICATION" – The act of providing an employing official or appointing authority with the names of the appropriate eligibles to be considered for appointment to fill a vacancy.

"CHARGES" – A detailed statement of the specific incidents alleging cause for dismissal or disciplinary action.

"CLASS" – One or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with propriety to designate each position allocated to the class; that the same general qualification requirements are needed for performance of the duties of the class; that the same tests of fitness may be used to select employees; and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

"CLASSIFIED SERVICE" – All positions in the higher education institutions which are subject to the provisions of the higher education personnel law.

"COLLECTIVE BARGAINING" – The performance of the mutual obligation of the appointing authority and the certified exclusive bargaining representative to meet at reasonable times, to confer and bargain in good faith, and to execute a written agreement with respect to those personnel matters over which the appointing authority may lawfully exercise discretion.

"COMPETITIVE SERVICE" – All positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

"CORRECTIVE EMPLOYMENT PROGRAM" – A program designed to increase the employment of handicapped persons and of women and minorities who are underutilized in certain job groups because of present or past practices or other conditions which resulted in limited employment opportunities.

"**COUNSELING EXEMPTION**" – Individuals in counseling-exempt positions are responsible for directing and/or participating in providing academic, athletic, medical, career, financial aid, student activity and/or personal counseling to students. Such activities include, but are not limited to, providing individual and group guidance services using recognized professional techniques and practices.

"**CYCLIC YEAR POSITION**" – A position scheduled to work less than twelve full months each year, due to known, recurring periods in the annual cycle when the position is not needed.

"**DEMOTION**" – The change of an employee from a position in one class to a position in another class which has a lower salary range maximum.

"**DEVELOPMENT**" – The attainment through work experience and training of proficiency in skills which will enable the employee to perform higher level duties.

"**DIRECTOR**" – The personnel director of the higher education personnel board.

"**DISMISSAL**" – The termination of an individual's employment for just cause as specified in these rules.

"**ELIGIBLE**" – An applicant for a position in the competitive service who has met the minimum qualifications for the class involved, has been admitted to and passed the examinations, and has met all requirements for eligibility as stated on the bulletin board posting, or an applicant for a position in the noncompetitive service who has met all requirements for eligibility as stated on the bulletin board posting.

"**ELIGIBLE LIST**" – A list established by the personnel officer, composed of names of persons who have made proper application, met the minimum qualifications, and successfully completed the required examination process to be certified for vacancies in a class at the institution.

"**EMPLOYEE**" – A person working in the classified service at an institution.

"**EMPLOYEE ORGANIZATION**" – Any lawful association, labor organization, federation, council, or brotherhood, having as one of its purposes the improvement of working conditions among employees, and which has filed a notice of intent to represent employees with the director, and which has been authorized in accordance with WAC 251-14-020.

"**EMPLOYING OFFICIAL**" – An administrative or supervisory employee designated by the appointing authority to exercise responsibility for requesting certification, interviewing eligibles, and employing classified employees.

"**EXECUTIVE EMPLOYEES**" – Management personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

- (1) Primary duty must be management of a recognized department or subdivision; and
- (2) Must customarily and regularly direct the work of two or more employees; and
- (3) Must have the authority to hire and fire, or to recommend with authority on these and other actions affecting employees; and
- (4) Must customarily and regularly exercise discretionary powers; and
- (5) Must be paid at a rate of at least \$672 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if he/she regularly directs the work of at least two other employees and the primary duty is management of a recognized department or subdivision.

"**EXECUTIVE HEAD EXEMPTION**" – Executive heads of major academic or administrative divisions are analogous in the hierarchy to vice presidents, deans and chairmen. Directors may be executive heads as determined by the higher education personnel board. An executive head is in charge of a separate budget unit and directs subordinates.

"**EXEMPT POSITION**" – A position properly designated as exempt from the application of these rules as provided in WAC 251-04-040. (Also see separate definitions of "administrative assistant exemption," "executive head exemption," "research exemption," "counseling exemption," "extension and/or continuing education exemption," "graphic arts or publication exemption," and "principal assistant exemption.")

"**EXTENSION AND/OR CONTINUING EDUCATION EXEMPTION**" – Individuals considered exempt in this category are responsible for originating and developing formal education programs for the general public, usually involving close contact with faculty and staff or training or consulting with specific groups in the community to enable them to provide specialized training and/or services to the community.

"**FRINGE BENEFITS**" – As used in the conduct of salary surveys, the term shall include but not be limited to compensation for leave time, including vacation, civil, and personal leave; employer retirement contributions; health insurance payments, including life, accident, and health insurance, workmen's compensation, and sick leave; and stock options, bonuses, and purchase discounts where appropriate.

"**FULL-TIME EMPLOYMENT**" – Work consisting of forty hours per week.

"**GRAPHIC ARTS OR PUBLICATION EXEMPTION**" – Individuals qualifying for exemption under this category will be involved in performing selected graphic arts or publication activities requiring prescribed academic preparation or special training. Positions of this type are those which use special visual techniques, require original design and layout and/or can be distinguished from positions associated with the standard editorial functions.

"**GRIEVANCE**" – A dispute filed in accordance with a grievance procedure of a signed collective bargaining agreement.

"**HANDICAPPED PERSON**" – Any person with physical, mental or sensory impairments that would impede that individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight, static and permanent in that they are seldom fully corrected by medical replacement, therapy, or surgical means.

"**HEARING EXAMINER**" – An individual appointed by the board to preside over, conduct and make recommended decisions including findings of fact and conclusions of law in all cases of employee appeals to the board.

"INSTITUTIONS OF HIGHER EDUCATION" – The University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges. For purposes of application of these rules, the term shall be considered to include the various related boards as defined in this section, unless specifically indicated to the contrary.

"JOB GROUP" – For affirmative action goal-setting purposes, a group of jobs having similar content, wage rates and opportunities. An EEO job category may consist of one or more job groups.

"JOB CATEGORIES" – Those groupings required in equal employment opportunity reports to federal agencies.

"LATERAL MOVEMENT" – Appointment of an employee to a position in another class which has the same salary range maximum as the employee's current class.

"LAYOFF" – Any of the following management initiated actions caused by lack of funds (~~([, curtailment] [or lack] of work[, or good faith reorganization for efficiency purposes])~~), curtailment or lack of work, or good faith reorganization for efficiency purposes:

- (1) Separation from service to an institution;
- (2) Separation from service within a class;
- (3) Reduction in the work year, and/or
- (4) Reduction in the number of work hours.

"LAYOFF SENIORITY" – The last period of unbroken service in the classified service. Authorized leave of absence or leave without pay shall not constitute a break in service, however, the time spent on such leave shall not be included in computing seniority except where required by statute and except in the case of cyclic year positions. Permanent employees who are veterans or their unmarried widows/widowers as identified in WAC 251-10-045 shall have added to their unbroken ((~~insti-~~tution)) service the veteran's active military service to a maximum of five years' credit.

"LAYOFF UNITY" – A clearly identified structure within an institution, which is approved by the director, and within which employment/layoff options are determined in accordance with the reduction in force procedure.

"LEAD" – An employee who performs the same duties as other employees in his/her work group and in addition regularly assigns, instructs and checks the work of the employees.

"NONCOMPETITIVE SERVICE" – All positions in the classified service for which a competitive examination is not required.

"ORGANIZATIONAL UNIT" – A clearly identified structure, or substructure of persons employed to achieve a common goal or function under the direction of a single official. An organizational unit may consist of either an administrative entity or a geographically separated activity.

"PART-TIME EMPLOYMENT" – Work of twenty or more hours per week but less than full time employment with an understanding of continuing employment for six months or more.

"PERIODIC INCREMENT DATE" – ("P.I.D.") – The date upon which an employee is scheduled to move to a

higher salary step within the range for his/her current class, as provided in WAC 251-08-090 and 251-08-100.

"PERMANENT EMPLOYEE" – An employee who has successfully completed a probationary period at the institution within the current period of employment or trial service period resulting from promotion, transfer, lateral movement, or voluntary demotion from another institution or related board.

"PERSONNEL OFFICER" – The principal employee in each institution/related board responsible for administrative and technical personnel activities of the classified service.

"P.I.D." – Commonly used abbreviation for periodic increment date.

"POSITION" – A set of duties and responsibilities normally utilizing the full or part time employment of one employee.

"PRINCIPAL ASSISTANT EXEMPTION" – Individuals qualifying for exemption under this category function as second-in-command in importance levels. The individual may perform many of the functions of his/her superior in the superior's absence, or alternatively may have major administrative or program responsibilities. Reporting relationships will not be below that of the executive head. In some institutions an executive head may have more than one principal assistant as determined by the higher education personnel board.

"PROBATIONARY PERIOD" – The initial six-month period of employment in a class following appointment from an eligible list of a nonpermanent employee (~~(of the institution)~~). However, upon prior approval by the board, the probationary period for selected classes may be established for a period in excess of six months but not to exceed twelve months.

"PROBATIONARY REAPPOINTMENT" – Appointment of a probationary employee from an eligible list to a position in a different class.

"PROFESSIONAL EMPLOYEES" – Personnel whose responsibilities require them to spend at least 80% of their work hours as follows:

(1) Primary duty must involve work that requires knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study or work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on invention, imagination, or talent; and

(2) Must consistently exercise discretion and judgment; and

(3) Must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties; and

(4) Must be paid at a rate of at least \$737 per month exclusive of board, lodging or other facilities.

For persons whose salaries exceed \$1083 per month, the 80% limitation does not apply if the primary duty consists of work requiring knowledge of an advanced type in a field of science or learning which requires consistent exercise of discretion and judgment.

"PROMOTION" – The appointment as a result of recruitment, examination and certification, of a permanent

employee to a position in another class having a higher salary range maximum.

"PROVISIONAL APPOINTMENT" – Appointment made prior to establishment of an eligible list, per the provisions of WAC 251-18-300. A person so appointed is required to apply through the competitive process to be considered for the position on a permanent basis.

"PUBLIC RECORDS" – Any writing containing information relating to conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

"REALLOCATION" – The assignment of a position by the personnel officer to a different class.

"REASSIGNMENT" – A management initiated movement of a classified employee from one position to another in the same class.

"RELATED BOARDS" – The state board for community college education, the council for postsecondary education, the higher education personnel board, and such other boards, councils and commissions related to higher education as may be established. For purposes of application of these rules, the term "institution" shall be considered to include these related boards, unless specifically indicated to the contrary.

"RESEARCH EXEMPTION" – Individuals in research-exempt positions spend the majority of their time in one or more of the following activities: Identification and definition of research problems, design of approaches or hypotheses and methodology to be used, design of specific phases of research projects, analysis of results, development of conclusion and hypothesis, presentation of research results in publishable form.

"RESIGNATION" – A voluntary termination of employment.

"REVERSION" – The return of a permanent employee from trial service to the most recent class in which permanent status was achieved at the institution.

"SUPERVISOR" – Any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"SUSPENSION" – An enforced absence without pay for disciplinary purposes.

"TEMPORARY APPOINTMENT" –

(1) Work performed in the absence of an employee on leave for:

(a) Less than ninety consecutive calendar days (WAC 251-18-350(4));

(b) Ninety or more consecutive calendar days (WAC 251-18-350(2)); or

(2) Formal assignment of the duties and responsibilities of a higher level class for a period of less than ninety consecutive calendar days; or

(3) Performance of extra work required at a work load peak, a special project, or a cyclic work load which

does not exceed one hundred seventy-nine consecutive calendar days.

"TRAINING" – Formal and systematic learning activities intended to provide employees with the knowledge and skills necessary to become proficient or qualified in a particular field.

"TRANSFER" – An employee initiated change from one classified position to another in the same class without a break in service.

"TRIAL SERVICE" – The initial period of employment following promotion, transfer, demotion, or lateral movement into a class in which the employee has not held permanent status at the institution, beginning with the effective date of the change and continuing for six months, unless interrupted as provided in these rules or extended as provided in WAC 251-18-330((5))(6).

"UNDERUTILIZATION" – Having fewer minorities, women, or handicapped persons in a particular job group than would reasonably be expected by their availability.

"UNION SHOP" – A union membership provision which, as a condition of employment, requires all employees within a bargaining unit to become members of an employee organization.

"UNION SHOP REPRESENTATIVE" – An employee organization which is the exclusive representative of a bargaining unit that has been certified by the director as the union shop representative following an election wherein a majority of employees in the bargaining unit voted in favor of requiring membership in the employee organization as a condition of employment.

"UNION SHOP REPRESENTATION FEE" – Employees who are granted a nonassociation right based on religious tenets or teachings of a church or religious body of which they are members, must pay a representation fee to the union shop representative. Such fee is equivalent to the regular dues of the employee organization minus any monthly premiums for union sponsored insurance programs.

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

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-10-045 LAYOFF—VETERANS RETENTION PREFERENCE. (1) For the purpose of this section veteran means any permanent employee who has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(2) Veterans as defined in subsection (1) of this section shall have added to their unbroken service in (~~an institution of higher education~~) the classified service, their total active military service, not to exceed five years. The combined total of unbroken (~~institutional employment~~) service in the classified service and active military service will constitute the veterans' layoff seniority.

(3) The unmarried widow/widower of an eligible veteran is entitled to veterans retention benefits as outlined in subsections (1) and (2) of this section regardless of the veteran's length of active military service.

(4) For the purpose of this rule "veteran" does not include any person who as a veteran retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

AMENDATORY SECTION (Amending Order 102, filed 9/20/82, effective 10/25/82)

WAC 251-10-055 LAYOFF LISTS—INSTITUTION-WIDE. (1) The names of persons identified in subsection (6) of this section, permanent and probationary employees who are scheduled for layoff, who have been laid off from service within a class or service to the institution, or who have accepted a lower option in lieu of layoff shall be placed on the institution-wide layoff list(s) for those class(es) in which they have held permanent status, probationary (if within the same class series as the list), or trial service appointment status within the current period of employment at the institution provided that:

(a) The employee has requested placement on the list;

(b) The employee has not been rejected, reverted, demoted or dismissed from such class(es); and

(c) The class has the same or lower salary range maximum as the class from which laid off.

In addition such employees shall be placed on institution-wide layoff list(s) for all lower class(es) in these same class series.

(2) Upon request, employees shall be placed on these lists at the completion of the three day option period or upon selection of an option, whichever is sooner.

(3) Layoff lists shall be institution-wide with eligibles ranked according to layoff seniority as defined in WAC 251-04-020.

(4) Eligibles certified from such lists shall be referred in preference to all other eligibles.

(5) Removal from the institution-wide layoff list shall be as provided below:

(a) Acceptance of a layoff option or appointment from a layoff list shall cause removal from the list(s) for all classes with the same or lower salary range maximum; except that, unless the employee so requests, he/she may not be removed via this procedure from the layoff list for the class from which laid off.

(b) Retirement, resignation, or dismissal from the institution shall cause removal from the list(s).

(c) Declination of appointment to three positions on shifts for which the employee has formally indicated availability.

(6) In addition to persons identified in subsection (1) of this section, institution-wide layoff lists shall also

contain the names of former employees of the institution/related board who have not successfully completed a trial service period resulting from movement identified in WAC 251-18-347. Such employees shall only have access to the list for the class in which they held permanent status prior to moving via WAC 251-18-347.

AMENDATORY SECTION (Amending Order 110, filed 12/30/83, effective 2/1/84)

WAC 251-18-180 ELIGIBLE LISTS—DEFINITION—COMPOSITION. The various eligible lists are defined as follows:

(1) Institution-wide layoff lists shall be established by class and shall contain the names of:

(a) All permanent and probationary employees laid off or scheduled for layoff in accord with WAC 251-10-030 and 251-10-055. Ranking of eligibles shall be in order of layoff seniority.

(b) Former permanent employees of the institution who (i) have transferred, promoted, voluntarily demoted or laterally moved to positions at other institutions/related boards, and (ii) have not successfully completed their trial service periods at the institution to which they moved. Ranking of eligibles shall be in order of layoff seniority.

(2) Organizational unit promotional lists shall be established by class and shall contain the names of all permanent employees of the organizational unit for which the list is established, who have successfully completed the examination for the class. Ranking of eligibles shall be in order of their final earned rating on the examination, plus any preference credits.

(3) Institution-wide promotional lists shall be established by class and shall contain the names of all permanent employees who have successfully completed the examination for the class, ranked in order of their final earned rating on the examination, plus any preference credits.

(4) Special employment program layoff lists shall be established by class and shall contain the names of permanent employees laid off, scheduled for layoff or removed from service within a class due to layoff conditions in special employment programs as provided in WAC 251-10-035. Ranking of eligibles shall be in order of layoff seniority.

(5) State-wide layoff lists shall be established by class and shall contain the names of permanent employees laid off or scheduled for layoff who have exercised their option per WAC 251-10-060. Ranking of eligibles shall be in order of layoff seniority as provided in WAC 251-10-060(2).

(6) Open competitive/noncompetitive lists:

(a) Open competitive lists shall be established by class and shall contain the names of all candidates who have successfully completed the examination for the class, ranked in order of their final earned rating on the examination, plus any veterans (~~retention~~) preference credits or credits resulting from being in permanent status at another institution/related board. (~~Preference~~) Credits resulting from movement indicated above shall be equal to five percent of the employee's final earned rating and will be added to the employee's final passing score.

(b) Noncompetitive lists shall be established by class where the class has been previously approved by the director to be part of the noncompetitive service at a particular higher education institution. They shall contain the names of applicants who meet the minimum requirements for the class for which the list is established. The eligibles shall be ranked by priority in time of filing application.

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-18-320 APPOINTMENT—PROBATIONARY. (1) Probationary appointment shall be made only upon appointment of eligibles from the:

(a) Open-competitive or noncompetitive list except those identified in WAC 251-18-347.

(b) Institution-wide layoff list - when the employee was in probationary status at the time of layoff.

(c) State-wide layoff list.

(d) Combined eligible list as provided in WAC 251-18-181 and 251-18-240(4) when the person appointed is ~~((not))~~ neither a permanent employee of the institution nor an employee moving pursuant to WAC 251-18-347.

(2) The probationary period will continue for the length of time as determined under WAC 251-06-090, unless interrupted as provided in these rules. All positions in a class shall require the same probationary period. In the event an employee is on leave without pay for more than ten work days during the probationary period, the completion date of the probationary period shall be extended by an amount of time equal to the period of leave without pay.

(3) Qualified probationary employees may be reappointed during the probationary period to other classes. Upon such reappointment the following shall apply:

(a) The employee shall begin a probationary period in the new class;

(b) The salary in the new class shall be established as provided in WAC 251-08-080;

(c) The former periodic increment date shall be abolished and a new periodic increment date established in the same manner as provided in WAC 251-08-100(2).

AMENDATORY SECTION (Amending Order 91, filed 11/4/81)

WAC 251-18-330 TRIAL SERVICE PERIOD.

(1) A trial service period of six months shall be required upon appointment of a permanent employee to a new class at the institution, unless

(a) during the current period of employment at the institution, permanent status has been held in the class to which the employee is moving, or

(b) the class is lower in that same class series, or

(c) the employee is being reallocated per the provisions of WAC 251-06-080(1)(a), or

(d) the employee is moving to the class as part of a recognized apprenticeship program as provided in WAC 251-18-400(5).

(2) A trial service period of six months shall be required upon employee movement as specified in WAC 251-18-347.

(3) The trial service period provides the employing official an opportunity to observe and evaluate the new employee's work. Employees who do not perform satisfactorily during the trial service period may be reverted as follows:

(a) With preemptive rights to the former position in which permanent status was last held, or to a vacant position in that class (except when reversion is from a position the appointment to which was a result of disciplinary demotion or employee movement as specified in WAC 251-18-347). The personnel officer shall determine which position to preempt. However, if the employee was in a trial service appointment in another class prior to the current trial service period, the personnel officer may provide the employee the opportunity to complete the first interrupted trial service period.

(b) Reversion must be preceded by written notice at least one work day (eight hours), before the effective date.

(c) If the former position to which the employee has preemptive rights has been abolished and a vacant position in the class is not available, or if there is no class to which the reverted employee has preemptive rights, the affected employee shall be accorded such bumping rights and placement on layoff lists as would be provided in layoff from his/her former class.

~~((3))~~ (4) Reversion from trial service must be preceded by:

(a) Written notice detailing deficiencies in performance, which shall include the specific changes required; and

(b) A reasonable opportunity to overcome identified deficiencies.

~~((4))~~ (5) An employee who is reverted may appeal to the board regarding:

(a) Whether the employer complied with the requirements of WAC 251-18-330~~((3))~~(4)(a) and (b); and

(b) Whether the claimed deficiencies existed at the time of reversion.

~~((5))~~ (6) The board may uphold the reversion action, extend the trial service period, overturn the reversion, grant permanent status or order such other actions as may be determined appropriate pursuant to the best standards of personnel administration.

~~((6))~~ (7) In the event an employee is on leave without pay status for more than ten work days during the trial service period, the completion date of the trial service period shall be extended by an amount of time equal to the period of leave without pay.

~~((7))~~ (8) Successful completion of the trial service period shall result in permanent status in the class.

~~((8))~~ (9) Salary and periodic increment date shall be determined as follows:

(a) Upon promotional trial service appointment, the salary shall be established as provided in WAC 251-08-110; and the existing periodic increment date shall be eliminated and a new date established to be effective the date of completion of trial service;

(b) Upon trial service reversion the salary shall be established as provided in WAC 251-08-115(4) and the former periodic increment date shall be reestablished;

(c) Upon trial service appointment to a class at the same salary level, the salary and periodic increment date shall remain unchanged.

AMENDATORY SECTION (Amending Order 98, filed 7/22/82, effective 9/1/82)

WAC 251-18-340 APPOINTMENT—PERMANENT STATUS. Permanent status appointments shall be made under the following conditions:

(1) Upon successful completion of a probationary period or trial service period.

(2) Demotion, either voluntary or involuntary, when made to a class in which the employee has held permanent status during the current period of employment at the institution.

(3) Transfer within a class at the institution.

(4) Certification from a layoff list for a class in which the employee had permanent status at the time of layoff or lower classes in the same class series for which the employee is qualified.

(5) Conversion, per the provisions of WAC 251-18-420, of the incumbent of an exempt position which is converted to classified status, provided the incumbent has been employed for at least six months in the exempt position.

AMENDATORY SECTION (Amending Order 108, filed 9/23/83, effective 10/24/83)

WAC 251-22-070 VACATION LEAVE—USE.

(1) Vacation leave may not be taken until an employee has completed six months of continuous employment. An employee bringing an accrued balance from another state agency may use the previously accrued vacation leave during the institutional probationary or trial service period.

(2) All requests for vacation leave must be approved by the employing official or designee in advance of the effective date.

(3) Vacation leave shall be scheduled by the employing department at a time most convenient to the work of the department, the determination of which shall rest with the employing official. As far as possible, leave will be scheduled in accordance with the wishes of the employee in any amount up to the total of his/her earned leave credits.

(4) Paid vacation leave may not be used in advance of its accrual.

WSR 84-04-072
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Labor

and Industries intends to adopt, amend, or repeal rules concerning WAC 296-200-300 procedures for notice of infraction; 296-200-310 service on employee of a contractor; 296-200-320 mailing copy of notice of infraction to contractor; and 296-400-300 procedures for notice of infraction. These four rules are new rules that are required by the changes to the contractor registration law, chapter 18.27 RCW; and the plumber certification law, chapter 18.106 RCW, enacted in 1983. They set out the procedures the department will follow in issuing a notice of infraction and notifying the contractor or plumber that they have received a notice of infraction. The rules also clarify, for the benefit of the district courts and contractors, which of the justice court traffic infraction rules (JTIR) apply to contractor and plumber notices of violation;

that the agency will at 9:30, Tuesday, March 6, 1984, in the Conference Room, General Administration Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 6, 1984.

The authority under which these rules are proposed is RCW 18.27.040, 18.27.200 and 18.106.020.

The specific statute these rules are intended to implement is RCW 18.27.040, 18.27.200 and 18.106.020.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 6, 1984.

Dated: February 1, 1984

By: Sam Kinville
 Director

STATEMENT OF PURPOSE

Title and Number of Rule Sections or Chapters: WAC 296-200-300 Procedures for notice of infraction; 296-200-310 Service on employee of a contractor; 296-200-320 Mailing copy of notice of infraction to contractor; and 296-400-300 Procedures for notice of infraction.

Statutory Authority: RCW 18.27.040, 18.27.200 and 18.106.020.

Specific Statutes that Rules are Intended to Implement: RCW 18.27.040, 18.27.200 and 18.106.020.

Summary of the Rules: This notice proposes to add three new sections to chapter 296-200 WAC, Contractor certificate of registration renewals—Security—Insurance. WAC 296-200-300 is added to set up a procedure for issuing a notice of infraction to a contractor that violates RCW 18.27.200. WAC 296-200-310 allows the department to serve notice of an infraction on an employee of a contractor. WAC 296-200-320 states that the department is required to send a copy by certified mail to the contractor of the notice of infraction. To prove that the letter was mailed, the department's representative shall sign an affidavit of mailing. One new section is proposed to add to chapter 296-400 WAC, Certification of competency for journeyman plumbers. WAC 296-400-300 is added to set up a procedure for issuing a notice of infraction to a plumber.

Reasons Supporting the Proposed Rules: These four rules are new rules that are required by the changes to

the contractor registration law, chapter 18.27 and chapter 18.106 RCW for plumbers. These statutes were enacted in 1983. They set out the procedures the department will follow in issuing notices of infraction and notifying the contractor or plumber that they have received a notice of infraction. The rules also clarify, for the benefit of the district courts, contractors, and plumbers, which of the justice court traffic infraction rules (JTIR) apply to contractor and plumber notices of violation.

The Agency Personnel Responsible for the Drafting, Implementation and Enforcement of the Rule: Carlene M. White, Assistant Administrator, Electrical Licensing, Plumber Certification, and Contractor Registration Section, 520 South Water Street, Olympia, Washington 98502, (206) 754-1587.

Name of the Person or Organization Whether Private, Public, or Governmental, that is Proposing the Rules: Department of Labor and Industries.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rules: The rules will be beneficial to the department, the district courts, the contractors, and the plumbers because the rules are designed to eliminate possible problems regarding the use of the traffic infraction form that the new laws require the department to do. They also clarify the procedures the department will follow in issuing and servicing notices of infraction. The rules will be beneficial to the department, the district courts, the contractor, and the plumber.

The rules are not necessary to comply with a federal law or a federal or a state court decision.

Any Other Information that may be of Assistance in Identifying the Rule or its Purpose: None.

A small business impact statement is not required because the rules do not have a negative fiscal impact.

NEW SECTION

WAC 296-200-300 PROCEDURES FOR NOTICES OF INFRACTION. (1) The department may issue a notice of infraction to a contractor that violates RCW 18.27.200. The notice of infraction by law must be on the same basic form as that prescribed for traffic infractions. The supreme court has adopted the justice court traffic infraction rules (JTIR) as the rules of procedure for traffic infractions. To ensure that court procedures are the same for contractor notices of infraction as for traffic notices of infraction, the department shall comply with all JTIR rules except for rules 1.1, 1.2, 2.1, and 2.4(a). Rules 1.1, 1.2, and 2.1 do not directly apply to notices of violation for contractors. Rule 2.4(a) does not apply because RCW 18.27.270 provides that a defendant must respond to a notice of violation within fourteen days, not within seven days as for a traffic infraction.

(2) In reading the JTIR rules, the following terms, as they appear in the rules, shall be construed to mean:

- (a) "Department" means the department of labor and industries, not the department of licensing.
- (b) "Notice of traffic infraction" means notice of infraction.
- (c) "Traffic case" means a contractor infraction case.
- (d) "Law enforcement officer" means a representative of the department.

NEW SECTION

WAC 296-200-310 SERVICE ON EMPLOYEE OF A CONTRACTOR. If a contractor is a corporation or a partnership, the department need not serve the contractor personally. In such a case, if no

owner, officer, or partner of a violating contractor is on a job site, the department may issue a notice of infraction to any employee on the site. For purposes of serving the notice of infraction, the legislature intended that all employees of a contractor, at whatever level, are authorized to act as, and are, agents to accept service of the notice of infraction on behalf of the contractor. A promise to appear signed by an employee on behalf of the contractor is binding on the contractor. To lessen possible problems, however, the department shall have the employee complete the promise to appear on the notice of infraction in the following fashion: The employee shall sign the "name of the contractor, by name of the employee". It will appear thus:

Jane Doe Construction Co.
(by) Richard Roe, Employee.

NEW SECTION

WAC 296-200-320 MAILING COPY OF NOTICE OF INFRACTION TO CONTRACTOR. If the department serves a notice of infraction on an employee of a contractor, and not on the owner, officer, or partner of the contractor, the law requires the department to mail by certified mail a copy of the notice of infraction to the contractor if the department can determine the contractor's name and address. If the department cannot determine the contractor's name and address, it need not mail a copy of the notice of infraction; in such a case, the notice of infraction shall remain valid. To ensure further that the contractor receives a copy, the department shall, as well as mail a copy by certified mail, mail a second copy by ordinary mail. To prove that the letters were mailed the department's representative shall sign an affidavit of mailing in substantially the following form:

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
)
COUNTY OF) ss.

I, (name of Representative), being first duly sworn, on oath depone and say:

That on _____, 19__ , pursuant to RCW 18.27.230, I caused a copy of the notice of infraction, with serial number _____, dated _____, to be mailed by certified mail, return receipt requested, via the United States Postal Service, postage prepaid; and a second copy of the notice of infraction to be mailed by ordinary mail, via the United States Postal Service, postage prepaid, at _____, Washington, to:

(Name of Contractor
Address of Contractor)

(Signature of representative)
(Name of representative)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19__.

.....
NOTARY PUBLIC for the State of
Washington, residing at

NEW SECTION

WAC 296-400-300 PROCEDURES FOR NOTICES OF INFRACTION. (1) The department may issue a notice of infraction to a plumber that violates RCW 18.106.180. The notice of infraction by law must be on the same basic form as that prescribed for traffic infractions. The supreme court has adopted the justice court traffic infraction rules (JTIR) as the rules of procedure for traffic infractions. To ensure that court procedures are the same for plumber notices of infraction as for traffic notices of infraction, the department shall comply with all JTIR rules except for rules 1.1, 1.2, 2.1, and 2.4(a). Rules 1.1, 1.2, and 2.1 do not directly apply to notices of violation for plumbers. Rule 2.4(a) does not apply because RCW 18.106.220 provides that a defendant must respond to a notice of violation within fourteen days, not within seven days as for a traffic infraction.

(2) In reading the JTIR rules, the following terms, as they appear in the rules, shall be construed to mean:

- (a) "Department" means the department of labor and industries, not the department of licensing;
- (b) "Notice of traffic infraction" means notice of infraction;
- (c) "Traffic case" means a plumber infraction case;
- (d) "Law enforcement officer" means a representative of the department.

WSR 84-04-073
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
 [Filed February 1, 1984]

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

- Amd WAC 356-06-010 Definitions (seasonal career employees, seasonal career positions, temporary employment).
- Amd WAC 356-18-090 Vacation leave—Accrual.
- Amd WAC 356-30-080 Temporary ((~~employment~~)) appointments—Exempt service.
- Amd WAC 356-30-130 Seasonal career employment;

that the agency will at 10:00 a.m., Thursday, March 8, 1984, in the Board Hearings Room, Department of Personnel, 600 South Franklin, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

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

The specific statute these rules are intended to implement is RCW 41.06.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 6, 1984.

Dated: February 1, 1984

By: Leonard Nord
 Secretary

STATEMENT OF PURPOSE

Amend WAC 356-06-010.

Title: Definitions (seasonal career employees, seasonal career positions).

Purpose: To define words and terms used throughout Title 356 WAC.

Statutory Authority: RCW 41.06.150.

Summary and Reasons: Proposed changes would clarify more thoroughly terms which were adopted by the Personnel Board in December 1983. Better describes terms used in WAC 356-30-130 regarding a new type of employment established as seasonal career employment.

Responsibility for Drafting: John Calhoun, Department of Transportation, Transportation Building, MS: KF-01, Olympia, WA 98504, Phone: 753-7337; Implementation: All state agencies; and Enforcement: Department of Personnel.

Proposed by: Department of Transportation, governmental agency.

Comments: The proposed changes were adopted on an emergency basis by the Personnel Board on January 12, 1984.

Amend WAC 356-06-010.

Title: Definitions (temporary employment).

Purpose: To define words and terms used throughout Title 356 WAC.

Statutory Authority: RCW 41.06.150.

Specific Statute: RCW 41.06.070(12).

Summary and Reasons: Proposed change is in conjunction with a proposed change to WAC 356-30-080 which would allow agencies more options in making temporary appointments.

Responsibility for Drafting: John Calhoun/Robert Hahn, Department of Transportation, Transportation Building, MS: KF-01, Olympia, WA 98504, Phone: 753-7337; Implementation and Enforcement: Department of Personnel.

Proposed by: Department of Transportation, governmental agency.

Amend WAC 356-18-090.

Title: Vacation leave—Accrual.

Purpose: Outlines the basis under which employees will accrue vacation leave credits.

Statutory Authority: RCW 41.06.150.

Summary: Proposal would delete the reference to part-time, intermittent, and seasonal employees. Employees in such positions would accrue vacation leave on the same basis as other employees (i.e., full accrual if the employee usually works 40 hours per week; pro-rated accrual if the employee usually works less than 40 hours per week).

Reasons: The proposed revision would bring the vacation leave - accrual rule into accord with revisions adopted by the Personnel Board in January 1984 to the sick leave - accrual rules.

Responsibility for Drafting: John Calhoun, Department of Transportation, Transportation Building, MS: KF-01, Olympia, WA 98504, Phone: 753-7337; Implementation and Enforcement: Department of Personnel.

Proposed by: Department of Transportation, governmental agency.

Amend WAC 356-30-080.

Title: Temporary ((~~employment~~)) appointments—Exempt service.

Purpose: Contains the procedural requirements agencies must follow when filling temporary exempt positions.

Statutory Authority: RCW 41.06.150.

Specific Statute: RCW 41.06.070(12).

Summary: The proposed revision would allow agencies to use the temporary employment - exempt service rules to obtain temporary replacements for permanent employees who, for whatever reason, are absent from their job.

Reasons: The existing rule is too restrictive. Agencies have a need to fill in behind permanent employees who are absent for reasons other than leave. Permanent employees, for example, on acting appointments to a higher class are not on leave, but are still absent from their former job.

Responsibility for Drafting: John Calhoun/Robert Hahn, Department of Transportation, Transportation Building, MS: KF-01, Olympia, WA 98504, Phone: 753-7337; Implementation and Enforcement: Department of Personnel.

Proposed by: Department of Transportation, governmental agency.

Comments: Rule proposal reflects present practice in state government.

Amend WAC 356-30-130.

Title: Seasonal career employment.

Purpose: Outlines procedure for making seasonal career appointments.

Statutory Authority: RCW 41.06.150.

Summary and Reasons: Proposed revisions are clarifying changes to amendments adopted by the Personnel Board in December 1983. Proposal better clarifies the procedures for appointing seasonal career employees.

Responsibility for Drafting: John Calhoun, Department of Transportation, Transportation Building, MS: KF-01, Olympia, WA 98504, Phone: 753-7337; Implementation: All state agencies; and Enforcement: Department of Personnel.

Proposed by: Department of Transportation, governmental agency.

Comments: Proposed changes were adopted on an emergency basis by the Personnel Board in January 1984.

AMENDATORY SECTION (Amending Order 194, filed 12/30/83)

WAC 356-06-010 DEFINITIONS. The following definitions apply throughout these rules unless the context clearly indicates another meaning:

ACTING APPOINTMENT - An appointment of limited duration made from within the classified service to a supervisory or managerial position.

ADMINISTRATIVE PERSONNEL - Employees who regularly exercise discretion and independent judgment in the performance of: (1) Work related directly to management policy; or (2) work providing direct assistance to executive or administrative personnel.

AGENCY - An office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

AGRICULTURAL PERSONNEL - Employees performing work which includes farming and all its branches, including cultivating the soil, or growing or harvesting crops, or raising livestock, bees, fur-bearing animals, or poultry; or doing any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

ALLIED REGISTER - A register for a class for which the duties and minimum or desirable qualifications are equivalent to or above those for another class.

ALLOCATION - The assignment of a position to a job classification.

ANNIVERSARY DATE - Original entry date into state service as adjusted by leave without pay or break in service.

APPOINTING AUTHORITY - A person or group of persons lawfully authorized to make appointments.

BARGAINING UNIT - The group of employees in positions determined by the personnel board to constitute a unit appropriate for collective bargaining purposes under these rules.

BASIC SALARY RANGE - The dollar amount of the step of the salary range to which the employee is entitled, before any deduction, and exclusive of additional compensation of any kind.

BOARD - The state personnel board.

BUMPING - The replacement of an incumbent by another employee subject to reduction in force, who has greater seniority.

CAREER PLANNING - A programmed process designed to assist employee career growth through job experience, training and/or continuing education.

CERTIFICATION - Providing an agency with the appropriate number of names of candidates who have passed the examination for a given class and are eligible to be considered for vacancies.

CLASS - Identification of a position, or a group of positions, sufficiently similar in duties so that the same requirements of training, experience, or skill and the same title, examination, and salary range may be applied.

CLASSIFIED SERVICE - All positions and employees in the state service subject to the provisions of chapter 41.06 RCW and these rules.

COLLECTIVE BARGAINING OR COLLECTIVE NEGOTIATION - The performance of the mutual obligation of the appointing authority, or designee, and the certified exclusive representative of a bargaining unit to meet in an attempt to reach an agreement on all personnel matters over which the appointing authority may lawfully exercise discretion.

COMPENSATORY TIME - Time off in lieu of cash payment for overtime.

COMPETITIVE SERVICE - All positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

DATE OF ELECTION - The date of election is the date the director of personnel certifies the results of the election.

DEMOTION - A change of a permanent employee from a position in one class to a position in another class having a lower maximum salary.

DESIRABLE QUALIFICATIONS - The levels of education and/or experience deemed desirable or preferable for admission to the examination in lieu of fixed minimum qualifications.

DIRECTOR - The director of the department of personnel.

DISABILITY - An employee's bodily inability to perform adequately the essential duties of the job class. (For purposes of WAC 356-35-010, this definition shall not include maternity.)

DISMISSAL - The termination of employment of a permanent employee (for cause) or of a probationary employee as specified in these rules.

EDUCATION LEAVE OF ABSENCE - An authorized leave of absence for educational purposes.

ELEVATION - Restoring an employee to the higher classification, with permanent status, which was held prior to being granted a demotion.

ELIGIBLE - An applicant whose name is on a register.

EMERGENCY APPOINTMENT - An appointment, for emergency reasons, not to exceed 60 calendar days.

EMPLOYEE - Any person employed under the jurisdiction of these rules.

EMPLOYEE ORGANIZATION - Any organization having the authority, as specified in WAC 356-42-010, to represent state employees on personnel matters.

EXECUTIVE PERSONNEL (As used in chapter 15 of these rules) - Employees who customarily and regularly exercise discretionary powers in directing and controlling program operations of an agency or division or customarily recognized subdivision thereof and personnel who are responsible for (1) hiring or firing or making substantial recommendation for same and (2) directing the work of and (3) regulating the working hours of two or more employees.

EXEMPT POSITION - Any position designated as exempt from the application of these rules as specified in WAC 356-06-020.

EXCHANGE TIME - Equal time off for excess hours worked by exceptions work period employees.

EXIT LEAVE - The paid hours of nonworking time taken by an employee who is not eligible to receive a lump sum cash payment for accrued vacation leave. Exit leave is taken following the last designated work day prior to an employee's resignation, dismissal, or separation due to reduction in force or disability and continuing until all the employee's accrued vacation leave is exhausted.

FULL TIME EMPLOYMENT - Regularly scheduled employment requiring an average of 40 hours of work per week. However, for certification from a register, work between 32 - 40 hours per week shall be considered full time.

HANDICAPPED - Persons with physical, mental or sensory impairments that would impede that individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight; static and permanent in that they are seldom fully corrected by medical replacement, therapy or surgical means.

HOLIDAYS - Paid nonwork days for state employees as established by RCW 1.16.050.

HOUSED PERSONNEL - Employees whose duties require that they reside at the place of their employment or who otherwise spend a substantial portion of their work time subject to call and not engaged in the performance of active duties.

HUMAN RESOURCE DEVELOPMENT - The function of achieving agency goals by changing or enhancing employees' knowledges, skills, attitudes and behaviors.

INTERMITTENT EMPLOYMENT - Employment without any understanding of continuity, fitting no particular pattern and performed for

no more than a total of (nine months) 1560 hours during any consecutive 12-month period.

INTERVENING SALARY STEPS – All increment steps in a salary range, except the lowest and highest.

LAW ENFORCEMENT PERSONNEL – Employees empowered by statute to enforce laws designed to maintain public peace and order, protect life and property, and detect and prevent crimes. Employees in these positions must have the power of arrest, and have been trained in rules of evidence, laws of arrest, search and seizure and legal rights of citizens.

MINIMUM QUALIFICATIONS – The training, experience, and other qualifications established for a given class and required of an applicant for admission to the examination for that class.

NONCOMPETITIVE POSITIONS – Positions designated by the board as not requiring a competitive examination.

ORIENTATION – An introduction to the organization and to tasks, jobs, procedures and other activities new to the employee.

OVERTIME – Work authorized and performed in accordance with WAC 356-15-030.

PART TIME EMPLOYMENT – Work of less than 40 hours per week. However, for certification from registers, work of less than 32 hours per week shall be considered part time.

PERIODIC INCREMENT DATE – The date established in accordance with the merit system rule on which an employee is entitled to a salary increase within a salary schedule range as prescribed in the merit system rules.

PERMANENT EMPLOYEE – An employee who has successfully completed a probationary period and has had no break in service.

PERSONNEL RECORD – Such information having pertinence to the employment of an employee and which is retained in a specific location as required by WAC 356-46-060(2)A.

POSITION – A group of duties and responsibilities normally assigned to an employee. Such position may be filled or vacant, full-time or part-time, seasonal, temporary or permanent.

PREMIUM PAYMENT – Wage payment over and above the basic salary rate authorized by the board for extraordinary conditions of employment.

PROBATIONARY PERIOD – The trial period of employment following certification and appointment to, or reemployment in, the classified service and continuing for 6 to 12 months as determined under the provisions of WAC 356-30-260.

PROFESSIONAL PERSONNEL – Employees performing work which requires consistent exercise of independent judgment and is in a specialized field requiring advanced knowledge normally gained through achieving a baccalaureate degree but which may be gained through equivalent experience.

PROJECT EMPLOYMENT – A program designated by the director of personnel as "project employment," that is separately financed by a grant, federal funds, or by state funds, or by a combination of funds to provide training or employment opportunities or expertise or additional employees to carry out a specific project or goal and which, either because of the nature of the project, funding requirements, or potential harmful impact on employment opportunities for regular civil service employees, cannot be facilitated through the regular civil service system. Such a program may last upward to two years and beyond, but has an end in sight.

PROMOTION – A change of an employee from a position in one class to a position in a class having a higher maximum salary.

PROVISIONAL APPOINTMENT – An appointment to a position pending the establishment of a register for that class.

REDUCTION IN FORCE – A separation resulting from a lack of funds, lack of work, good faith reorganization for efficiency purposes, or from there being fewer positions than the employees entitled to the positions because of exercising their rights to return to the classified service. When a reduction in force occurs, it is a separation from service without cause on the part of the employee.

REDUCTION – Placement of an employee's salary at a lower step within the range as a result of a disciplinary action.

REEMPLOYMENT – An appointment, made from the reemployment register, of a former employee who had permanent status.

REGISTER – A list of eligible names established for employment or reemployment in a class.

REINSTATEMENT – Return of an employee to full employment rights by board action following appeal hearing.

RESIGNATION – A voluntary separation from employment.

REVERSION – Voluntary or involuntary movement of an employee during a six-month trial service period to the class which was held prior to the current trial service appointment.

SALARY RANGE – A sequence of minimum, intervening, and maximum dollar amounts designated by the board as the monthly compensation for a class.

SCHEDULING PLAN – A series of schedules, approved for specific positions by the director of personnel or the personnel board, through which schedules the incumbents move in an established pattern.

SEASONAL CAREER EMPLOYEES – Incumbents who have been appointed into seasonal career positions with the mutual expectation of continued employment or employees who have repeatedly returned to state employment in the same agency (in a work pattern defined as seasonal career employment) and are granted a seasonal career appointment at the start of their fourth season of consecutive employment as provided in WAC 356-30-130(3).

SEASONAL CAREER EMPLOYMENT – Two work patterns are included: (1) Work in positions, not intermittent in nature nor exempted by statutes or the provisions of WAC 356-06-020, which is cyclic in nature and beginning at approximately the same time each year lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period; and (2) work patterns in positions as in (1) above but lasting for only a minimum of three months each season and for the past three consecutive seasons in the same agency.

SEASONAL CAREER POSITIONS – A grouping of assigned duties, tasks, and responsibilities in seasonal career employment established to respond to work that is cyclic in nature beginning at approximately the same time each year and lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period.

SENIORITY – A measure of the last period of unbroken time served in positions in the classified service under the jurisdiction of the state personnel board. Service in positions brought under the jurisdiction of the state personnel board by statute is counted as though it had previously been under the jurisdiction of the state personnel board. Leaves of absence granted by agencies and separations due to reduction in force are not considered a break in service. Time spent on leaves of absence without pay is not credited unless it is for educational leaves, or statutes require it be credited; or it is taken at the specific request of an agency so employees may perform work specifically related to state work. Time spent off the state payroll due to reduction in force will be credited for that period of time the employee is eligible to be placed on the reduction in force register. Leaves without pay granted to directly or indirectly reduce the possible effect of reduction in force will be credited in accordance with WAC 356-18-140 and 356-18-220. Leaves of absence without pay granted to employees who are drawing worker's compensation because of injury or illness while employed by the state will be credited. Time spent in exempt appointments listed in RCW 41.06.070 will be credited and the service will not be regarded as broken when employees return from exempt service in accordance to RCW 41.06.070(22), WAC 356-06-055 and 356-30-330. Time spent under the jurisdiction of the higher education personnel board will be added when the employee comes under the jurisdiction of the state personnel board through the provisions of WAC 356-06-055(6). The length of active military service of a veteran, not to exceed five years, shall be added to the state service for such veteran or his widow.

SERIES – A group of classes of positions to which the same kind of work is assigned but which is at different levels of difficulty and responsibility.

SUPERVISOR – Any employee assigned responsibility by management to participate in all the following functions with respect to their subordinate employees: (1) Selection of staff, (2) training and development, (3) planning and assignment of work, (4) evaluation of performance, and (5) corrective action. Participation in these functions must not be of a merely routine nature but requires the exercise of individual judgment.

SUSPENSION – An enforced absence without pay for disciplinary purposes.

TANDEM EMPLOYMENT – Any position filled by more than one employee as voluntarily agreed between management and employee(s) who jointly fulfill the responsibilities and duties of the position(s).

TEMPORARY EMPLOYMENT – Single or multiple periods of employment during the absence of a permanent employee on ((leave;)) or for work done at a workload peak and normally lasting for less than nine months and having an end in sight.

TERMINATION – Separation from employment for reasons beyond the control of the employee.

TRAINING - An organized learning process designed to provide needed changes in the skills, knowledges, attitudes or behaviors of employees.

TRANSFER - The change of an employee from one to another classified position having the same salary range number.

TRIAL SERVICE PERIOD - A six-month trial period of employment of a permanent employee beginning with the effective date of the promotion or demotion or appointment from the promotional register.

TUITION REIMBURSEMENT - A full or partial reimbursement to eligible employees by the employing agency for tuition paid to attend approved courses.

UNDERFILL - The filling of a position with an employee in a lower related class in the absence of an adequate eligible register for the classification.

UNION SHOP - A form of union security that requires that all employees within a bargaining unit become members of the certified bargaining representative within 30 calendar days of the union shop election or 30 calendar days from an employee's date of hire, whichever is later.

UNION SHOP FEE - The union shop fee, sometimes known as a representation fee, is the fee paid by an employee to a union shop representative in lieu of holding membership in that union. An employee who has been certified for nonmembership status because of bona fide religious tenets of a church or religious body of which the employee is a member, shall pay a fee equivalent to the regular monthly dues of the union shop representative minus any included monthly premiums for union sponsored insurance programs.

UNION SHOP REPRESENTATIVE - A union shop representative is an employee organization that is certified as exclusive bargaining representative for a bargaining unit and which has also been certified as union shop representative by the director of personnel. To be certified as union shop representative, a majority of all employees in the bargaining unit must vote in favor of having the petitioning employee organization as their union representative.

VETERAN - For the purpose of granting preference during layoffs and subsequent reemployment, any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given: **PROVIDED**, That the person has not voluntarily retired with 20 or more years of active military service and has military retirement pay in excess of \$500 per month.

VETERAN'S WIDOW - For the purpose of granting preference during layoffs and subsequent reemployment, the unmarried wife of a deceased veteran as defined in WAC 356-06-010 except that such veteran's one-year minimum length of active military service shall be disregarded.

VOLUNTEER EXPERIENCE - Work experience for which no salary was received, which may be credited toward meeting the minimum qualifications for a classification: Provided such experience is equivalent to and not prohibited by the minimum qualifications of the classification. Volunteer experience for which academic credit was granted may be used to satisfy either the educational or the experience requirements of a class, but may not be used for both.

WORK DAY - A 24-hour period beginning at a time determined by the appointing authority. For scheduled standard work period positions the work day begins at the scheduled starting time of the employee.

WORK PERIOD DESIGNATION - Identification of each classification's and position's criteria for hours of work as defined in WAC 356-15-020 and qualifications for premium pay as defined in chapter 356-15 WAC.

WORK SCHEDULE - A series of workshifts and work days within the workweek.

WORKSHIFT - Scheduled working hours within the workday.

WORKWEEK - A regular recurring period of 168 hours beginning at a time determined by the appointing authority and continuing for seven consecutive 24-hour periods. For scheduled standard work period positions the workweek begins at the scheduled starting time of the first shift of the employee's uniform shifts.

Y-RATE - A salary amount which either exceeds the maximum step for the salary range of an employee's class or a salary amount that falls between the steps of a salary range of an employee's class.

AMENDATORY SECTION (Amending Order 157, filed 6/15/81)

WAC 356-18-090 VACATION LEAVE—ACCRUAL. (1) Full-time employees who were in pay status for 15 or more calendar days including holidays shall be credited monthly with the following rates of vacation leave for each year of employment. (~~(Parttime, intermittent, hourly or seasonal)~~) Employees whose payroll hours are usually less than 40 hours a week shall be credited with vacation leave under the same conditions as a fulltime employee. The hours credited shall be at the respective ratio of payroll hours to the payroll hours requirement for fulltime employment.

(a) During the first year of current continuous employment — 96 hours (12 days) per annum.

(b) During the second year of current continuous employment — 104 hours (13 days) per annum.

(c) During the third and fourth years of current continuous employment — 112 hours (14 days) per annum.

(d) During the fifth, sixth, and seventh years of current continuous employment — 120 hours (15 days) per annum.

(e) During the eighth, ninth, and tenth total years of employment — 128 hours (16 days) per annum.

(f) During the eleventh, twelfth, and thirteenth total years of employment — 136 hours (17 days) per annum.

(g) During the fourteenth, fifteenth, and sixteenth total years of employment — 144 hours (18 days) per annum.

(h) During the seventeenth, eighteenth, and nineteenth total years of employment — 152 hours (19 days) per annum.

(i) During the twentieth, twenty-first, and twenty-second total years of employment — 160 hours (20 days) per annum.

(j) During the twenty-third, twenty-fourth, and twenty-fifth total years of employment — 168 hours (21 days) per annum.

(k) During the twenty-sixth year of total employment and after — 176 hours (22 days) per annum.

(2) Vacation leave is cumulative to a maximum of 240 hours (30 working days) unless the employee's request for leave is deferred by the agency and a statement of necessity filed with the director of personnel. Such deferred leave may be credited in excess of the 30-day maximum until such leave is granted by the employing agency.

AMENDATORY SECTION (Amending Order 148 and 148A, filed 10/13/80 and 1/20/81)

WAC 356-30-080 TEMPORARY ((EMPLOYMENT)) APPOINTMENTS—EXEMPT SERVICE. (1) Except as stipulated below, appointments to temporary exempt positions as defined in WAC 356-06-020(15) are exempt from these rules provided(:

~~(1) There is no involvement in federal grant-in-aid)~~ the positions are not used in a seasonal manner as described in the definition of seasonal career employment.

~~(2) Upon establishment, temporary exempt positions ((have been reported to))~~ shall be approved by the director of personnel or designee.

~~(3) Temporary appointments may be made to temporary exempt positions for work done at a workload peak normally lasting for less than nine months and having an end in sight.~~

~~(4) Compensation and minimum qualifications of temporary appointees ((are))~~ shall be consistent with those for comparable classified positions.

~~((4) That the))~~ (5) A temporary appointment ((lasts for)) shall last no more than nine months for single appointments, or no more than nine cumulative months for multiple appointments within a continuous twelve month period((, except when a temporary employee replaces a permanent employee who has been granted a leave of absence without pay in accordance with WAC 356-18-140 and 356-39-120 and 356-39-130. In such cases, the temporary appointment may extend to the date the employee on leave is scheduled to return.

~~(5) That))~~ (6) A ((two)) three-month break in service ((has occurred)) shall occur since the last temporary appointment of the same person in the same agency, except for multiple appointments as indicated in ((4)) (5) above.

(7) Established registers, certification, and referral service are available for use in filling temporary exempt positions. A temporary employee, appointed following certification from the register, may enter a probationary period and subsequently gain permanent status, when a change in agency needs results in the permanent availability of the position.

AMENDATORY SECTION (Amending Order 194, filed 12/30/83)

WAC 356-30-130 SEASONAL CAREER EMPLOYMENT.
 (1) ~~((Seasonal career positions are those established to respond to work that is cyclic in nature beginning at approximately the same time each year and lasting for a minimum of five months and a maximum of nine months in any consecutive twelve-month period;))~~ Seasonal career employees are those in seasonal career positions or employees whose repeated pattern of work is defined as the second pattern (2) in the definition of seasonal career employment.

~~(2) ((The appointing authority may establish seasonal))~~ Positions which are established to respond to cyclic work load requirements and which meet the definition of seasonal career employment shall be established as seasonal career positions; provided, that the agency will not establish seasonal career positions which circumvent the utilization of full time positions. ~~((Seasonal career employees are those who have been appointed to a seasonal career position with the mutual expectations of continued employment season after season.))~~

(3) An initial appointment into seasonal career employment shall be from a register or lists; except that employees selected for a fourth consecutive season of cyclical temporary employment, as provided in the definition of seasonal career employment, shall be granted a seasonal career appointment provided they pass a qualifying examination for the classification in which they are employed.

(4) Upon completion of the probationary period of 1040, 1560, or 2080 accumulated scheduled hours (if serving a six-month, nine-month, or twelve-month probationary period), employees in seasonal career ~~((positions))~~ employment shall assume the rights of a permanent employee. Past service that later entitles employees to seasonal career employment will count toward permanent status at the beginning of the fourth qualifying season.

(5) ~~Seasonal career employees affected by reduction-in-force, ((or))~~ reduction in hours of work, ~~((or))~~ subsequent reemployment or increase in scheduled hours of work ~~((affecting seasonal career employees in seasonal career positions shall be by seniority))~~ will have their reduction-in-force rights only within their seasonal career layoff unit ~~((; provided;))~~ and will compete based on seniority. Notification of reduction-in-force or alterations of work schedules shall be given no later than two working days prior to the effective date. ~~((Seasonal career employees shall not accrue seniority while on seasonal layoff))~~ Seniority gained by seasonal career employees during seasonal layoff shall be disregarded.

(6) ~~((Agencies))~~ Seasonal career reduction-in-force registers shall ~~((maintain))~~ be maintained and ~~((post seasonal reduction in force registers for reemployment to seasonal career positions))~~ posted within their respective agencies in accordance with the agency's reduction-in-force ~~((policy))~~ procedures and policies.

(7) Seasonal career employees ~~((who have completed one season of employment))~~ separated due to a reduction-in-force shall be placed on a separate seasonal career reduction-in-force register for ~~((that))~~ the season ~~((of employment))~~ from which they were layed off.

WSR 84-04-074**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY**

[Filed February 1, 1984]

The Department of Ecology withdraws its notice of intent to amend WAC 173-19-4501 Bellingham, city of, shoreline master program in WSR 84-03-057 originally scheduled for public hearing in Lacey, Washington, on February 29, 1984, and adoption on March 14, 1984.

The Department of Ecology has received numerous requests to hold the public hearing related to the proposed amendment in the city of Bellingham.

The department and the city have agreed to resubmit the shoreline master program amendment at a later date. At such time, the department will file a notice of intent.

John F. Spencer
Deputy Director

**WSR 84-04-075
PROPOSED RULES
DEPARTMENT OF ECOLOGY**

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Department of Ecology intends to adopt, amend, or repeal rules concerning dangerous waste regulations, amending chapter 173-303 WAC in the following areas: The moderate risk waste standards amendment provides a lesser degree of mandatory handling standards for certain wastes which pose a moderate threat to the environment; the recycling standards amendment provides various "levels of regulation" depending on the degree of hazard; the land disposal/groundwater monitoring standards specify groundwater requirements more suited for Washington's soil conditions and topography; and the technical amendments correct errors and clarify the existing regulation.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 21, 1984.

The authority under which these rules are proposed is chapter 70.105 RCW, hazardous waste disposal.

The specific statute these rules are intended to implement is chapter 70.105 RCW.

This notice is connected to and continues the matter in Notice No. WSR 83-21-090 filed with the code reviser's office on October 19, 1983.

Dated: February 1, 1983[1984]

By: Donald W. Moos

Director

**WSR 84-04-076
PROPOSED RULES
DEPARTMENT OF ECOLOGY**

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Department of Ecology intends to adopt, amend, or repeal rules concerning general regulations for air pollution sources, amending chapter 173-400 WAC, specifically, WAC 173-400-075(5), arsenic standards, is being added;

that the agency will at 6:00 p.m., Tuesday, March 6, 1984, in the Public Utilities Administration Building, 3628 South 35th Street, Tacoma, WA, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 10, 1984.

The authority under which these rules are proposed is chapter 70.94 RCW.

The specific statute these rules are intended to implement is chapter 70.94 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 20, 1984.

Dated: February 1, 1984

By: Donald W. Moos

Director

STATEMENT OF PURPOSE

Title: Revisions of chapter 173-400 WAC, General regulations for air pollution sources.

Description of Purpose: To provide regulations for the emission of arsenic.

Statutory Authority: Chapter 70.94 RCW.

Summary of Rule Changes: The rule establishes interim community exposure standards for arsenic and provides mechanisms for its implementation and enforcement.

Reasons Supporting Proposed Action: Arsenic is a known toxic air pollutant. Means need to be found to reduce levels of arsenic near the Tacoma smelter, especially "fugitive" arsenic at ground level.

Agency Personnel Responsible for Drafting: P. A. Nelson, 459-6249; Implementation and Enforcement: H. F. Droege, 459-6256; Department of Ecology, Mailstop PV-11, Olympia, WA 98504.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: The amendments should be adopted.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: Not applicable.

Small Business Economic Impact Statement: No impact.

Chapter 173-400

GENERAL REGULATIONS FOR AIR POLLUTION SOURCES

AMENDATORY SECTION (Amending Order DE 83-13, filed 4/15/83)

WAC 173-400-075 EMISSION STANDARDS FOR SOURCES EMITTING HAZARDOUS AIR POLLUTANTS. (1) The emission standards for asbestos, beryllium, beryllium rocket motor firing, mercury and vinyl chloride promulgated by the United States environmental protection agency prior to January 1, 1983, as contained in Title 40, Code of Federal Regulations, Part 61, are by this reference adopted and incorporated herein.

(2) The department or cognizant local authority, at any time after the effective date of this section, may conduct source tests and require access to records, books, files and other information specific to the control, recovery or release of asbestos, beryllium, mercury, or vinyl chloride in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring and analytical methods for sources of asbestos, beryllium, mercury, or vinyl chloride shall conform with the requirements of Title 40, Code of Federal Regulations, Part 61, as promulgated prior to January 1, 1983.

(4) This section shall not apply to any source operating pursuant to a waiver granted by the United States environmental protection agency or an exemption granted by the president of the United States during the effective life of such waiver or exemption.

(5) Arsenic standards.

(a) The owner or operator of any source which emits five tons or more of arsenic per year shall:

(i) Use best available technology (BAT) to control fugitive emissions of arsenic.

As used herein BAT means the best controls and work practices available considering economic, energy and environmental impacts. The level of control that represents BAT may be different for new and existing sources within a source category because of higher costs associated with retrofitting controls on existing sources, or differences in control technology for new vs. existing sources.

(ii) Establish and operate monitoring facilities for arsenic at sites approved by the department or cognizant local authority. Such sites

shall be representative of areas of potential maximum concentrations to which the public may be exposed.

(iii) Report within fifteen days, or in accordance with an approved work plan, to the department or cognizant local authority any exceedance of the following interim community exposure standards at any arsenic monitoring site:

Maximum 24-hour concentration -- 2.0 micrograms arsenic (expressed as As) per cubic meter.

Maximum annual arithmetic mean -- 0.3 micrograms arsenic (expressed as As) per cubic meter.

(iv) Maintain daily logs and records of the time and nature of activities that may release fugitive emissions of arsenic.

(v) Complete an evaluation of the cause of such exceedance within thirty days of the report of such exceedance.

(vi) Submit a work plan for the identification and evaluation of fugitive arsenic emissions that is satisfactory to the department or cognizant local authority. The plan is required within thirty days after the effective date of this regulation. The work plan shall include but not be limited to an identification and evaluation of fugitive emission sources, including operating and maintenance procedures, siting of arsenic monitoring stations, a description of sampling equipment, analytical techniques, quality assurance, schedules of sampling, a program to record meteorological conditions at time of sampling, and techniques used to evaluate and determine causes of exceedances. The work plan shall be completed within one year. Subparagraphs (ii), (iii), (iv), and (v) shall not impose additional requirements on the source to the extent that such requirements are included in the work plan.

(b) The standards set forth in (a)(iii) of this subsection are intended as interim community exposure standards. As more information becomes available it is anticipated that these standards will be reviewed.

(c) During this interim period the department shall periodically review all monitoring records and plant logs to determine the need for and practicability of additional emission controls, monitoring stations or adjustment to the above standards. Whenever the cause of any exceedance can be attributed to a specific source, the department or cognizant local authority shall determine if additional measures can be taken to control fugitive emissions of arsenic, and if so shall establish additional BAT requirements and a compliance program. Thereafter the department shall establish such final standards as appropriate to require, monitor and regulate the application of BAT for fugitive emissions of arsenic.

(d) Failure of a source to comply with any provision of subsection (5)(a) of this section or any order issued by the department or cognizant local authority pursuant to WAC 173-400-075, shall constitute cause for enforcement action per WAC 173-403-170 or 173-403-180.

WSR 84-04-077

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning Bellingham, City of, amending WAC 173-19-4501;

that the agency will at 7:00 p.m., Thursday, March 15, 1984, in the Bellingham High School Cafeteria, 2020 Cornwall Avenue, Bellingham, WA, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 29, 1984.

The authority under which these rules are proposed is RCW 90.58.120 and 90.58.200.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 22, 1984.

Dated: February 1, 1984

By: John F. Spencer
Deputy Director

STATEMENT OF PURPOSE

Dated: February 1, 1984

By: John F. Spencer
Deputy Director

Title: Amending WAC 173-19-4501 Bellingham, City of.

Description of Purpose: Adoption of a revised shoreline master program into the state master program, chapter 173-19 WAC.

Statutory Authority: RCW 90.58.120 and 90.58.200.

Summary of Rule: The amendment adopts revisions to the shoreline master programs for the city of Bellingham.

Reasons Supporting Proposed Action: Shoreline master programs and revisions thereto are developed by local government and submitted to the Department of Ecology for approval. The programs do not become effective until adopted by the department in accordance with the Administrative Procedure Act.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jeanne Holloman, WDOE, MS/PV-11, Olympia, WA 98504.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: [No information supplied by agency]

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: Not required.

AMENDATORY SECTION (Amending Order DE 79-34, filed 1/30/80)

WAC 173-19-4501 BELLINGHAM, CITY OF. City of Bellingham Master Program approved September 30, 1974. Revision approved January 30, 1980. Revision approved March 22, 1984.

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 84-04-078

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning Olympia, City of, amending WAC 173-19-4203;

that the agency will at 7:00 p.m., Tuesday, March 20, 1984, in the Energy Facility Site Evaluation Council Office, Building 1, 4224 6th Avenue S.E., Lacey, WA, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 4, 1984.

The authority under which these rules are proposed is RCW 90.58.120 and 90.58.200.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 27, 1984.

STATEMENT OF PURPOSE

Title: Amending WAC 173-19-4203 Olympia, City of.

Description of Purpose: Adoption of a revised shoreline master program into the state master program, chapter 173-19 WAC.

Statutory Authority: RCW 90.58.120 and 90.58.200.

Summary of Rule: The amendment adopts revisions to the shoreline master programs for the city of Olympia.

Reasons Supporting Proposed Action: Shoreline master programs and revisions thereto are developed by local governments and submitted to the Department of Ecology for approval. The programs do not become effective until adopted by the department in accordance with the Administrative Procedure Act.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jeanne Holloman, WDOE, MS/PV-11, Olympia, WA 98504.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: No.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: Not required.

AMENDATORY SECTION (Amending Order DE 79-34, filed 1/30/80)

WAC 173-19-4203 OLYMPIA, CITY OF. City of Olympia Master Program approved May 21, 1976. Revision approved April 4, 1984.

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 84-04-079

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning:

Amd WAC 173-19-370 Skagit County.
Amd WAC 173-19-4704 Selah, City of;

that the agency will at 2:00 p.m., Thursday, March 8, 1984, in the Energy Facility Site Evaluation Council Office, Building 1, 4224 6th Avenue S.E., Lacey, WA, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 22, 1984.

The authority under which these rules are proposed is RCW 90.58.120 and 90.58.200.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1984.

Dated: February 1, 1984
 By: John F. Spencer
 Deputy Director

STATEMENT OF PURPOSE

Title: Amending WAC 173-19-370 Skagit County and WAC 173-19-4704 Selah, City of.

Description of Purpose: Adoption of a revised shoreline master program into the state master program, chapter 173-19 WAC.

Statutory Authority: RCW 90.58.120 and 90.58.200.

Summary of Rule: The amendment adopts revisions to the shoreline master programs for Skagit County and the city of Selah.

Reasons Supporting Proposed Action: Shoreline master programs and revisions thereto are developed by local governments and submitted to the Department of Ecology for approval. The programs do not become effective until adopted by the department in accordance with the Administrative Procedure Act.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jeanne Holloman, WDOE, MS/PV-11, Olympia, WA 98504.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: None.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: Not required.

AMENDATORY SECTION (Amending Order DE 83-5, filed 3/23/83)

WAC 173-19-370 SKAGIT COUNTY. Skagit County Master Program (~~approved October 5, 1976~~) approved October 5, 1976. (~~Revision~~) Revision approved January 5, 1979. Revision approved May 11, 1979. Revision approved March 3, 1980. Revision approved September 10, 1980. (~~Revision approved December 10, 1980~~) Revision approved December 10, 1980. Revision approved September 23, 1981. Revision approved November 23, 1981. Revision approved August (~~19~~25) 19, 1982. Revision approved February 24, 1983. Revision approved March 22, 1984.

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 DE 79-34, filed 1/30/80)

WAC 173-19-4704 SELAH, CITY OF. City of Selah Master Program approved September 5, 1974. Revision approved March 22, 1984.

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 84-04-080

**NOTICE OF PUBLIC MEETINGS
 WASHINGTON STATE LIBRARY**
 [Memorandum—January 31, 1984]

Washington State Library Commission

March 8, 1984
 June 14, 1984
 September 13, 1984
 December 6, 1984

Washington Library Network Computer Service
 Council

March 6, 1984
 June 12, 1984
 September 11, 1984
 December 4, 1984

WSR 84-04-081

**PROPOSED RULES
 MARINE EMPLOYEES' COMMISSION**
 [Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Marine Employees' Commission intends to adopt, amend, or repeal rules concerning labor relations in the Washington State Ferry System, including:

- New ch. 316-02 WAC Rules of practice and procedures.
- New ch. 316-25 WAC Marine employees' representation case rules.
- New ch. 316-35 WAC Marine employees' unit clarification case rules.
- New ch. 316-45 WAC Unfair labor practice case rules.
- New ch. 316-55 WAC Marine employees' impasse resolution rules.
- New ch. 316-65 WAC Marine employees' grievance arbitration rules.
- New ch. 316-75 WAC Marine employees' union security dispute rules.
- Rep ch. 316-07 WAC As adopted by the prior Marine Employees' Commission;

that the agency will at 10:00 a.m., Friday, March 9, 1984, in the Transportation Commission Board Room, Transportation Building, Olympia, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is section 19, chapter 15, Laws of 1983.

The specific statute these rules are intended to implement is RCW 84.52.052.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 8, 1984.

Dated: January 27, 1984
 By: Donald E. Kokjer
 Acting Chairman

STATEMENT OF PURPOSE

Title: Chapter 316-02 WAC, Marine employees' labor relations rules.

Description of Purpose: To promote harmonious and cooperative relationships between the Washington State Ferry System and its employees; protect the rights of ferry employees with respect to employee organizations; and promote equality in compensation, benefits, and working conditions between ferry system employees, private sector employees within the state, and other Washington state employees in directly comparable positions.

Statutory Authority: RCW 84.52.052.

Specific Statute Rule is Intended to Implement: Chapter 84.52 RCW.

Summary of the Rules: Implementing chapter 84.52 RCW.

Reasons Supporting Proposed Action: Statutory requirement. Repeal of chapter 316-07 WAC is necessary because the legislature abolished the prior Marine Employees' Commission.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marine Employees' Commission, Louis O. Stewart, Commissioner, 603 Evergreen Plaza, Olympia, Washington 98504.

Person or Organization Proposing Rule, and Whether Public, Private or Governmental: Marine Employees' Commission, a governmental agency.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: No comment.

Rules are not necessary as result of federal law or federal or state court action.

No small business economic impact is applicable.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- (1) WAC 316-07-010 GENERAL APPLICATION.
- (2) WAC 316-07-020 SPECIAL RULES.
- (3) WAC 316-07-030 MODIFICATIONS AND EXCEPTIONS.
- (4) WAC 316-07-040 ADDRESS FOR COMMUNICATIONS—TIME OF OFFICIAL RECEIPT.
- (5) WAC 316-07-050 OFFICE HOURS.
- (6) WAC 316-07-060 COMPUTATION OF TIME.
- (7) WAC 316-07-070 DEFINITIONS.
- (8) WAC 316-07-080 INFORMAL PROCEDURE.
- (9) WAC 316-07-090 FORMAL PROCEDURE.
- (10) WAC 316-07-100 FILING AND SERVICE.
- (11) WAC 316-07-110 INTERVENTION.
- (12) WAC 316-07-120 APPEARANCES.
- (13) WAC 316-07-130 PREHEARING CONFERENCES.
- (14) WAC 316-07-140 VOLUNTARY SETTLEMENT.
- (15) WAC 316-07-150 SUBPOENAS.
- (16) WAC 316-07-160 DEPOSITIONS.
- (17) WAC 316-07-170 HEARINGS.
- (18) WAC 316-07-180 CONTINUANCES.
- (19) WAC 316-07-190 STIPULATION AS TO FACTS.
- (20) WAC 316-07-200 CONDUCT AT HEARINGS.
- (21) WAC 316-07-210 TESTIMONY UNDER OATH.
- (22) WAC 316-07-220 ORDER OF PROCEDURE.
- (23) WAC 316-07-230 RULES OF EVIDENCE—ADMISSIBILITY CRITERIA.
- (24) WAC 316-07-240 RULES OF EVIDENCE—OFFICIAL NOTICE.

- (25) WAC 316-07-250 RULES OF EVIDENCE—EXHIBITS AND DOCUMENTARY EVIDENCE.
- (26) WAC 316-07-260 BRIEFS.
- (27) WAC 316-07-270 RECONSIDERATION.
- (28) WAC 316-07-280 NO DISCUSSION OF PROCEEDING UNTIL DECISION.
- (29) WAC 316-07-290 ADMINISTRATIVE RULINGS.
- (30) WAC 316-07-300 COMPLIANCE WITH ORDERS—NOTIFICATION TO COMMISSION.

Chapter 316-02 WAC
RULES OF PRACTICE AND PROCEDURE—MARINE EMPLOYEES' COMMISSION

NEW SECTION

WAC 316-02-001 APPLICATION AND SCOPE OF CHAPTER 316-02 WAC. Chapter 316-02 WAC has been added to the Washington Administrative Code by the marine employees' commission pursuant to the authority of section 19, chapter 15, Laws of 1983 (RCW 47.64....) and chapter 34.04 RCW, to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

- (1) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.
- (2) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.
- (3) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.
- (4) Chapter 316-55 WAC, which contains rules relating to the resolution of impasses occurring in ferry system collective bargaining.
- (5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.
- (6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

In the event of a conflict between general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

NEW SECTION

WAC 316-02-003 POLICY—CONSTRUCTION—WAIVER. The policy of the state being primarily to promote peace in labor relations in the Washington state ferry system, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the marine employees' commission and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

NEW SECTION

WAC 316-02-007 DEFINITIONS. As used in Title 316 WAC, unless the context otherwise requires, the definitions in this section shall apply.

- (1) "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.
- (2) "Arbitrator" means either a single arbitrator or a panel of three arbitrators.
- (3) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.
- (4) "Commission" means the marine employees' commission created by chapter 15, Laws of 1983.

(5) "Department of transportation" or "department" means the department as defined in RCW 47.01.021.

(6) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(7) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(8) "Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

(9) "Lockout" means the refusal of ferry system management to furnish work to ferry employees in an effort to get ferry employ organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage, as defined in subsection (10) of this section, shall not be considered a lockout.

(10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her wilful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike.

(11) "Transportation commission" means the commission as defined in RCW 47.01.021.

NEW SECTION

WAC 316-02-010 APPEARANCE AND PRACTICE BEFORE COMMISSION—WHO MAY APPEAR. No person may appear in a representative capacity before the marine employees' commission or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(3) A bona fide officer, employee or other authorized representative of: (a) The department of transportation, or (b) any labor or employee organization recognized, or seeking recognition, in accordance with chapter 316-25 WAC;

(4) Other persons, including but not limited to bona fide representatives of ferry users, may make presentations to the marine employees' commission following written request approved by a majority of the commission: PROVIDED, That only persons qualified under subsections (1), (2), and (3) of this section may take part in representation cases, unit clarifications, unfair labor practice cases, impasse resolutions, grievance handling, union security disputes, or any other technical matters involving labor relations.

NEW SECTION

WAC 316-02-020 APPEARANCE AND PRACTICE BEFORE COMMISSION—STANDARDS OF CONDUCT. Misconduct at any hearing conducted by the commission or its designee shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 316-02-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.

NEW SECTION

WAC 316-02-030 APPEARANCE AND PRACTICE BEFORE COMMISSION—APPEARANCE BY FORMER EMPLOYEE OF

COMMISSION OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. No former member of the marine employees' commission, former employee of the commission or former member of the attorney general's staff shall, at any time after severing his employment with the commission or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the commission during the time of his employment with the commission.

NEW SECTION

WAC 316-02-040 APPEARANCE AND PRACTICE BEFORE COMMISSION—FORMER EMPLOYEE AS WITNESS. Except upon the express written consent of the marine employees' commission, no former member of the commission, or former member of the attorney general's staff shall, at any time after severing his employment with the commission or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the commission during the time of his employment with the commission.

NEW SECTION

WAC 316-02-100 SERVICE OF PROCESS—COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

NEW SECTION

WAC 316-02-103 SERVICE OF PROCESS—ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail or by telegraph, 3 days shall be added to the prescribed period.

NEW SECTION

WAC 316-02-105 SERVICE OF PROCESS—EXTENSION OF TIME. The commission or its authorized agent may, by agreement of the parties or for good cause shown, extend any time limit prescribed or allowed by the rules of the commission. Any motion to extend any time limit shall, except for good cause shown, be made before the expiration of such time limit.

NEW SECTION

WAC 316-02-110 SERVICE OF PROCESS—BY WHOM SERVED. The commission shall cause to be served all orders, notices and other formal papers issued by it, together with any other papers which it is required by law or rule to serve. Every other paper shall be served by the party filing it.

NEW SECTION

WAC 316-02-120 SERVICE OF PROCESS—UPON WHOM SERVED. All formal papers served by the commission or by any party shall be served upon all counsel then of record and upon all parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact. Except as specifically provided elsewhere in these rules, copies of all correspondence directed to the commission or by the commission in connection with any matter pending before the commission shall be furnished to all counsel of record and to all parties not represented by counsel.

NEW SECTION

WAC 316-02-130 SERVICE OF PROCESS—METHOD OF SERVICE. Service of papers shall be made personally or, unless otherwise provide by law, by first-class, registered, or certified mail, or by telegraph.

NEW SECTION

WAC 316-02-140 SERVICE OF PROCESS—COMPLETION OF SERVICE ON PARTIES. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

NEW SECTION

WAC 316-02-150 SERVICE OF PROCESS—FILING WITH COMMISSION. Papers required to be filed with the commission shall be deemed filed upon actual receipt by the commission during its regular office hours at the place specified for such filing: PROVIDED, HOWEVER, That such service shall be deemed to be incomplete if the party making the filing should subsequently fail, when requested to do so by the commission, to provide proof of service upon other parties required to be served.

NEW SECTION

WAC 316-02-160 SERVICE OF PROCESS—OPPORTUNITY FOR HEARING. All hearings in contested cases shall be public. Any party to a contested case shall have the right to appear at such hearing in person, by counsel, or by other representative; and to call, examine and cross-examine witnesses; and to introduce into the record documentary or other evidence.

NEW SECTION

WAC 316-02-170 SERVICE OF PROCESS—NOTICE OF HEARING. In any contested case, all parties shall be served with a notice within the statutory time as required by the particular statute governing the proceeding involved. In the absence of a statutory requirement, notice shall be given twenty days before the date set for hearing. All notices of hearing shall state the time and place of the hearing, and shall clearly identify the proceeding or the issues involved.

NEW SECTION

WAC 316-02-180 SERVICE OF PROCESS—CONTINUANCES. Immediately upon receipt of notice of a hearing, or as soon thereafter as circumstances necessitating a continuance come to its knowledge, any party desiring a continuance shall notify all other parties prior to filing a request for continuance with the commission. All continuance requests shall be filed in writing and shall specify, in detail, the reasons why the continuance is necessary, the position of all other parties concerning the requested continuance and suggested alternative dates for rescheduling. In passing upon a request for continuance, the commission shall consider whether the request was promptly and timely made. For good cause shown, the commission or its designated hearing officer or examiner may grant a continuance and may at any time order a continuance on its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may, in his discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

NEW SECTION

WAC 316-02-200 DEFINITION OF ISSUES—BEFORE HEARING. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that the hearing officer or examiner may proceed promptly to conduct the hearing on relevant and material matter only.

NEW SECTION

WAC 316-02-210 DEFINITION OF ISSUES—PREHEARING CONFERENCE AUTHORIZED. In any proceeding, the commission or its designated hearing officer or examiner, upon its or his own motion or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

- (1) The simplification of issues;
- (2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding.

NEW SECTION

WAC 316-02-220 DEFINITION OF ISSUES—RECORD OF ACTION TAKEN DURING PREHEARING CONFERENCE. The commission or its designated hearing officer or examiner shall make an order or statement which recites the action taken at any prehearing conference, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

NEW SECTION

WAC 316-02-230 SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the commission and served on all other parties to the proceeding.

NEW SECTION

WAC 316-02-300 SUBPOENAS—FORM. Every subpoena shall state the name of the commission as: State of Washington, marine employees' commission; shall state the title of the proceeding, if any; shall show on its face the name and address of the party at whose request the subpoena was issued; and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

NEW SECTION

WAC 316-02-310 SUBPOENAS—ISSUANCE TO PARTIES. Subpoenas requiring the attendance and testimony of witnesses or the production of evidence shall be issued ex parte to any party to a contested case: PROVIDED, HOWEVER, That no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the commission staff in any proceeding before the commission. The commission or its hearing officer or examiner shall issue subpoenas upon the application of counsel or other representative authorized to practice before the commission, and may condition the issuance of subpoenas to parties not so represented upon a showing of general relevance and reasonable scope of the testimony or evidence sought. Attorneys may act under the authority conferred by RCW 34.04.105(2)(a).

NEW SECTION

WAC 316-02-320 SUBPOENAS—SERVICE. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

NEW SECTION

WAC 316-02-330 SUBPOENAS—FEES. Witnesses summoned before the commission shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington.

NEW SECTION

WAC 316-02-340 SUBPOENAS—PROOF OF SERVICE. The person serving the subpoena may make proof of service by filing the subpoena and the required return, affidavit, or acknowledgement of service with the agency or the officer before whom the witness is required to testify or produce evidence. If service has not been acknowledged by the witness, such person shall make an affidavit of service.

Failure to make proof of service does not affect the validity of the service.

NEW SECTION

WAC 316-02-350 SUBPOENAS—QUASHING. Any motion to quash a subpoena is directed within five days after the date of service of the subpoena upon him and, in any event, shall be made at or before the time specified in the subpoena for compliance. The person making such motion shall give notice of the motion to the party to whom the subpoena was issued. The commission, hearing officer or examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

NEW SECTION

WAC 316-02-360 SUBPOENAS—ENFORCEMENT. Upon application and for good cause shown, and upon proof of service of the subpoena involved if such proof was not previously provided pursuant to WAC 316-02-340, the commission will seek judicial enforcement of subpoenas which have not been quashed or may authorize a party to seek enforcement.

NEW SECTION

WAC 316-02-370 SUBPOENAS—GEOGRAPHICAL SCOPE. Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

NEW SECTION

WAC 316-02-400 EVIDENCE—EXAMINATION OF WITNESSES. Witnesses in any hearing in a contested case shall be examined orally, under oath or affirmation, and shall be subject to cross-examination.

NEW SECTION

WAC 316-02-410 EVIDENCE—APPLICATION OF RULES OF EVIDENCE. Subject to the other provisions of these rules, the officer conducting the hearing shall admit all competent and relevant evidence of probative value. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in the superior courts of the state of Washington.

NEW SECTION

WAC 316-02-420 EVIDENCE—OBJECTIONS AND RULINGS. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. No such objection shall be deemed waived by further participation in the hearing.

NEW SECTION

WAC 316-02-450 EVIDENCE—STIPULATIONS AND ADMISSIONS OF RECORD. The evidence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon whom binding. Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, or oral argument, or, is made in a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) Withdrawal. Any party bound by a stipulation or admission of record may, at any time prior to final decision, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the

hearing officer or examiner of the agency that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

NEW SECTION

WAC 316-02-460 EVIDENCE—SUBMISSION OF DOCUMENTARY EVIDENCE. Documentary evidence shall be submitted in duplicate. It shall be the responsibility of the party submitting documentary evidence to provide a copy thereof to each of the other parties to the proceeding not already having a copy. Upon failure of a party to comply with this rule within five days after the close of the hearing, the commission shall, upon request, make all necessary copies at a reasonable monetary charge to the party offering the document.

NEW SECTION

WAC 316-02-470 EVIDENCE—EXCERPTS FROM DOCUMENTARY EVIDENCE. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing officer or examiner and to the other parties. In the absence of a request for and a showing of cause for the admission of the entire document in evidence, only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

NEW SECTION

WAC 316-02-490 EVIDENCE—REFUSAL OF WITNESS TO ANSWER. The refusal of a witness at any hearing in a contested case to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer or examiner, be ground for striking all testimony previously given by such witness on related matter.

NEW SECTION

WAC 316-02-500 DECLARATORY RULINGS AUTHORIZED. As prescribed by RCW 34.04.080 any interested person may petition the commission for a declaratory ruling. The commission shall consider the petition and within a reasonable time the commission shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for an oral hearing or the submission of written evidence upon the matter, give reasonable notification to the person of the time and place for such hearing or submission of the issued involved, and, within a reasonable time, the commission shall:
 - (a) Issue a binding declaratory ruling; or
 - (b) Issue a nonbinding declaratory ruling; or
 - (c) Notify the person that no declaratory ruling is to be issued.

NEW SECTION

WAC 316-02-510 DECLARATORY RULINGS—PETITION. Any person petitioning the commission for a declaratory ruling pursuant to RCW 34.04.080 and WAC 316-02-500 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Marine Employees' Commission". On the left side of page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling". Opposite the foregoing caption shall appear the word "Petition".

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state the name of the other party to any collective bargaining relationship from which the issue or issues to be ruled upon arises. The third paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and three legible copies plus one copy for service on each party the petitioner seeks to have bound by any declaratory ruling shall be filed with the commission. Petitions shall be on white paper, 8 1/2" x 13" in size.

NEW SECTION

WAC 316-02-600 COMMISSION DECISIONS IN CONTESTED CASES—FORM AND CONTENT. Every decision and final order shall:

- (1) Be correctly captioned as to name of commission and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;
- (6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

NEW SECTION

WAC 316-02-610 COMMISSION DECISIONS IN CONTESTED CASES—SERVICE. Every final order issued by the commission shall be served on each party or upon the person or organization designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

NEW SECTION

WAC 316-02-800 COMMISSION RECORDS—PUBLIC ACCESS. The commission will maintain for public inspection: (1) An index to all proceedings filed with and processed by the commission; (2) a docket for each proceeding filed with and processed by the commission showing the actions taken on and the final resolution of each such proceeding; (3) a schedule of hearing dates assigned in particular cases; and (4) the files for all proceedings, including all documents filed with the commission in the particular case, except materials held in confidence as provided in WAC 316-02-810.

NEW SECTION

WAC 316-02-810 COMMISSION RECORDS—CONFIDENTIALITY. The commission, in order to protect the privacy of individual employees and in order to respect the confidential nature of the mediation process, shall not permit the disclosure to any person of (1) evidence filed as a showing of interest in support of a representation petition or motion for intervention, or (2) notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

NEW SECTION

WAC 316-02-820 COMMISSION OFFICES. The commission maintains its principal office in the city of Olympia, Washington at Olympia, Washington 98504.

NEW SECTION

WAC 316-02-900 PETITIONS FOR RULE MAKING—WHO MAY PETITION. Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule.

NEW SECTION

WAC 316-02-910 PETITIONS FOR RULE MAKING—FORM. Any interested person petitioning the commission requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Marine Employees' Commission." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for (state whether promulgation,

amendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by commission rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and three legible copies of the petition shall be filed with the commission. Petitions shall be on white paper, 8 1/2" x 13" in size.

NEW SECTION

WAC 316-02-920 PETITIONS FOR RULE MAKING—COMMISSION MUST CONSIDER. All petitions shall be considered by the commission and the commission may, at its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

NEW SECTION

WAC 316-02-930 PETITIONS FOR RULE MAKING—NOTICE OF DISPOSITION. The commission shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.

Chapter 316-25 WAC
MARINE EMPLOYEES' REPRESENTATION CASE RULES

NEW SECTION

WAC 316-25-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission on petitions for investigation of questions concerning representation of Washington state ferry system employees. The provisions of this chapter should be read in conjunction with the provisions of:

- (1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.
- (2) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.
- (3) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.
- (4) Chapter 316-55 WAC, which contains rules relating to resolution of impasses occurring in ferry system collective bargaining.
- (5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.
- (6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

NEW SECTION

WAC 316-25-010 PETITION FOR INVESTIGATION OF A QUESTION CONCERNING REPRESENTATION OF EMPLOYEES—WHO MAY FILE. A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed by any employee of the Washington state ferry system, group of employees, employee organization, department of transportation, or their agents.

NEW SECTION

WAC 316-25-030 PETITION—TIME FOR FILING. In order to be timely filed:

(1) Where there is a valid written and signed collective bargaining agreement in effect covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed during the period not more than ninety nor less than sixty days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof.

(2) Where a certification has been issued by the commission covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must be filed not less than twelve months following the date of the certification.

(3) Where neither subsections (1) nor (2) of this section are applicable, a petition may be filed at any time.

NEW SECTION

WAC 316-25-050 PETITION FORM—NUMBER OF COPIES—FILING—SERVICE. Each petition shall be prepared on a form furnished by the commission or on a facsimile thereof. The original and three copies of the petition shall be filed with the commission at its Olympia office. The party filing the petition shall serve a copy on the department and on each employee organization named in the petition as having an interest in the proceedings.

NEW SECTION

WAC 316-25-070 CONTENTS OF PETITION. Each petition shall contain:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative in matters concerning relationships between the department and its employees.

(2) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions, and, if known, the approximate number of employees in such bargaining unit.

(3) The names and, if known, the addresses and telephone numbers of the principal representatives of any organizations which may claim to represent any of the employees in the bargaining unit which the petitioner claims to be appropriate.

(4) A statement that: (a) The department declines, after having been requested to do so, to recognize the petitioner as the exclusive representative of the employees in the bargaining unit which the petitioner claims to be appropriate, or (b) the employees in the bargaining unit which the petitioner claims to be appropriate wish to change their exclusive bargaining representative, or (c) the employees in the bargaining unit do not wish to be represented by an employee organization.

(5) Any other relevant facts.

(6) The name, address and affiliation, if any, of the petitioner and the name, address and telephone number of the principal representative, if any, of the petitioner.

(7) The signature and, if any, the title of the petitioner or its representative.

NEW SECTION

WAC 316-25-090 CONTENTS OF PETITION FILED BY DEPARTMENT. Each petition filed by the department shall contain all of the information required by WAC 316-25-070, except for that required by WAC 316-25-070(4). Each petition filed by the department shall contain a statement that the department has been presented with a demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition. WAC 316-25-110 shall not be applicable to such petitions. Where the status of an incumbent exclusive bargaining representative is questioned, the department shall attach such affidavits and other documentation as may be available to it to demonstrate the existence of a good faith doubt concerning the representation of its employees.

NEW SECTION

WAC 316-25-110 SUPPORTING EVIDENCE. The original petition shall be accompanied by a showing of interest indicating that the petitioner has the support of not less than thirty percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest must be timely filed under the same standards applicable to the petition, and must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate during the ninety day period preceding the filing of such evidence with the commission.

NEW SECTION

WAC 316-25-130 LIST OF EMPLOYEES. The department shall submit to the commission a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the department shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the department shall, upon request, provide a copy of the list of names and addresses to the intervenor.

NEW SECTION

WAC 316-25-150 AMENDMENT AND WITHDRAWAL. Any petition may be amended or withdrawn by the petitioner under such conditions as the commission may impose.

NEW SECTION

WAC 316-25-170 INTERVENTION—BY INCUMBENT REPRESENTATIVE. An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. No motion for intervention shall be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

NEW SECTION

WAC 316-25-190 INTERVENTION—BY ORGANIZATION OTHER THAN INCUMBENT. An organization not covered by WAC 316-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of not less than ten percent of the employees in the bargaining unit which the petitioner claims to be appropriate or of not less than thirty percent of the employees in whatever different bargaining unit the intervenor claims to be appropriate. The showing of interest must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate during the ninety-day period preceding the filing of such evidence with the commission. The showing of interest shall be made confidentially to the commission at or before the time the motion for intervention is made: PROVIDED, HOWEVER, That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the commission may impose to avoid undue delay of the proceedings. No motion for intervention shall be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

NEW SECTION

WAC 316-25-210 SHOWING OF INTEREST CONFIDENTIAL. The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the commission and may not be litigated at any hearing. The commission shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the commission shall not honor any attempt to withdraw or diminish a showing of interest.

NEW SECTION

WAC 316-25-230 ELECTION AGREEMENTS. Where the department and all other parties agree on a representation election, they may file an election agreement with the commission. Such election agreement shall contain:

(1) The name and address of the department and the name, address and telephone number of its principal representative.

(2) The names and addresses of all other parties participating in the election agreement and the names, addresses and telephone numbers of their principal representatives.

(3) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in such unit.

(4) A statement by all parties that: (a) No organization is known which is or may be entitled to intervene as an incumbent representative, or (b) the incumbent representative is a party to the election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by documentation attached to the election agreement.

(5) A statement by all parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that all parties agree that a question concerning representation exists; that a hearing is waived; and that the commission is requested to proceed to conduct an election and certify the results.

(6) A list, attached to the election agreement as an appendix, containing the names of the employees eligible to vote in the election and the eligibility cut-off date for the election. If the parties request that the election be conducted by mail ballot, the list shall include the last known address of each of the employees eligible to vote. If no eligibility cut-off date is specified by the parties, the eligibility cut-off date shall be the date on which the election agreement is filed.

(7) The suggestions of the parties as to the location, the day or days of the week and the time or times of day for the conduct of the election, or that the election be conducted by mail ballot.

(8) The signatures and, if any, the titles of all parties or their representatives.

The original and one copy of the election agreement shall be filed with the commission at its Olympia office, and copies shall be posted by the department in conspicuous places on the department's premises where notices to affected employees are usually posted. The election agreement shall remain posted for at least seven days after it is filed with the commission (ten days after it is deposited in the United States mail addressed to the commission).

Upon the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining unit, the commission shall proceed to conduct an election. Objections to the election by a party to the election agreement shall be limited to matters relating to specific conduct affecting the results of the election.

NEW SECTION

WAC 316-25-250 CROSS-CHECK AGREEMENTS. Where only one organization is seeking certification as the representative of unrepresented employees, the department and the organization may file a cross-check agreement with the commission. Such cross-check agreement shall contain:

(1) The name and address of the department and the name, address and telephone number of its principal representative.

(2) The name and address of the organization and the name, address and telephone number of its principal representative.

(3) The description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions and the number of employees in such unit.

(4) A statement by the parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that the parties agree that a question concerning representation exists; that a hearing is waived; and that the commission is requested to conduct and certify the results of a cross-check of individually signed and dated authorization cards or membership records submitted by the organization against the employment records of the department.

(5) A list, attached to the cross-check agreement as an appendix, containing the names of the employees in the bargaining unit.

(6) The suggestions of the parties as to the time and place where the records to be cross-checked can be made available to the commission.

(7) The agreement of the parties to be bound by the results of the cross-check.

(8) The signatures and, if any, the titles of the representatives of the parties.

The original and one copy of the cross-check agreement shall be filed with the commission at its Olympia office, and copies thereof shall be posted by the department in conspicuous places on the department's premises where notices to affected employees are usually posted. The cross-check agreement shall remain posted for at least seven days after

it is filed with the commission (ten days after it is deposited in the United States mail addressed to the commission).

Upon the filing of a cross-check agreement conforming to the foregoing requirements and seeking a cross-check in an appropriate bargaining unit, the commission shall proceed with the cross-check of records. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check.

NEW SECTION

WAC 316-25-270 SUPPLEMENTAL AGREEMENTS. Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 316-25-230 or a cross-check agreement under WAC 316-25-250, but are unable to agree on limited issues concerning the definition of the bargaining unit or employee eligibility, they may expedite the determination of the question concerning representation while reserving their disagreement for subsequent determination by filing a supplemental agreement under this rule together with an agreement under WAC 316-25-230 or 316-25-250. Such supplemental agreement shall contain:

(1) The names of all parties to the election agreement or cross-check agreement and the case number of the proceedings.

(2) Identification of the employees or classifications as to which a dispute exists, together with the identification of the position taken by each party on the dispute.

(3) A statement by all parties requesting that employees affected by the supplemental agreement be permitted to vote by challenged ballot or be challenged for purposes of a cross-check, subject to a subsequent determination of the dispute; and that the certification of the results of the election or cross-check not be withheld pending the determination of the dispute unless the challenges are sufficient in number to affect the outcome.

(4) The signatures and, if any, the titles, of the representatives of the parties.

The original and one copy of the supplemental agreement shall be filed with the commission together with the agreement filed under WAC 316-25-230 or 316-25-250, and shall be posted with such agreement.

Upon the filing of a supplemental agreement, the commission shall proceed with the determination of the question concerning representation. If the challenges are sufficient in number to affect the outcome, they shall be determined prior to the issuance of a certification. Otherwise, a conditional certification shall be issued which shall be amended upon final disposition of the issues framed in the supplemental agreement.

NEW SECTION

WAC 316-25-290 NOTICE OF HEARING. After a petition has been filed, if it appears to the commission that there is reasonable cause to believe that a question concerning representation exists, there shall be issued and served on the department and on all organizations listed in the petition and on any organization having theretofore intervened, a notice of hearing before a hearing officer at a time and place fixed therein. The commission shall furnish the department with copies of such notice, and the department shall post them in conspicuous places on its premises where notices to affected employees are usually posted. Any such notice of hearing may be amended or withdrawn before the close of the hearing.

NEW SECTION

WAC 316-25-310 HEARINGS—WHO SHALL CONDUCT. Hearings may be conducted by the commission, by a member of the commission or by any other individual designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

NEW SECTION

WAC 316-25-330 AUTHORITY OF HEARING OFFICER. The hearing officer shall have authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;

(3) To rule on objections to evidence and offers of proof, receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;

(4) To question witnesses;

(5) To regulate the time, place and course of the hearing;

(6) To dispose of procedural requests or other similar matters;

(7) To hold conferences for the settlement, simplification or adjustment of issues; and

(8) To take any other action authorized by these rules.

NEW SECTION

WAC 316-25-350 HEARINGS—NATURE AND SCOPE.

Hearings shall be public and shall be limited to matters concerning the determination of the existence of a question concerning representation, the appropriate bargaining unit and questions of eligibility. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a clear and complete factual record upon which the commission may discharge its duties under the pertinent statutes and these rules.

NEW SECTION

WAC 316-25-370 BLOCKING CHARGES—SUSPENSION OF PROCEEDINGS—REQUEST TO PROCEED. (1) Where representation proceedings have been commenced under this chapter and:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 316-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election; the commission may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

(2) The complainant(s) in the unfair labor practice case may file a request to proceed, in writing, with the commission. Such request to proceed shall identify, by case number, the representation proceedings for which it is made, shall request that those representation proceedings be continued notwithstanding the pending unfair labor practice case, and shall acknowledge that the commission will not entertain objections based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed conforming to the foregoing requirements the commission shall resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

(3) Where a complaint charging unfair labor practices is filed after the filing of an election agreement or issuance of a direction of election, the commission shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 316-25-590.

NEW SECTION

WAC 316-25-390 PROCEEDINGS BEFORE A HEARING OFFICER. The hearing officer may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Such actions shall be subject to review by the commission only as follows:

(1) Except for rulings as to whether the department is subject to the jurisdiction of the commission, a direction of election and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 316-25-590.

(2) An order of dismissal shall be subject to review by the commission on its own motion or at the request of any party made within twenty days following the date of the order. Briefs or written arguments shall be submitted as provided in WAC 316-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the hearing officer shall have the same force and effect as if issued by the commission.

NEW SECTION

WAC 316-25-410 CROSS-CHECK OF RECORDS. Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall submit to the commission original individual cards or letters signed and dated by employees in the bargaining unit not more than ninety days prior to the filing of the

petition and indicating that such employees authorize the named organization to represent them for the purposes of collective bargaining, or shall submit to the commission membership records maintained by the organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing. The department shall make available to the commission original employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit. Prior to the commencement of the cross-check, the organization may file a request that the question concerning representation be determined by a representation election and such requests shall be honored. Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year thereafter. All cross-checks shall be by actual comparison of records submitted by the parties. The commission shall not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. Upon the conclusion of the comparison of records, the commission officer conducting the cross-check shall prepare and furnish to the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined and the number of employee records counted as valid evidence of representation.

NEW SECTION

WAC 316-25-430 NOTICE OF ELECTION. When an election is to be conducted, the commission shall furnish the department with appropriate notices, and the department shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The date(s), hours and polling place(s) for the election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least seven days prior to the opening of the polls. In computing such period, the day of posting shall be counted, but the day on which the polls are opened shall not be counted. The reproduction of any document purporting to suggest, either directly or indirectly, that the commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

NEW SECTION

WAC 316-25-450 DISCLAIMERS. An organization may file a disclaimer and have its name removed from the ballot: PROVIDED, HOWEVER, That if such a disclaimer is filed after the issuance of a notice of election, the organization filing the disclaimer shall not seek to be certified in that bargaining unit for a period of at least one year thereafter.

NEW SECTION

WAC 316-25-470 ELECTIONEERING. (1) The department and employee organizations are prohibited from making election speeches on the department's time to massed assemblies of employees within twenty-four hours before the scheduled time for the opening of the polls.

(2) There shall be no electioneering at or about the polling place during the hours of voting.

Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

NEW SECTION

WAC 316-25-490 ELECTION PROCEDURES—BALLOTING. All elections shall be by secret ballot. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed. Each party may be represented by observers of its own choosing, subject to such limitations as the commission may prescribe: PROVIDED, HOWEVER, That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer.

NEW SECTION

WAC 316-25-510 **CHALLENGED BALLOTS.** Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot shall not be opened until the challenge is resolved. Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or by the election officer, the challenge shall thereby be resolved. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before the commission or a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The hearing officer shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the commission as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the hearing officer are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 316-25-670.

NEW SECTION

WAC 316-25-530 **VOTES NEEDED TO DETERMINE ELECTION.** (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

(2) Representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.

NEW SECTION

WAC 316-25-550 **TALLY SHEET.** Upon closing the polls, the election officer shall prepare and furnish to each of the parties a tally of the votes cast on unchallenged ballots and the number of challenged ballots. After the subsequent resolution of challenged ballots affecting the results of the election, a revised tally shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive.

NEW SECTION

WAC 316-25-570 **PROCEDURE FOLLOWING INCONCLUSIVE ELECTION.** In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election shall be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization to be excluded from a run-off election may file objections to specific conduct affecting the results of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the department or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections shall be resolved prior to the conduct of a run-off election. All run-off elections shall be determined as provided in WAC 316-25-530.

NEW SECTION

WAC 316-25-590 **FILING AND SERVICE OF OBJECTIONS.** Within seven days after the tally has been served under WAC 316-25-410 or under WAC 316-25-550, any party may file objections with the commission. Objections may consist of:

(1) Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation of or threat of reprisal or promise of reward to eligible voters; and/or

(2) Designation of one or more previous rulings or directions in the matter which the objecting party desires to have reviewed by the commission.

Objections shall contain, in separate numbered paragraphs, statements of the specific conduct, if any, alleged to have improperly affected the results of the election and, in separate numbered paragraphs, the specific rulings or directions, if any, which the party filing the objections desires to have reviewed. The original and three copies of the objections shall be filed with the commission at its Olympia office, and the party filing the objections shall serve a copy on each of the other parties to the proceedings. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election.

NEW SECTION

WAC 316-25-610 **PROCEDURE WHERE NO OBJECTIONS ARE FILED.** If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the election officer shall forthwith certify the results of the proceedings, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed.

NEW SECTION

WAC 316-25-630 **PROCEDURE WHERE OBJECTIONS ARE FILED.** (1) Objections to conduct improperly affecting the results of an election may be referred to a hearing officer for investigation. If the objections raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before said hearing officer. Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding. The rules relating to the conduct of hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

(2) Objections to prior rulings and/or directions in the matter shall be referred directly to the commission.

NEW SECTION

WAC 316-25-650 **BRIEFS AND WRITTEN ARGUMENTS ON OBJECTIONS.** All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously, as follows:

(1) The deadline for the filing of briefs or written arguments shall be fourteen days following the later of:

(a) The close of an investigation under WAC 316-25-630(1);

(b) The issuance of a transcript of a hearing held under WAC 316-25-630(1); or

(c) The filing of objections under WAC 316-25-590(2).

(2) The commission or its designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established.

The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on each of the other parties.

NEW SECTION

WAC 316-25-670 **COMMISSION ACTION ON OBJECTIONS.** In all cases where objections have been filed, the entire record in the proceedings shall be transferred to the commission. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter. The commission shall determine the objections and any challenged ballots referred to the commission pursuant to WAC 316-25-510, and shall issue appropriate orders.

Chapter 316-35 WAC
MARINE EMPLOYEES' UNIT CLARIFICATION CASE RULES

NEW SECTION

WAC 316-35-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission on petitions for clarification of existing bargaining units. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

(2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(3) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(4) Chapter 316-55 WAC, which contains rules relating to resolution of impasses occurring in ferry system collective bargaining.

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

NEW SECTION

WAC 316-35-010 PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT—WHO MAY FILE. In the absence of a question concerning representation, a petition for clarification of an existing bargaining unit may be filed by the department of transportation, an exclusive representative or its agents, or by the parties jointly.

NEW SECTION

WAC 316-35-030 PETITION FORM—NUMBER OF COPIES—FILING—SERVICE. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 316-35-050. The original and three copies of the petition shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall serve a copy on the other party to the collective bargaining relationship in which the disagreement arises.

NEW SECTION

WAC 316-35-050 CONTENTS OF PETITION. Each petition for clarification of an existing bargaining unit shall contain:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative for the purposes of collective bargaining.

(2) The name, address and affiliation, if any, of the exclusive representative, and the name, address and telephone number of its principal representative.

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and identification of the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations claiming to represent any employees affected by the proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s).

NEW SECTION

WAC 316-35-070 AMENDMENT AND WITHDRAWAL. Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the commission may impose.

NEW SECTION

WAC 316-35-090 NOTICE OF HEARING. After a petition for clarification of an existing bargaining unit has been filed, if it appears to the commission that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing.

NEW SECTION

WAC 316-35-110 CONSOLIDATION OF PROCEEDINGS. If a proceeding initiated by a petition for clarification under WAC 316-35-010 is pending at the same time as a proceeding involving all or any part of the same bargaining unit initiated by a petition for investigation of a question concerning representation filed pursuant to WAC 316-25-010, the proceedings shall be consolidated and all issues concerning the description of the bargaining unit shall be resolved in the consolidated proceedings.

NEW SECTION

WAC 316-35-130 HEARINGS—WHO SHALL CONDUCT. Hearings may be conducted by the commission, by a member of the commission, or by any other individual designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

NEW SECTION

WAC 316-35-150 AUTHORITY OF HEARING OFFICER. The hearing officer shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence, and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other procedural matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized by these rules.

NEW SECTION

WAC 316-35-170 HEARINGS—NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the petition for clarification of an existing bargaining unit. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission may discharge its duties under the pertinent statutes and these rules.

NEW SECTION

WAC 316-35-190 PROCEEDINGS BEFORE A HEARING OFFICER. The hearing officer may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

NEW SECTION

WAC 316-35-210 PROCEEDINGS BEFORE THE COMMISSION—PETITION FOR REVIEW. The final order of the hearing

officer shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days after the date of the order. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on any other parties. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the filing of the petition for review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on the other party. The commission or a designee of the commission may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues.

NEW SECTION

WAC 316-35-230 FILING AND SERVICE OF CROSS-PETITION FOR REVIEW. Where a petition for review has been timely filed under WAC 316-35-210, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days.

NEW SECTION

WAC 316-35-250 COMMISSION ACTION. The hearing officer shall transfer the entire record in the proceeding to the commission. The commission shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders.

Chapter 316-45 WAC UNFAIR LABOR PRACTICE CASE RULES

NEW SECTION

WAC 316-45-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with the provisions of:

- (1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.
- (2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.
- (3) Chapter 316-35 WAC, which contains rules relating to petitions for clarification of existing ferry system employees' bargaining units.
- (4) Chapter 316-55 WAC, which contains rules relating to resolution of impasses occurring in ferry system collective bargaining.
- (5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.
- (6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

NEW SECTION

WAC 316-45-010 COMPLAINT CHARGING UNFAIR LABOR PRACTICES—WHO MAY FILE. A complaint charging that any person has engaged in or is engaging in an unfair labor practice, hereinafter referred to as a "complaint" may be filed by any employee, group of employees, employee organization, the department of transportation, or their agents.

NEW SECTION

WAC 316-45-030 FORM—NUMBER OF COPIES—FILING—SERVICE. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original and three copies shall be

filed with the commission at its Olympia office. The party filing the complaint shall serve a copy on each party named as a respondent.

NEW SECTION

WAC 316-45-050 CONTENTS OF COMPLAINT CHARGING UNFAIR LABOR PRACTICES. Each complaint shall contain, in separate numbered paragraphs:

- (1) The name and address of the party filing the complaint, hereinafter referred to as the complainant, and the name, address and telephone number of its principal representative.
- (2) The name(s) and address(es) of the person(s) charged with engaging in, or having engaged in, unfair labor practices, hereinafter referred to as the respondent(s), and, if known, the names, addresses and telephone numbers of the principal representatives of the respondent(s).
- (3) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.
- (4) A listing of the sections of the Revised Code of Washington (RCW) alleged to have been violated.
- (5) A statement of the relief sought by the complainant.
- (6) The signature and, if any, the title of the person filing the complaint.

NEW SECTION

WAC 316-45-070 AMENDMENT. Any complaint may be amended upon motion made by the complainant.

NEW SECTION

WAC 316-45-090 WITHDRAWAL. Any complaint may be withdrawn by the complainant under such conditions as the commission may impose.

NEW SECTION

WAC 316-45-110 INITIAL PROCESSING OF COMPLAINT. The commission or its designee shall determine whether the facts as alleged may constitute an unfair labor practice within the meaning of section 4, chapter 15, Laws of 1983 (RCW _____). If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the commission or designee shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the commission or designee shall cause the contents of the charge to be issued and served as a complaint of unfair labor practices, shall assign the matter to an examiner and shall notify the parties of such assignment. An order of dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 316-45-350.

NEW SECTION

WAC 316-45-130 EXAMINER—WHO MAY ACT. The examiner may be a member of the commission or any other individual designated by the commission. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

NEW SECTION

WAC 316-45-150 AUTHORITY OF EXAMINER. The examiner shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place, and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue findings of fact, conclusions of law and orders;
- (9) To take any other action authorized by these rules.

NEW SECTION

WAC 316-45-170 NOTICE OF HEARING. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. Attached to the notice of hearing shall be a copy of the complaint as approved under WAC 316-45-110. The notice of hearing shall specify the date for the filing of an answer, which shall be not less than ten days prior to the date set for hearing. Any such notice of hearing may be amended or withdrawn before the close of the hearing.

NEW SECTION

WAC 316-45-190 ANSWER—FILING AND SERVICE. The respondent(s) shall, on or before the date specified therein in the notice of hearing, file with the examiner the original and three copies of its answer to the complaint, and shall serve a copy on the complainant.

NEW SECTION

WAC 316-45-210 ANSWER—CONTENTS AND EFFECT OF FAILURE TO ANSWER. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted.

NEW SECTION

WAC 316-45-230 AMENDMENT OF ANSWER. The respondent may amend its answer at any time prior to the hearing. During the hearing or subsequent thereto, it may amend its answer in any case where the complaint has been amended, within such period as may be fixed by the examiner or the commission. Whether or not the complaint has been amended, the answer may, in the discretion of the examiner or the commission, be amended upon motion under such terms and within such period as may be fixed by the examiner or the commission.

NEW SECTION

WAC 316-45-250 MOTION TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN. If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer, such respondent may, on or before the date specified for the filing of an answer, file a motion requesting an order directing that the complaint be made more definite and certain. Such motion shall be filed with the examiner and served by the moving party on the complainant and on any other parties. The filing of such motion will extend the time during which the respondent must file and serve an answer until such date as the commission or examiner may set. The examiner may require the complainant to file and serve a statement supplying information necessary to make the complaint definite and certain.

NEW SECTION

WAC 316-45-270 HEARINGS—NATURE AND SCOPE. Hearings shall be public and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear and complete factual record on which the examiner and commission may discharge their duties under these rules: PROVIDED, HOWEVER, That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of its complaint or of the respondent with respect to the presentation of its defense.

NEW SECTION

WAC 316-45-290 BRIEFS AND PROPOSED FINDINGS. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact, conclusions of law

and order, or both, at such time as may be fixed by the examiner. The examiner may direct the filing of briefs when he or she deems such filing warranted by the nature of the proceeding or of particular issues therein.

NEW SECTION

WAC 316-45-310 EXAMINER DECISION. After the close of the hearing and the filing of all briefs, the examiner shall make a decision containing findings of fact, conclusions of law and order. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties.

NEW SECTION

WAC 316-45-330 WITHDRAWAL OR MODIFICATION OF EXAMINER DECISION. On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within twenty days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence which could not with reasonable diligence have been discovered and produced at the hearing: PROVIDED, HOWEVER, That this section shall be inoperative after the filing of a petition for review with the commission.

NEW SECTION

WAC 316-45-350 PETITION FOR REVIEW OF EXAMINER DECISION. The examiner's findings of fact, conclusions of law and order shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the examiner. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have fourteen days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission or its designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

NEW SECTION

WAC 316-45-370 FILING AND SERVICE OF CROSS-PETITION FOR REVIEW. Where a petition for review has been timely filed under WAC 316-45-350, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadlines for the submission of briefs or written arguments shall be extended by seven days.

NEW SECTION

WAC 316-45-390 COMMISSION ACTION. On its own motion, or on the filing of a petition for review, the entire record in the proceeding shall be transferred to the commission, and thereafter all motions and arguments shall be directed to the commission. The commission may request the parties to appear before it to make oral arguments as to certain of the issues or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, determine the matter.

NEW SECTION

WAC 316-45-410 UNFAIR LABOR PRACTICE REMEDIES. If an unfair labor practice is found to have been committed, the commission or its examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

(1) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the employer shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as credit to the benefit record of the employee(s).

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

NEW SECTION

WAC 316-45-430 MOTION FOR TEMPORARY RELIEF. In addition to the remedies available under WAC 316-45-410, any complainant in an unfair labor practice proceeding may file a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

(1) The complainant shall, at the time its complaint is filed or as soon thereafter as facts giving rise to the request for temporary relief become known, provide written notice to the commission or its designee of its intent to make a motion for temporary relief and shall, at the same time, serve a copy of such notice on each of the other parties to the proceedings.

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the commission or its designee shall expedite the processing of the matter under WAC 316-45-110.

(3) After the determination of the commission or designee that the complaint states a cause of action, any complainant desiring temporary relief may file with the commission or designee a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies, and shall serve a copy of such motion and affidavits on all other parties to the proceedings. The other parties shall have seven calendar days thereafter to file and serve counter-affidavits.

(4) The designee shall forward all such motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making such determination, the commission shall adhere to the following policy:

"The name and authority of the marine employees' commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 316-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the commission or its designee with the assistance of the attorney general, shall petition the superior court of Thurston county or the county wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for such temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

(c) If the commission concludes that temporary relief should not be sought prior to the conclusion of administrative proceedings in the matter, such determination shall not bar renewal of the request for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

NEW SECTION

WAC 316-45-550 COLLECTIVE BARGAINING—POLICY. It is the policy of the commission to promote bilateral collective bargaining negotiations between the department and the exclusive representatives of its employees in accordance with sections 1 and 4, chapter 15, Laws of 1983 (RCW _____). Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or non-mandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.

Chapter 316-55 WAC

MARINE EMPLOYEES' IMPASSE RESOLUTION RULES

NEW SECTION

WAC 316-55-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission relating to the resolution of impasses occurring in collective bargaining. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

(2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(3) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.

(4) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

NEW SECTION

WAC 316-55-010 RESOLUTION OF IMPASSES—REQUEST FOR MEDIATION. In the absence of an impasse agreement between parties, or the failure of either party to utilize the procedures of such impasse agreement by August 1st in each odd-numbered year, either party may make a request in writing to the marine employees' commission for mediation.

NEW SECTION

WAC 316-55-020 MEDIATION REQUEST—INFORMATION REQUIRED. The party or parties requesting mediation shall provide the following information to the commission:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative in the negotiations;

(2) The name and address of the employee organization and the name, address and telephone number of the employee organization's principal representative in the negotiations;

(3) The name and address of the association or other organization, if any, filing the request on behalf of the employer or exclusive representative seeking mediation;

(4) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(5) A description of the size and composition of the bargaining unit involved;

(6) The expiration date of any collective bargaining agreement then in effect or recently expired;

(7) Any other relevant information; and

(8) The name, signature, and capacity of each officer, attorney, or other individual acting for the filing party or parties.

NEW SECTION

WAC 316-55-030 IMPASSE RESOLUTION—APPOINTMENT OF MEDIATOR. Upon the filing of a request for mediation, the commission shall appoint a mediator from the list of qualified, impartial, and disinterested persons maintained by the commission for that purpose. If the parties have stipulated the names of one or more persons who are acceptable to both parties as mediator, then the commission shall consider their desires.

NEW SECTION

WAC 316-55-050 IMPASSE RESOLUTION—SUBMISSION OF WRITTEN PROPOSALS. Parties requesting the mediation services of the commission are encouraged to file with the appointed mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute.

NEW SECTION

WAC 316-55-070 IMPASSE RESOLUTION—FUNCTION OF MEDIATOR. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such steps as the mediator deems appropriate in order to aid the parties in voluntarily resolving their differences and effecting an agreement. The mediator shall not compel the parties to agree.

NEW SECTION

WAC 316-55-090 IMPASSE RESOLUTION—CONFIDENTIAL NATURE OF FUNCTION. Information disclosed by the parties to the mediator in confidence during the course of mediation shall not be divulged by the mediator. Mediation meetings shall be of an executive, private or nonpublic nature.

NEW SECTION

WAC 316-55-110 IMPASSE RESOLUTION—DISPUTE RESOLUTION PANEL. The commission shall establish and maintain a panel of qualified persons and shall make a list of members of that panel available to parties for their use in selecting a neutral chairman for an arbitration panel, a grievance arbitrator, a fact-finder or an ad hoc interest arbitrator. Any person may apply for membership on the panel and, upon acceptance by the commission, shall be placed under contract pursuant to RCW 39.29.010.

NEW SECTION

WAC 316-55-130 IMPASSE RESOLUTION—DISCLOSURE. Prior to accepting the appointment, or as soon thereafter as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the commission and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated.

NEW SECTION

WAC 316-55-150 IMPASSE RESOLUTION—VACANCIES. If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the commission or its designee shall declare the office vacant. The vacancy shall be filled as provided in these rules.

NEW SECTION

WAC 316-55-160 FACT-FINDING. Prior to collective bargaining, the commission shall conduct a salary survey comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of private sector employees within the state

and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved. The commission shall make such other findings of fact as the parties may request during bargaining or impasse. The obtained salary survey data shall be a public document.

NEW SECTION

WAC 316-55-170 WAIVER OF MEDIATION AND FACT-FINDING. By mutual agreement, the parties may waive mediation and fact-finding and proceed with binding arbitration. Such waiver shall be in writing and signed by the representatives of the parties. If the parties waive mediation or fact-finding, impasse resolution shall be continued as provided in WAC 316-55-500 et seq.

NEW SECTION

WAC 316-55-500 BINDING ARBITRATION. If impasse persists fourteen days after the mediator has been appointed, or beyond any other date mutually agreed to by the parties, all impasse items shall be submitted to arbitration by giving written notice. Such notice shall contain:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative in the negotiations;

(2) The name and address of the employee or employee organization party to the labor dispute and the name, address and telephone number of that party's principal representative in the negotiations;

(3) The name and address of the organization, if any, filing the request on behalf of the employee, employee organization or department seeking arbitration;

(4) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(5) A description of the size and composition of the bargaining unit involved;

(6) The expiration date of any collective bargaining agreement then in effect or recently expired;

(7) Any other relevant information; and

(8) The name, signature and capacity of each officer, attorney or other representative acting for the filing party or parties.

The original and three copies of the notice shall be filed with the commission at its Olympia office. The party filing the notice shall serve a copy on each of the other parties to the labor dispute. Amendments to notices shall be filed and served in the same manner as the original notice in the proceeding.

NEW SECTION

WAC 316-55-505 FINAL OFFER. In addition to the information required in WAC 316-55-500, within four days of arbitration request, a final offer on the impasse items shall be submitted to the commission or its designee, with proof of service of a copy to the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by an arbitrator or panel of arbitrators.

NEW SECTION

WAC 316-55-510 SINGLE ARBITRATOR. The two parties may agree to submit their dispute to a single arbitrator. The full costs of arbitration under this procedure shall be shared equally by the parties to the dispute.

NEW SECTION

WAC 316-55-515 ARBITRATION PANEL. If the parties cannot agree on an arbitrator within four days, a panel consisting of three members shall be appointed in the following manner:

(1) One member shall be appointed by the secretary of transportation;

(2) One member shall be appointed by the ferry employee organization;

(3) One member shall be appointed mutually by the members appointed by the secretary of transportation and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators;

(4) If the third member has not been selected within four days of notification as provided in subsection (3) of this section, a list of seven arbitrators shall be submitted to the parties by the marine employees' commission. The two arbitrators selected by ferry system management and the ferry employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the commission. The second arbitrator and the first arbitrator shall alternately remove one additional name until only one name remains. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within thirty days, or at such time mutually agreed to by the parties, at a location designated by him or her. In lieu of a list of seven nominees for the third member being submitted by the marine employees' commission, the parties may mutually agree to have either the Federal Mediation and Conciliation Service or the American Arbitration Association submit a list of seven nominees.

(5) Ferry system management and the employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel shall be shared equally by each party.

(6) If a vacancy occurs on the panel of arbitrators, the selection for replacement of that member shall be in the same manner and within the same time limits as the original member was chosen.

(7) No final award may be made by the panel until three arbitrators have been chosen.

NEW SECTION

WAC 316-55-520 INTERVENTION AND CONSOLIDATION OF PROCEEDINGS. (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission under this subchapter may make a written motion for intervention prior to the hearing or make an oral motion for intervention at the outset of the hearing. No such motion shall be filed or made after the hearing of evidence has commenced, except for good cause shown. The motion for intervention must state the name and address of the moving party; the name, address and telephone number of its principal representative, if any; the party's interest in the proceedings; and the party's position in regard to the labor dispute.

(2) Disposition of motion for intervention: Motions for intervention shall be considered first at all hearings, or may be set for prior hearing. An opportunity shall be afforded the original parties to be heard thereon. If it appears that the motion discloses an interest in the labor dispute or that participation by the moving party is in the public interest, the commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related.

NEW SECTION

WAC 316-55-525 CONDUCT OF INTEREST ARBITRATION. (1) The submission of the impasse items to the arbitrators shall be limited to those issues upon which the parties have not reached agreement. With respect to each such item, the arbitration panel award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board on each impasse item.

(2) The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in section 15, chapter 15, Laws of 1983.

(3) From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(4) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- (a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (b) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of private

sector employees within the state and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved;

(c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;

(d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and

(e) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.

(5) The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the superior court in Thurston county, or any county in which any hearing is held, to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

(6) A majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

(7) The selections by the panel of arbitrators and items agreed upon by the ferry system management and the employee organization shall be deemed to be the collective bargaining agreement between the parties.

(8) The determination of the panel of arbitrators shall be by majority vote and shall be final and binding, subject to sections 9 and 10, chapter 15, Laws of 1983. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

(9) Two copies of the final award, including the written explanation required by subsection (8) of this section shall be filed with the commission.

NEW SECTION

WAC 316-55-600 CENTRAL FILING OF AGREEMENTS. The parties to collective bargaining agreements entered into as a result of collective bargaining pursuant to chapter 47.64 RCW shall file with the commission two complete copies of their agreement.

Chapter 316-65 WAC

MARINE EMPLOYEES' GRIEVANCE ARBITRATION RULES

NEW SECTION

WAC 316-65-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

(2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(3) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.

(4) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(5) Chapter 316-55 WAC, which contains rules relating to the resolution of impasses occurring in ferry system collective bargaining.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

NEW SECTION

WAC 316-65-010 GRIEVANCE ARBITRATION—WHO MAY FILE. Where there is an agreement to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be filed by the department of transportation, an exclusive

representative of employees or their agents, an employee, or by the parties jointly: PROVIDED, That invoking arbitration shall be only with the approval of the employee organization, in accordance with chapter 47.64 RCW.

NEW SECTION

WAC 316-65-030 GRIEVANCE ARBITRATION—FILING—SERVICE. Each request for appointment of a grievance arbitrator shall be on a form furnished by the commission or shall be prepared by the party or parties filing the request in conformance with WAC 316-65-050. The original request shall be filed with the commission at its Olympia office. If the request is not filed jointly, the party filing the request shall serve a copy on the other party to the collective bargaining agreement under which the dispute arises.

NEW SECTION

WAC 316-65-050 GRIEVANCE ARBITRATION—CONTENTS OF REQUEST. Each request for appointment of a grievance arbitrator shall contain:

(1) The name, address and telephone number of the department and the name, address and telephone number of the department's principal representative for the purposes of collective bargaining.

(2) The name, address and telephone number of the exclusive representative and the name, address and telephone number of its principal representative.

(3) Identification of the request as: (a) A request for appointment of an arbitrator; (b) a request for arbitration of a grievance dispute arising under chapter 47.64 RCW; or (c) a request for the submission of a list of names from the dispute resolution panel created by WAC 316-55-110.

(4) A description of the grievances or issues to be submitted to arbitration and the number of employees affected thereby.

(5) The agreement of the requesting party, or the parties jointly, that the arbitrator's decision on the grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.

(6) The agreement of the requesting party, or the parties jointly, that the arbitration award be final and binding upon the parties.

(7) The signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties).

NEW SECTION

WAC 316-65-090 GRIEVANCE ARBITRATION—DESIGNATION OF PANEL OF ARBITRATORS. Upon the filing of a request for a panel of arbitrators, the commission shall furnish the parties a list of names selected from the dispute resolution panel. The list shall contain five names unless a different number is specifically requested by the parties or is specified in their collective bargaining agreement. The commission shall furnish, whenever available, biographical information, including background, qualifications and experience, on each of the arbitrators on the list supplied to the parties. If one or more of those named is unavailable to accept appointment as arbitrator or must be disqualified, a substitute name will be provided upon the joint request of the parties. If all of those named are rejected by the parties, a second list will be provided upon the joint request of the parties. All contacts and arrangements between the parties and an arbitrator selected under this rule will be the responsibility of the parties.

NEW SECTION

WAC 316-65-110 GRIEVANCE ARBITRATION—CONDUCT OF PROCEEDINGS. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises. All such arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" adopted by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and Conciliation Service in effect on December 1, 1977: PROVIDED, HOWEVER, That arbitration matters handled by the commission or its designee(s) shall be filed in the public files of the commission and shall not be accorded the privacy required by such code.

NEW SECTION

WAC 316-65-130 GRIEVANCE ARBITRATION—AWARD. Any arbitrator assigned or selected under this chapter shall, after submission of the arbitration award to the parties, file a copy with the commission.

NEW SECTION

WAC 316-65-150 GRIEVANCE ARBITRATION—EXPENSES. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expenses of an arbitrator selected by the parties from a panel designated by the commission and any costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or such other arrangements as they may agree upon. The commission shall pay the salary and traveling expenses of a commissioner or other designee assigned as a grievance arbitrator, but shall pay no other expenses of the proceedings.

NEW SECTION

WAC 316-65-500 GRIEVANCE ARBITRATION—EXCLUSIVE PROCEDURES. Upon the filing of a request pursuant to WAC 316-65-050 for arbitration of a dispute concerning interpretation or application of a collective bargaining agreement negotiated pursuant to chapter 47.64 RCW, the procedures of WAC 316-65-500, et seq. shall be the exclusive procedures for the determination of such dispute.

NEW SECTION

WAC 316-65-510 INTERVENTION AND CONSOLIDATION OF PROCEEDINGS. (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission under this subchapter may make a written motion for intervention prior to the hearing or make an oral motion for intervention at the outset of the hearing. No such motion shall be filed or made after the hearing of evidence has commenced, except for good cause shown. The motion for intervention must state the name and address of the moving party; the name, address and telephone number of its principal representative, if any; the party's interest in the proceedings; and the party's position in regard to the labor dispute.

(2) Disposition of motion for intervention: Motions for intervention shall be considered first at all hearings, or may be set for prior hearing. An opportunity shall be afforded the original parties to be heard thereon. If it appears that the motion discloses an interest in the labor dispute or that participation by the moving party is in the public interest, the commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related.

NEW SECTION

WAC 316-65-515 CONDUCT OF GRIEVANCE ARBITRATION PROCEEDINGS. Hearings may be conducted by the commission, by a member of the commission, or by any other person designated by the commission as examiner. At any time, an examiner may be substituted for the examiner previously presiding. An examiner shall have authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule on objections to evidence and offers of proof, receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue an arbitration award on the matters in dispute, subject to the right of any party to petition for review of such award by the commission; and

(9) To take any other action authorized by these rules. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection thereto in writing, shall be deemed to have waived its right to object.

NEW SECTION

WAC 316-65-525 GRIEVANCE HEARING. The commission or its designated examiner shall establish a date, time and place for a hearing and shall provide reasonable notice thereof to the parties. Where it appears to the commission or examiner that an emergency exists warranting consideration of interim relief, a hearing may be scheduled for that purpose on less notice than that provided by WAC 316-02-170. For good cause shown, the commission or examiner may adjourn the hearing upon the request of a party or upon its own initiative. The parties may waive oral hearing by written agreement.

NEW SECTION

WAC 316-65-530 ORDER OF PROCEEDINGS AND EVIDENCE. The order of presentation at the hearing shall be as agreed by the parties or as determined by the agency. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. The commission or examiner may make, and take official notice of the results of, its own inspection of the conditions involved. Each documentary exhibit shall be filed with the commission and copies shall be provided to the other parties.

NEW SECTION

WAC 316-65-535 ARBITRATION IN THE ABSENCE OF A PARTY. The commission or examiner may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Except for good cause shown, the failure of a party to appear shall constitute grounds for dismissal of its claim or granting of relief against it, as may be appropriate.

NEW SECTION

WAC 316-65-540 CLOSING OF HEARING. The hearing shall be deemed closed after the parties have completed presenting their testimony and/or exhibits and have filed briefs within agreed time limits. The commission or examiner may direct the filing of briefs when it deems such filing warranted by the nature of the proceedings or of particular issues therein.

NEW SECTION

WAC 316-65-545 EXAMINER DECISION. After the close of the hearing and the filing of all briefs, the examiner shall issue an arbitration award on the matters in dispute. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties.

NEW SECTION

WAC 316-65-550 PETITION FOR REVIEW OF EXAMINER DECISION. The examiner's award shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the award issued by the examiner. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have fourteen days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the arbitration award of the examiner shall automatically become final and binding.

NEW SECTION

WAC 316-65-555 COMMISSION ACTION. On its own motion, or on the filing of a petition for review, the entire record in the proceeding shall be transferred to the commission, and thereafter all motions and arguments shall be directed to the commission. The commission may request the parties to appear before it to make oral arguments as to certain of the issues or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, issue the final and binding arbitration award on the matter.

NEW SECTION

WAC 316-65-560 GRIEVANCE ARBITRATION REMEDIES. If a violation of a collective bargaining agreement is found to have been committed, the commission or its examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

(1) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the department shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

Chapter 316-75 WAC MARINE EMPLOYEES' UNION SECURITY DISPUTE RULES

NEW SECTION

WAC 316-75-001 SCOPE—CONTENTS—OTHER RULES. This chapter governs proceedings before the marine employees' commission relating to union security disputes arising between employees and employe organizations certified or recognized as their bargaining representative. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

(2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(3) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.

(4) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(5) Chapter 316-55 WAC, which contains rules relating to the resolution of impasses occurring in ferry system collective bargaining.

(6) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

NEW SECTION

WAC 316-75-010 UNION SECURITY—OBLIGATION OF EXCLUSIVE BARGAINING REPRESENTATIVE. An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 47.64 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

NEW SECTION

WAC 316-75-030 UNION SECURITY—ASSERTION OF RIGHT OF NONASSOCIATION. An employee who, pursuant to RCW 47.64....., asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall notify the exclusive bargaining representative, in writing, of the claim of a right of nonassociation and shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

NEW SECTION

WAC 316-75-050 UNION SECURITY—RESPONSE BY EXCLUSIVE BARGAINING REPRESENTATIVE. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 316-75-030, the exclusive bargaining representative shall respond to the employee, in writing, both as to the eligibility of the employee to make alternative payments and as to the charitable organization(s) suggested by the employee. If a dispute exists concerning whether the employee is within a class of employees obligated under the terms of the union security provision, all such matters of contractual interpretation shall be resolved under such procedures as may be available for unit clarification or resolution of disputes concerning the interpretation or application of the collective bargaining agreement.

NEW SECTION

WAC 316-75-070 UNION SECURITY—FILING OF DISPUTE WITH COMMISSION. In the event of a disagreement between an employee and his or her exclusive bargaining representative as to the eligibility of such employee to make alternative payments or as to the organization which is to receive such payments, either the employee or the exclusive bargaining representative may file with the commission a petition for a declaratory ruling on the union security obligations of the affected employee.

NEW SECTION

WAC 316-75-090 UNION SECURITY—PETITION FORM—NUMBER OF COPIES—FILING—SERVICE. Each petition for declaratory ruling on union security obligations shall be prepared in conformance with WAC 316-75-110. The original and three copies of the petition shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the dispute and on the employer.

NEW SECTION

WAC 316-75-110 UNION SECURITY—CONTENTS OF PETITION. Each petition shall be headed "In the matter of the petition of (name of petitioning party) for a declaratory ruling concerning the union security obligations of (name of affected employee) under a collective bargaining agreement between (name of employer) and (name of exclusive bargaining representative)," and shall contain:

- (1) The name and address of the department and the name, address and telephone number of the department's principal representative for the purposes of collective bargaining.
- (2) The name, address and affiliation, if any, of the exclusive representative, and the name, address and telephone number of its principal representative, if any.
- (3) The name, address and telephone number of the affected employee and the name, address and telephone number of his or her representative.
- (4) Statements, in additional numbered paragraphs, of the matters in dispute.
- (5) A copy, attached to the petition as an exhibit, of the union security provision under which the dispute arises.
- (6) Any other relevant facts.
- (7) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s).

NEW SECTION

WAC 316-75-130 UNION SECURITY—ESCROW OF DISPUTED FUNDS BY DEPARTMENT. Upon being served with a

copy of a petition filed under WAC 316-75-070, the department shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Said funds shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the department shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

NEW SECTION

WAC 316-75-150 UNION SECURITY—INVESTIGATION. The commission shall refer the petition under dispute to one of its members or other designee, who shall conduct an investigation and such conferences as may be necessary to determine the relative positions of the parties and the facts and authorities relied upon by them, and shall issue a report in conformance with WAC 316-02-220.

NEW SECTION

WAC 316-75-170 UNION SECURITY—NOTICE OF HEARING. If the petition raises material questions of fact which cannot be resolved without a hearing and summary disposition under WAC 316-02-230 is not appropriate, there shall be issued and served on each of the parties to the dispute and on the department a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing.

NEW SECTION

WAC 316-75-190 UNION SECURITY—HEARINGS—WHO SHALL CONDUCT. Hearings may be conducted by the commission or by any other person designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

NEW SECTION

WAC 316-75-210 AUTHORITY OF HEARING OFFICER. The hearing officer shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence, and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other procedural matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized by these rules.

NEW SECTION

WAC 316-75-230 HEARINGS—NATURE AND SCOPE. Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments.

NEW SECTION

WAC 316-75-250 PROCEEDINGS BEFORE THE HEARING OFFICER. After the close of the hearing, the hearing officer may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, to determine the matter.

NEW SECTION

WAC 316-75-270 PROCEEDINGS BEFORE THE COMMISSION—PETITION FOR REVIEW. The final order of the hearing officer shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days following the date of the order issued by the hearing officer. The original and three copies of the petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the proceeding and on the employer. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the initiation

of review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served upon the other party. The commission or the designee of the commission may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter.

NEW SECTION

WAC 316-75-290 COMMISSION ACTION. The hearing officer shall transfer the entire record in the proceeding to the commission. The commission shall determine the matter.

NEW SECTION

WAC 316-75-310 IMPLEMENTATION. Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission, the department shall release any funds (together with accumulated interest) held in escrow under WAC 316-75-130 to the designated charitable organization and the employee shall thereafter make payments and shall furnish written proof to the exclusive bargaining representative that such payments have been made to the designated charitable organization. Where the employee is found ineligible to make alternative payments, the department shall release any funds (together with accumulated interest) held in escrow to the exclusive bargaining representative and shall enforce the union security provision according to its terms. The department and the exclusive bargaining representative shall allow the affected employee a grace period of not less than thirty days following the agreement or final order of the commission to correct any arrearages.

WSR 84-04-082
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Parks and Recreation Commission intends to adopt, amend, or repeal rules concerning moorage fees, WAC 352-12-020; campsite reservation, WAC 352-32-035; and standard fees charged, WAC 352-32-250;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Ocean Shores Community Club, 1016 Catala Avenue S.E., Ocean Shores, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 43.51.040 and 43.51.060.

The specific statute these rules are intended to implement is RCW 43.51.040 and 43.51.060.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 12, 1984.

Dated: February 1, 1984

By: Gary Robinson
Executive Assistant

STATEMENT OF PURPOSE

Title: Moorage fees, WAC 352-12-020; Campsite reservation, WAC 342-32-035; and Standard fees charged, WAC 352-32-250.

Description of Purpose: The amendments to the rules referenced above establish fees for the usage of designated floats not attached to piers, revise provisions on the usage of unreserved campsites, and increase the fees for the usage of certain state park facilities.

Statutory Authority: RCW 43.51.040 and 43.51.060.

Statutes Which Rules Implement: RCW 43.51.040 and 43.51.060.

Summary of Rule: The amendments to the rules referenced above establish a moorage fee for the usage of designated floats not attached to piers at \$4.00 per night for vessels twenty-six feet in length, and over, and \$2.00 per night for vessels under twenty-six feet in length; increase the campsite reservation fee and the environmental learning center fees; and delete the statement that unreserved campsites may be used for only one night at a time.

Reasons Supporting Proposed Action: The amendments to the rules referenced above respond to increased operating costs of state park facilities and make revisions to improve the management of state park facilities.

Agency Personnel Responsible for Drafting: Dennis Smith, Assistant Director, Administrative Services, Washington State Parks and Recreation Commission, 7150 Cleanwater Lane, Olympia, WA 98504, (206) 753-5766; Implementation and Enforcement: Lynn Genasci, Assistant Director, Operations, Washington State Parks and Recreation Commission, 7150 Cleanwater Lane, Olympia, WA 98504, (206) 753-5761.

Proposing: Washington State Parks and Recreation Commission.

Federal Law/Court Action: The amendments to the rules referenced above are not necessary because of federal law or state court action.

AMENDATORY SECTION (Amending Order 59, filed 3/31/82)

WAC 352-12-020 MOORAGE FEES. (1) Vessels moored between 3 p.m. and 8 a.m. at those facilities designated by the commission shall be charged a nightly moorage fee during the period May 1 through Labor Day, inclusive, according to the following schedule:

(a) Vessels twenty-six feet in length, and over, moored to designated docks or floats attached to piers, \$5.00 per night;

(b) Vessels twenty-six feet in length, and over, moored to designated floats not attached to piers, \$4.00 per night;

(c) Vessels under twenty-six feet in length, moored to designated docks or floats attached to piers, \$3.00 per night;

(d) Vessels under twenty-six feet in length, moored to designated floats not attached to piers, \$2.00 per night; PROVIDED, HOWEVER, Vessels properly displaying a valid seasonal permit shall not be charged a nightly moorage fee; PROVIDED FURTHER, There shall be no moorage fee for dinghies, vessels moored to state park buoys, or any vessel riding on its own anchor; PROVIDED FURTHER, There shall be no charge for temporary moorage for the purpose of loading or unloading a vessel, such temporary moorage shall be limited to thirty minutes.

(2) A vessel rafted to another vessel shall be charged the appropriate moorage fee based on that vessel's own length.

AMENDATORY SECTION (Amending Order 52, filed 5/28/81)

WAC 352-32-035 CAMPSITE RESERVATION. (1) Advance campsites reservations will be available in certain state parks as designated by the director.

(2) The period during which campsites may be reserved is from the Friday before Memorial Day through Labor Day.

(3) Requests for reservations may be made in writing and must be postmarked a minimum of 14 days in advance. Reservations may be made in person, at the park where camping is to occur, up to 24 hours in advance of the first camping day requested. Written requests may be made from the second Monday in January and up to 14 days in advance of Labor Day.

(4) Reservation requests can only be made for camping dates within the current calendar year.

(5) There will be a ~~(\$2.00)~~ \$3.00 nonrefundable fee charged for each reservation made at each park, in addition to the standard campsite fee, regardless of the number of days reserved. Payment of the ~~(\$2.00)~~ \$3.00 nonrefundable reservation fee and first night's camping fee must accompany the reservation request.

(6) Recreation, camping and reservation information may be obtained by calling the campsite information center on the toll-free telephone number established for that purpose. No reservation may be made by telephone.

(7) No individual may reserve a campsite in more than one state park, for one or more of the same days.

(8) Reservations for a specific campsite within a park will not be guaranteed.

(9) Unreserved campsites may be used ~~((for one night at a time))~~ on a first-come-first-served basis without a reservation.

(10) A raincheck will be issued for the camping fee paid for any confirmed reservation which is not used, provided a cancellation request is made by calling the campsite information center or the park in which the site is reserved, no less than 24 hours in advance of the first day of the reservation, or in writing to the park, postmarked seven days in advance of the first day of the reservation. Rainchecks will only be valid in the calendar year in which they are issued. In lieu of payment, for the first night's camping fee they may accompany the reservation request for which they are to be used.

(11) Campers will be declared no-show and forfeit their reservation as well as the reservation fee and the first night's camping fee if they have not cancelled or if the reservation is not claimed by 6 p.m. on Sunday through Thursday, or 9 p.m. ~~((on))~~ on Friday, Saturday, and the night before a holiday. After these hours your site may be re-assigned unless specific arrangements are made with the park to arrive later.

(12) For the 1981 season, reservations will be accepted beginning June 1 for the period beginning July 1 through Labor Day.

AMENDATORY SECTION (Amending Order 71, filed 11/22/83)

WAC 352-32-250 STANDARD FEES CHARGED. The following fees shall be charged in all parks operated by the Washington state parks and recreation commission:

(1) Overnight camping - standard campsite: \$5.50 per night;

(2) Overnight camping - utility campsite: \$5.50 per night plus a nightly fee of \$.50 for domestic water hookup, \$.50 for sewer hookup, and \$1.50 for electrical hookup. Payment for all utility hookups available to the site will be collected whether utility is actually used or not;

(3) Overnight camping - primitive campsite: \$3.00 per night for nonmotorized vehicle and \$4.00 per night for motorized vehicle;

(4) Overnight camping - reservation fee: As specified in WAC 352-32-035;

(5) Group camping area - certain parks: \$.35 per person per night; nonrefundable reservation fee - \$10.00. Recreational vehicle campers must pay the primitive campsite fee or other appropriate fee based on facilities available;

(6) Environmental learning center - overnight camping: ~~(\$2.50)~~ \$2.85 per camper per night: PROVIDED, HOWEVER, The fee shall be ~~(\$2.85)~~ \$2.95 per camper per night, effective September 6, 1983;

(a) Camp Wooten and Cornet Bay environmental learning centers during the season the swimming pools are operational: ~~(\$2.90)~~ \$3.25 per camper per night: PROVIDED, HOWEVER, The fee shall be ~~(\$3.25)~~ \$3.35 per camper per night, effective September 6, 1983;

(b) Environmental learning center - day use only: \$1.00 multiplied by the minimum capacity established for each environmental learning center or \$1.00 for each member of the group - whichever is higher;

(7) Hot showers: \$.25 for a minimum of six minutes shower time;

(8) Electric stoves: \$.25 for thirty minutes cooking time;

(9) Adirondacks - not to include those located in ELC areas: Same as fee charged for full utility campsite. Occupancy shall be limited to the number of built-in bunks provided;

(10) Extra vehicle charge: \$2.00 per night for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: PROVIDED, An extra vehicle charge shall not be imposed when the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay;

(11) Marine park moorage facilities - see WAC 352-12-020 and 352-12-030.

These fees do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended.

WSR 84-04-083**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed February 1, 1984]

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 governing livestock in the state of Washington to prevent spread of infectious disease, amending chapter 16-86 WAC;

that the agency will at 1:00 p.m., Wednesday, March 14, 1984, in Rooms 204-5, Central Washington State College, Ellensburg, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 27, 1984.

The authority under which these rules are proposed is chapter 16.36 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 14, 1984.

Dated: February 1, 1984

By: Mike Willis

Assistant Director

STATEMENT OF PURPOSE

Title: Amending chapter 16-86 WAC.

Description and Purpose: To amend rules governing livestock in the state of Washington to prevent spread of infectious disease.

Statutory Authority: Chapters 16.36 and 16.44 RCW.

Summary of Rules: To clarify definitions used in this rule and establish change of ownership brucellosis testing of dairy breed cattle within the state of Washington.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dean H. Smith, DVM, Washington State Veterinarian, Department of Agriculture, AX-41, Division of Livestock Services, 406 General Administration Building, Olympia, Washington 98504, (206) 753-5040.

Persons Proposing Rule: Department of Agriculture.

Agency Comments or Recommendations: Agency proposed.

Rule is not necessary as a result of federal law or federal or state court action.

Small Business Economic Impact: None.

AMENDATORY SECTION (Amending Order 1539, filed October 17, 1977)

WAC 16-86-005 (~~(DIRECTOR DEFINED)~~) DEFINITIONS. For purposes of this chapter: (1) "Director" means the director of agriculture of the state of Washington or his duly authorized representative.

(2) "Department" means the Washington state department of agriculture.

(3) "Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery and dentistry in the state of Washington and approved by the United States department of agriculture veterinary services to participate in state-federal cooperative programs.

(4) "Registry tattoo" means a tattoo identifying the individual as a registered animal within the breed association.

(5) "Official calfhood vaccine" means a female bovine animal four through twelve months (one hundred twenty days to three hundred sixty-five days) of age vaccinated with an approved brucella vaccine.

(6) "Approved brucella vaccine" means only those biological products that are approved by and produced under license of the United States department of agriculture for injection into cattle for the purpose of enhancing their resistance to brucellosis.

(7) "Vaccination tattoo" means the United States registered shield and V preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which vaccination was done.

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 1785, filed February 17, 1983)

WAC 16-86-015 WASHINGTON CATTLE SALE REQUIREMENTS. (1) Effective January 1, 1984, within thirty days prior to any change of ownership and in a manner prescribed by the state veterinarian, ((No breeding)) all dairy breed cattle ((may be sold in this state unless within the thirty days immediately preceding the change of ownership the animal has been)) shall be tested negative for brucellosis ((and the result of that test is negative)). ((Except)) The following classes of cattle are exempt from this test requirement:

(a) Calves under ~~((twelve))~~ four months of age.

(b) Cattle sold or consigned to a quarantined registered feed lot.

(c) Cattle sold or consigned to ~~((an official))~~ a federally inspected slaughter ~~((establishment for slaughter within fourteen days))~~ plant.

(d) Steers and spayed heifers.

(e) ~~((Officially))~~ Official calfhood ((vaccinated dairy cattle)) vaccinates under twenty months of age ((and officially vaccinated beef cattle under twenty-four months of age from herds not under quarantine)) and not parturient or post parturient.

~~((2))~~ The department shall review operation of WAC 16-86-015(1) in August 1982 to determine the results of the testing program in terms of the numbers of suspects and reactors discovered and the status of the brucellosis situation in the state. The purpose of the review is to assess the need for changes.

~~Unless after a hearing renewal is determined to be necessary, WAC 16-86-015(1) shall expire on August 1, 1983.~~

~~((3))~~ (2) No female cattle may be sold, or introduced into any herd, in the state of Washington unless they are properly identified as official brucellosis vaccinates; except the following classes of cattle are exempt from this requirement:

(a) Calves under four months of age: PROVIDED, That female calves under four months acquired by any herd and natural female additions must be officially brucellosis calfhood vaccinated and identified before the age of twelve months.

(b) ~~((In Washington herds, female dairy breed cattle, after January 1, 1983, over six years of age;~~

~~((In Washington herds;))~~ Female beef breed cattle((; after January 1, 1984, over twelve months of age; after January 1, 1985, over two years of age; after January 1, 1986, over three years of age; after January 1, 1987, over four years of age; after January 1, 1988, over five years of age; after January 1, 1989, over six years of age)) born before January 1, 1983.

~~((4))~~ (c) Cattle sold or consigned to a quarantined registered feed lot.

~~((5))~~ (d) Cattle sold or consigned to a federally inspected slaughter plant.

~~((6))~~ (e) Cattle sold or consigned to a public livestock market for immediate slaughter only.

~~((7))~~ (f) Spayed heifers.

~~((8))~~ (3) All Washington cattle shall be individually identified and permanently recorded as to herd of origin prior to being sold or consigned for slaughter. Such identity shall be transferred to the blood sample taken for MCI test purposes. These records shall be made available to the department upon request. Except the following classes of cattle shall be exempt from this requirement:

(a) Cattle under twenty-four months of age. (Not parturient or post parturient.)

(b) Steers and spayed heifers.

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 1732, filed May 1, 1981)

WAC 16-86-095 (~~(REQUIREMENTS FOR AUTHORIZING PAYMENT TO VETERINARIANS FOR)~~) OFFICIAL CALFHOO VACCINATION. ~~((The fee schedule for payment by the department to accredited veterinarians for official brucellosis calfhood vaccination shall be at a rate prescribed by the director not to exceed one dollar per animal.))~~

(1) An official vaccination report ((=)) of calfhood vaccinations must be ((reported)) made to the department within thirty days of occurrence on an approved report form (AGRI 030-3003) issued by the ((Washington state)) department ((of agriculture)) for the purpose of identifying and recording by official calfhood vaccination eartag or registry tattoo calves officially ((brucella)) brucellosis vaccinated.

(2) ~~((Accredited veterinarians in private practice may make claim to the department for each beef breed or dairy breed female bovine calf they officially vaccinate in the state of Washington.~~

~~((a) No claim for payment shall be made except for those officially calfhood vaccinated.~~

~~((b) No claim for payment shall be made unless an approved brucella vaccine is used for official calfhood vaccination.~~

~~((c) No claim for payment shall be made prior to submitting to the department the official calfhood vaccination report, countersigned by the owner of the animal, identifying by official calfhood vaccination eartag or registry tattoo each individual calf vaccinated.))~~ All vaccination must be done by a licensed accredited veterinarian or federal or state employed veterinarian. Vaccinated animals must be permanently identified as vaccinates by a vaccination tattoo in the right ear. An official vaccination tag or registry tattoo shall be used for individual animal identification.

(3) All brucellosis vaccinations shall be reported to the department before becoming official.

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-86-006	DEPARTMENT DEFINED.
WAC 16-86-007	DEFINITION—ACCREDITED VETERINARIAN.
WAC 16-86-009	DEFINITION—COMMERCIAL DAIRY HERD.
WAC 16-86-011	DEFINITION—OFFICIAL CALFHOO VACCINATION.
WAC 16-86-012	DEFINITION—APPROVED BRUCELLA VACCINE.

Reviser's note: Errors of punctuation or spelling in the above repealed section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

WSR 84-04-084
PROPOSED RULES
STATE BOARD
OF EDUCATION
 [Filed February 1, 1984]

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 State assistance in providing school plant facilities—Basic state support, chapter 180-27 WAC;

that the agency will at 9:00 a.m., Thursday, March 15, 1984, in the Snoqualmie Ballroom, Hilton Inn, Bellevue, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 16, 1984.

The authority under which these rules are proposed is RCW 28A.47.830.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1984.

Dated: February 1, 1984
 By: Monica Schmidt
 Secretary

STATEMENT OF PURPOSE

Rule: Chapter 180-27 WAC, State assistance in providing school plant facilities—Basic state support.

Rule Section(s): WAC 180-27-070 Architectural and engineering services.

Statutory Authority: RCW 28A.47.830.

Purpose of the Rule(s): To establish the maximum architectural and engineering service fees for the purpose of state matching.

Summary of the New Rule(s) and/or Amendments: WAC 180-27-070, sets architectural and engineering fee schedule based on square footage rather than amount of construction.

Reasons Which Support the Proposed Action(s): The new fee schedule will be sensitive to inflation and new market values.

Person or Organization Proposing the Rule(s): SPI, government.

Agency Personnel Responsible for Drafting: Ralph E. Julnes, SPI, 3-2298; Enforcement: Perry Keithley, SPI, 3-6742; and Implementation: Harvey Childs, SPI, 3-6703.

The Rule(s) is (are) Necessary as the Result of Federal Law, Federal Court Action, or State Court Action: No.

Agency Comments, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matter Pertaining to the Rule(s): The new fee schedule reflects values established in 1972 and will remain sensitive to cost increases resulting from market or inflation.

AMENDATORY SECTION (Amending Order 11-83, filed 10/17/83)

WAC 180-27-070 ARCHITECTURAL AND ENGINEERING SERVICES. School districts shall select their architectural and engineering consultants in accordance with chapter 39.80 RCW. As required by RCW 39.80.050, the district shall negotiate a contract with

the most qualified consultants at a price which the school district determines is fair and reasonable to the district; and, in making its determination, the district shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

The allocation of state moneys for matching purposes for a school facility project shall be based on the basic architectural and engineering services as defined by the American Institute of Architects Handbook of Professional Practice, Number Nine, Owner-Architects Agreements, Thirteenth Edition, July 1977, and calculated by the percentage(s) in relation to the square foot area of construction ((costs)) as calculated in WAC 180-27-040 and project type, as set forth below:

(1) New construction projects:

Architectural and Engineering Team Fee Matching Limitations

Construction Value	((Total Fee % of Construction Cost
Under \$ 100,000	10.0
100,000	9.0
200,000	8.5
300,000	8.25
400,000	8.0
500,000	8.0
600,000	7.75
700,000	7.75
800,000	7.5
900,000	7.5
1,000,000	7.5
2,000,000	7.0
3,000,000	6.7
4,000,000	6.3
5,000,000 & above	6.0))

Square Feet of Construction	Percent of Construction Cost
3,700 or under	10.0
3,700	9.0
7,350	8.75
11,000	8.5
14,650	8.25
18,300	8.0
25,700	7.75
36,700	7.5
55,000	7.25
73,400	7.0
101,000	6.75
128,450	6.5
156,000	6.25
183,500 & above	6.0

NOTE: ((Fees)) Compensation for projects with square foot area of construction ((costs)) between the values shown ((may)) shall be established for matching purposes by the process as indicated in the example below.

Example:

$$\begin{aligned} & ((8.25\% \text{ of } \$300,000.00 = \$24,750.00 \\ & 8.00\% \text{ of } 50,000.00 = 4,000.00 \\ & \underline{\$350,000.00 - \$28,750.00}) \end{aligned}$$

Assume: Area of construction = 75,000 sq. ft.
 Area cost allowance = \$90/sq. ft.

$$\begin{aligned} 73,400 \text{ sq. ft.} \times \$90/\text{sq. ft.} \times 7.0\% &= \$462,420.00 \\ 1,600 \text{ sq. ft.} \times \$90/\text{sq. ft.} \times 6.75\% &= 9,720.00 \\ \underline{75,000 \text{ sq. ft.}} & \underline{\$472,140.00} \end{aligned}$$

State share = ((~~\$28,750.00~~)) \$472,140.00 x state matching percentage

(2) Modernization projects:

For modernization projects, the ((architectural and engineering services eligible for state matching purposes)) limits of state participation shall ((not exceed)) be one and one-half times the ((percentage of the fees)) amount calculated for new construction as set forth in subsection (1) of this section.

(3) Combination projects:

For those projects which include a combination of new construction and modernization, the ~~((fee))~~ limits of state participation shall be prorated as set forth in subsection (1) and (2) of this section.

WSR 84-04-085
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Department of Licensing/Director, Department of Licensing, intends to adopt, amend, or repeal rules concerning application for examination, WAC 308-26-015, and dispensing optician examination, WAC 308-26-017.

A copy of the proposed amendments is shown below, however, changes may be made at the hearing;

that the agency will at 10:00 a.m., Tuesday, March 27, 1984, in the Highways-Licenses Building, 2nd Floor Conference Room, 12th and Franklin, Olympia, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.34.040.

The specific statute these rules are intended to implement is RCW 18.34.080.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 27, 1984.

Dated: January 31, 1984

By: Joan Baird
 Assistant Director

STATEMENT OF PURPOSE

Name of Agency: Washington State Department of Licensing/Director, Department of Licensing.

Purpose of Proposed Amendment: To restate the retesting procedure on failed examination sections and to provide for a deadline for submitting examination applications.

Statutory Authority: RCW 18.34.040 and 18.34.080.

Summary of Rule: WAC 308-26-015 Application for examination, and 308-26-017 Dispensing optician examination.

Reason for Proposed Rules: The proposed amendments are intended to restate the retesting procedure and provide for an application deadline.

Responsible Personnel: The Washington State Department of Licensing/Director, Department of Licensing, and the executive secretary for the Dispensing Opticians Examining Committee have the responsibility for drafting, implementing and enforcing this rule. The executive secretary is: Barbara Johnson, P.O. Box 9649, Olympia, WA 98504, Telephone: (206) 753-1153 comm, (206) 234-1153 scan.

Proponent of the Proposed Rule: This rule is proposed by the Department of Licensing/Director, Department of Licensing.

Agency Comments: This rule is proposed pursuant to RCW 18.34.040 and 18.34.080.

Federal Law or Federal or State Court Requirement: The proposed rule is not necessitated as the result of federal law or federal or state court action.

AMENDATORY SECTION (Amending Order PL 106, filed 2/2/71)

WAC 308-26-015 APPLICATION FOR EXAMINATION. (1) An individual shall make application for examination, in accordance with RCW 18.34.070, on an application form prepared and provided by the director.

(2) The apprenticeship training requirement shall be supported with certification by the licensed individuals (or individuals) who provided such training.

(3) Examination fees are not refundable. If an applicant is unable to attend his scheduled examination, and so notifies the director in writing at least 7 days prior to the scheduled examination date, the applicant will be rescheduled at no additional charge. Otherwise, the fee will be forfeited. (Emergencies considered.)

(4) If an applicant takes the examination and fails to obtain a satisfactory grade, he may retake the examination if he pays the statutory examination fee.

(5) Applications and fees for examination must be submitted to the Division of Professional Licensing, Department of Licensing, at least sixty (60) days prior to the scheduled examination. Failure to meet the deadline will result in the applicant not being scheduled until the next scheduled examination.

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 PL 397, filed 5/12/82)

WAC 308-26-017 DISPENSING OPTICIAN EXAMINATION. (1) Every qualified applicant shall pass an examination with a score of at least seventy percent (70%) in each of the three examination sections: Written contact lenses, written basic optical concepts to include anatomy and physiology, and practical. Subject to subsection (2), any applicant obtaining a score of less than 70% in any section will only be required to retake the section(s) in which a grade of less than 70% was obtained.

(2) Applicants failing an examination section(~~other than the practical section;~~) may retake the section(s) failed (~~after five months~~) at the next scheduled examination. ((An applicant failing the practical section must wait for one year when the complete examination is administered by the dispensing optician examining committee. Examination sections passed will be valid for a period of thirteen (13) months; applicants failing to successfully pass failed section(s) within thirteen (13) months shall be subject to subsequent reexamination on all three sections.)) Failure to pass the entire examination after three consecutive regularly scheduled examinations (emergency may be considered) shall require reexamination on all three sections.

WSR 84-04-086
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Examiners for Nursing Home Administrators)
 [Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Examiners for Nursing Home Administrators intends to adopt, amend, or repeal rules concerning approval of courses of study, WAC 308-54-140, and continuing education requirements to meet the conditions of reregistration for license, WAC 308-54-150.

A copy of the proposed amendments is shown below, however, changes may be made at the hearing;

that the agency will at 9:00 a.m., Tuesday, March 13, 1984, in Nendel's, 16838 Pacific Highway South, Seattle, Washington, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.52.100(14) and 18.52.110(2).

The specific statute these rules are intended to implement is RCW 18.52.110(2).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 13, 1984.

Dated: January 31, 1984

By: Stanley R. Haskins
Executive Secretary

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Examiners for Nursing Home Administrators.

Purpose of Proposed Amendments: To allow petitions for continuing education credit from licensees practicing only out of state, and to delete provision for approval of certain out of state continuing education courses and approval under special circumstances.

Statutory Authority: RCW 18.52.100(14) and 18.52.110(2).

Summary of Rules: WAC 308-54-140 Approval of courses of study, and WAC 308-54-150 Continuing education requirements to meet the conditions of reregistration for license.

Reasons for Proposed Amendments: To allow petitions for continuing education requirements through fulfillment of equal or greater out-of-state requirements by out-of-state licensees, and to remove provision allowing approval of continuing education courses in other than normal circumstances.

Responsible Personnel: The Washington State Board of Examiners for Nursing Home Administrators and its executive secretary have the responsibility for drafting, implementing and enforcing these rules. The executive secretary is: Stanley R. Haskins, P.O. Box 9649, Olympia, WA 98504, telephone: (206) 234-0774 scan, (206) 753-0774 comm.

Proponents of the Proposed Amendment: The amendments were proposed by the Washington State Board of Examiners for Nursing Home Administrators.

Agency Comments: The amendments are proposed pursuant to RCW 18.52.100(14) and 18.52.110(2).

Federal Law or State Court Requirements: The proposed amendments are not necessitated as a result of federal law or state court action.

AMENDATORY SECTION (Amending Order PL 328, filed 12/20/79)

WAC 308-54-140 APPROVAL OF COURSES OF STUDY. (1) Programs of study sponsored by any accredited universities or colleges which carry recognized academic credit may be deemed acceptable and approved for continuing education credit, provided, however, that the course meets the conditions set forth in WAC 308-54-130(2)(4) and provided that such course of study shall register for approval at

least 45 days prior to the course offering to allow sufficient time for the course of study to be approved prior to offering.

(2) Programs of study sponsored by the following may be deemed acceptable and approved for continuing education credits, provided, however, that the course meets the conditions set forth in WAC 308-54-130(2)(4) and provided that such course of study shall register for approval at least 45 days prior to the course offering to allow sufficient time for the course of study to be approved prior to offering:

American College of Nursing Home Administrators
American College of Hospital Administrators
Washington State Health Facilities Association
Washington Association of Homes for the Aging
United Nursing Homes, Inc.

Any state long-term care association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.

(3) Any course of study sponsored by an educational institution, association, professional society, or organization other than an accredited college or university may be approved by the board for continuing education credit, provided, however:

(a) Such course of study meets the conditions set forth in WAC 308-54-130(2)-(4); and

(b) Such course of study shall register for approval at least 45 days prior to the course offering to allow sufficient time for the course of study to be approved prior to offering.

~~((4) In certain circumstances the board reserves the right to approve courses, without registration, taken outside the state of Washington, if, in the opinion of the board, the course clearly meets the conditions of WAC 308-54-130(2)-(4). Approval will be based upon proof of time, place, curriculum, faculty, and other factors the board may require. Also, in special circumstances, the board may consider requests for continuing education credit for courses of study upon petition to the board.))~~

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 PL 338, filed 3/26/80)

WAC 308-54-150 CONTINUING EDUCATION REQUIREMENTS TO MEET THE CONDITIONS OF RE-REGISTRATION FOR LICENSE. (1) A condition of reregistration for license shall be the requirement that the applicant has attended board-approved courses in continuing education.

(2) The licensee shall present proof that he or she has obtained fifty-four classroom hours in approved continuing education courses during each three year period of his or her licensed tenure. The first three year period shall begin on the date of first renewal of the license, and shall conclude the day before the third anniversary of such renewal. Successive three year periods shall be computed in a similar fashion.

(3) There shall be no carry over of continuing education classroom hours from any three year period to the next three year period.

(4) Applicants for renewal practicing only out of the state of Washington may petition the board for full recognition of the continuing education requirement through fulfillment of their state of practice's licensing and continuing education requirements with the condition that their state has equal hours of continuing education requirements.

WSR 84-04-087

PROPOSED RULES

DEPARTMENT OF LICENSING

(Board of Dental Examiners)

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Dental Examiners intends to adopt, amend, or repeal rules concerning examination content, WAC 308-40-102.

A copy of the proposed amendment is shown below, however, changes may be made at the hearing;

that the agency will at 9:00 a.m., Friday, March 16, 1984, in the Double Tree Inn, Bonsai Room, 205 Strander Boulevard, Seattle, WA, conduct a public hearing on the proposed rules.

The adoption, amendment, or repeal of the rules will take place immediately following the hearing.

The authority under which these rules are proposed is RCW 18.32.040.

The specific statute these rules are intended to implement is RCW 18.32.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 16, 1984.

Dated: January 30, 1984

By: Chris R. Rose
Assistant Administrator

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Dental Examiners.

Purpose of Proposed Amendment: To restate examination content and possible content.

Statutory Authority: RCW 18.32.040.

Summary of Rule: WAC 308-40-102 Examination content.

Reason for Proposed Amendment: To restate and allow flexibility in examination content.

Responsible Personnel: The Washington State Board of Dental Examiners and its executive secretary have the responsibility for drafting, implementing and enforcing this rule. The acting executive secretary is: Chris R. Rose, Assistant Administrator, P.O. Box 9649, Olympia, WA 98504, telephone: (206) 234-1150 scan, (206) 753-1150 comm.

Proponents of the Proposed Amendment: The amendment was proposed by the Washington State Board of Dental Examiners.

Agency Comments: The amendment is proposed pursuant to RCW 18.32.040.

Federal Law or State Court Requirements: The proposed amendment is not necessitated as a result of federal law or state court action.

AMENDATORY SECTION (Amending Order PL 431, filed 3/29/83)

WAC 308-40-102 EXAMINATION CONTENT. (1) The examination will consist of:

(a) Theory: National Board only accepted.

(b) Practical:

(i) Restorative examination: The restorative examination shall consist of an amalgam restoration, a cast gold restoration and a gold foil restoration. Proper radiographs are required for each cavity selection.

Amalgam Class II ((=))

Cast gold restoration - Three or more surfaces.

Gold foil - Class II, III or V

~~((ii) Prosthetic. Candidates will be evaluated in the area of prosthetics.))~~

~~((iii))~~ (ii) The board may, at its discretion, give an examination ~~((oral diagnosis and treatment planning, or))~~ any other phase of dentistry. Candidate will receive information concerning such examination.

(2) Each applicant must furnish his or her own patient for all phases of the practical examination. Patients must be at least eighteen years of age, and shall not be a dentist, dental student, dental hygienist or

dental hygiene student. The state board of dental examiners and the school of dentistry assume no responsibility regarding work done on patients. Candidates will be required to furnish documentary evidence of malpractice and liability insurance for the examination.

(3) An assistant will be permitted to assist the applicant at the chair. Dentists or undergraduate dental students, hygienists, undergraduate hygienists are not acceptable as assistants. Assistants must complete a form of eligibility.

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.

WSR 84-04-088

ADOPTED RULES

DEPARTMENT OF LICENSING

(Dental Hygiene Examining Committee)

[Order PL 459—Filed February 1, 1984]

Be it resolved by the Washington State Dental Hygiene Examining Committee, acting at Seattle, Washington, that it does adopt the annexed rules relating to adding new section WAC 308-25-025, amending WAC 308-25-030 and 308-25-070, and repealing WAC 308-25-020 and 308-25-040.

This action is taken pursuant to Notice No. WSR 83-24-073 filed with the code reviser on December 7, 1983. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.29.031 and is intended to administratively implement that statute.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 26, 1984.

By Peggy Conner
Chairperson

NEW SECTION

WAC 308-25-025 THE EXAMINATION. The dental hygiene examination will consist of a written section and a practical section.

(1) Written examination. The written theory examination will cover ten (10) subject areas including inorganic chemistry, physiology, anatomy, bacteriology, anesthesia, radiography, materia medica, dental histology, principles of nursing and hygiene, and restorative dentistry: PROVIDED, That a certificate granted by the National Board of Dental Hygiene Examination may be accepted in lieu of the written examination: PROVIDED, FURTHER, that such applicant will also be required to successfully complete a written examination covering anesthesia, restorative dentistry, and other subjects.

(2) Practical examination: The practical examination will include:

(a) A clinical demonstration of a prophylaxis case to consist of the removal of deposits from and the polishing of the surfaces of the teeth.

(i) Patients must be obtained by applicant and be at least eighteen (18) years of age with a minimum of twenty-four (24) teeth. A patient shall not be a dentist, dental student, dental hygienist, or dental hygiene student. Patients must have sufficient supragingival and subgingival calculus and stain to provide a suitable test. Requirements for suitable test case:

(A) Subgingival calculus: Patients must have a minimum of the twelve (12) teeth with subgingival calculus, a minimum of four (4) teeth must be located in two (2) posterior sextants.

(B) Supragingival calculus: Patient must have supragingival calculus visible in at least one sextant.

(C) Stain: Patient must have visible stain in at least one sextant.

(D) Patients will not be acceptable if patient has advanced stages of periodontal involvement in more than one sextant. If the case is not appropriate for testing the applicant's competency, patient will be rejected.

(ii) Case history to be completed on forms prepared by the committee. The patient will be rejected if contraindications exist in the medical history for receiving immediate dental hygiene treatment.

(iii) The applicant must furnish a specified series of diagnostic radiographs taken by the applicant which will be evaluated by and remain with the committee. Unless otherwise authorized by the committee, the same patient will be used for patient case history, prophylaxis, anesthetic administration and radiographs.

(b) The applicant will be required to demonstrate the administration of a local anesthetic. The applicant will furnish anesthesia armamentarium including an aspirating syringe and using anesthetic solution with no vasoconstrictor unless otherwise authorized by the committee.

(c) Restorative: applicant will need to demonstrate the placement, carving and polishing of amalgam restorations.

(i) Applicant will bring a typodont with a condensed, carved and unpolished M.O.D. amalgam restoration on a molar which applicant will be required to polish and leave with the board.

(ii) The applicant must demonstrate proper insertion, condensation and carving of the restorative material in the typodont tooth, establishing proper anatomy, contour and proximal contact. The applicant must supply all instruments and materials required to perform the restorative procedures.

AMENDATORY SECTION (Amending Order PL 398, filed 5/14/82)

WAC 308-25-030 EXAMINATION RESULTS.

(1) In order to pass the examination the applicant must ((attain)):

(a) ((An average grade)) Attain a score of 65% in the written theory examination section, OR submit proof of successful completion of the National Board of Dental Hygiene Examination and a score of ((65%)) 75% in any required additional written examination; ((and))

((an average grade of 75% in the practical examination;)) successfully complete the prophylaxis case;
(c) successfully complete the anesthetic practical examination and;

(d) successfully complete the restorative practical examination.

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 672, filed 3/2/82)

WAC 308-25-070 DISMISSAL FROM EXAMINATION. Any applicant whose conduct interferes with the evaluation of professional competency by the ((director or the director's authorized agent)) committee may be dismissed from the examination and all of his or her work will be rejected. Such conduct will include but not be limited to the following:

(a) Giving or receiving aid, either directly or indirectly, during the examination process.

(b) Failure to follow directions relative to the conduct of the examination, including termination of procedures.

(c) Endangering the life or health of a patient.

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.

REPEALER

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

WAC 308-25-020 THE EXAMINATION.

WAC 308-25-040 EXAMINATION REVIEW PROCEDURES.

WSR 84-04-089

PROPOSED RULES

LIBRARY COMMISSION

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Library Commission intends to amend rules concerning the state agency's criteria for the adequacy of library service to the public; adopt rules on the establishment of the Washington Library Planning and Development Committee; and repeal rules on the establishment of the WLN executive council;

that such agency will at 10:00 a.m., Thursday, March 8, 1984, in the Conference Room, Timberland Regional Library Service Center, 415 Airdustrial Way S.W., Olympia, WA 98501, conduct a hearing relative thereto.

The adoption, amendment, or repeal of such rules will take place immediately following such hearing.

The authority under which these rules are proposed is RCW 27.04.040, 27.12.060, 34 CFR 76, RCW 27.04.060 and chapter 27.26 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency prior to March 8, 1984, and/or orally at 10:00 a.m., Thursday, March 8, 1984, Conference Room, Timberland Regional Library Service Center, 415 Industrial Way S.W., Olympia, WA 98501.

Dated: February 1, 1984

By: Roderick G. Swartz
State Librarian

STATEMENT OF PURPOSE

For the revision of chapter 304-12 WAC.

Title and Purpose. WAC 304-12-020 Washington Library Planning and Development Committee—Appointments, terms, expenses. This section specifies the method of development of the committee. WAC 304-12-025 Washington Library Planning and Development Committee—Duties. This section specifies the duties of the committee.

Statutory Authority: RCW 27.04.040.

Summary of the Rules: WAC 304-12-020 and 304-12-025, two new sections, describe the development and function of a new committee who will be assisting the state agency in its state-wide library responsibilities.

Proponents of the Rule: The newly conceived committee has been sanctioned by the Washington State Library Commission at its regular (public) meeting on December 1, 1983, and the proposed WAC change was drafted by the Washington State Library staff.

For revision of WAC 304-12-125.

Title and Purpose. WAC 304-12-125 General statement of criteria. This section delineates the criteria by which the state agency determines the adequacy of public library services to geographical areas and for groups of people in the state.

Statutory Authority: RCW 27.12.060 and 34 CFR 76.

Summary of the Rules: WAC 304-12-125 has specified criteria which will not be used in the future. Newly developed criteria must be inserted in its place not only to conform with Washington state law, but also to act as an integral planning component for the state agency's responsibilities for the Library Services and Construction Act.

Proponents of the Rule: The change in criteria for adequacy for library service to the public has been endorsed by the Washington Library Association, the Washington State Advisory Council on Libraries and the Washington State Library Commission.

For the deletion of WAC 304-12-015, 304-25-090, 304-25-100 and 304-25-040(3).

Title and Purpose. WAC 304-12-015 Services grant programs in Washington—Principles; 304-25-090 WLN executive council; 304-25-100 WLN executive council, responsibilities and rights; and 304-25-040(3) Network organization. These sections describe rules that are no longer of use.

Statutory Authority: RCW 27.04.060 and chapter 27.26 RCW.

Summary of the Rules: The above sections are proposed to be deleted because of present invalidity. New proposed rules have rendered these sections unnecessary.

Proponents of the Rule: The deletions have been recognized by the Washington State Library Commission, the Washington Library Association, and the Washington Library Network. The proposed deletion was drafted by the Washington State Library staff.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Roderick G. Swartz, State Librarian, Washington State Library, AJ-11, Olympia, WA 98504, (206) 753-2915.

NEW SECTION

WAC 304-12-020 WASHINGTON LIBRARY PLANNING AND DEVELOPMENT COMMITTEE CREATED—APPOINTMENTS—TERMS—EXPENSES. A Washington library planning and development committee is hereby created which shall consist of six persons appointed for two year terms. Four persons shall be appointed by the Washington state library commission. The commission shall confirm the remaining two members who shall be designated by the Washington library association executive board, and one of whom shall be a member of the Washington library trustees association. Terms shall be determined by lot following initial appointment, with three persons to serve one year and three persons to serve two years. Thereafter, three members shall be appointed each year. Members may be reappointed; however, no member shall serve more than two terms consecutively. Vacancies shall be filled by appointment for the unexpired term. The committee members shall serve without compensation, but will be reimbursed for subsistence, lodging, and travel expenses for committee meetings and approved business of the committee in accordance with the provisions of the Washington state travel regulations.

NEW SECTION

WAC 304-12-025 WASHINGTON LIBRARY PLANNING AND DEVELOPMENT COMMITTEE—DUTIES. (1) The committee shall act as an advisory body working in conjunction with state library staff to effect a sound basis for long-range state-wide library and information service planning activities. It shall advise in designing cooperative programs to further the development of the state-wide library information services network.

(2) The committee will identify issues, seek solutions, and make recommendations to the Washington state library commission, to the state's professional associations, and to others when appropriate.

(3) The committee will establish a standing subcommittee called the Washington state advisory council on libraries to advise it on expenditures of federal moneys. It may also establish other subcommittees and task forces, as is deemed necessary in the course of its work to accomplish various long-term and short-term goals.

AMENDATORY SECTION (Amending Order 1-75, filed 7/21/75)

WAC 304-12-125 GENERAL STATEMENT OF CRITERIA.

(1) In a free and open society the mission of libraries is to be aware of individuals' need for knowledge and personal growth and to respond to those needs by providing access to the wisdom, experience and imagination of mankind.

(2) The state agency's criteria for determining the adequacy of ((public)) library service((s to geographical areas and for groups of persons in the state are those criteria of the American Library Association as described in Minimum Standards for Public Library Systems, 1966, and such additional standards as may be adopted by the Washington Library Association.)) to the public are:

(a) That ninety percent of the requests by library users for specific titles is available through their library in a manner that is satisfactory to the users.

(b) That ninety percent of the requests by library users for works by a particular author or creator is available through their library in a manner that is satisfactory to the users.

(c) That ninety percent of the requests by library users for materials on a specific subject is available through their library in a manner that is satisfactory to the users.

(d) That ninety percent of the requests by library users for information is answered through their library in a manner that is satisfactory to the users.

(e) That ninety percent of the people in a library's service area is aware of the kinds of services provided by their library.

(f) That the percentage of use by each demographic group as defined in the Library Services and Construction Act regulations is the same, +/- fifteen percent, based on the highest percentage of use.

The determination of adequacy is made by comparing these criteria with annual reports which by law must be submitted to the state agency by each public library.

In allocating library services and construction funds, special consideration will be given to library programs, research and projects which:

~~((a))~~ (i) Serve disadvantaged persons residing in urban or rural areas with high concentrations of low-income families and to areas with high concentrations of persons with limited English speaking ability;*

~~((b))~~ (ii) Serve persons residing in sparsely settled areas of the state which are distant from adequate public library facilities;

~~((c))~~ (iii) Serve physically handicapped persons (including the blind or other visually handicapped);

~~((d))~~ (iv) Serve inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, residential schools for handicapped persons, and other general or special institutions or hospitals operated or substantially supported by the state;

~~((e))~~ (v) Serve persons residing in areas of the state having no local public library service;

~~((f))~~ (vi) Extend the range and improve the qualities of career development opportunities for people of all ages without regard to educational level;

~~((g))~~ (vii) Lead to the improvement and efficient management of library resources, both human and material, and which provide to all people maximum accessibility to those resources();

~~((h))~~ (viii) Strengthen metropolitan public libraries which serve as national or regional resource centers.

Footnote: *In accord with requirements of the Library Services and Construction Amendments of 1970 (Public Law 91-600) and the Code of Federal Regulations (45 CFR Part 130) priority will be given to ~~((a))~~ (i) above, i.e. programs or projects which serve urban and rural areas with high concentrations of low-income families and to programs and projects which serve areas with high concentrations of persons with limited English-speaking ability (as defined by PL 93-380, Education Amendments of 1974).

These areas are defined as those areas with low-income families or with concentrations of non-English speaking persons as reported in U.S. Bureau of Census 1970 PC (1)-C Series: General Social and Economic Characteristics. Low-income families are defined as those with annual incomes as designated by federal agencies. This information will be updated through publications of the Washington state office of economic opportunity.

Programs and priorities will change as needs in the state change or as revised federal regulations and/or new federal legislation may require.

Where applicable, an evaluation component will be a part of each project.

Where applicable, each grant request should contribute toward the achievement of the existing Washington state plan for library development, now called the Proposed Regional Library Plan for Washington by Charles Bowerman, 1950, or any plan which supersedes this existing plan.

Programs may also be developed across state lines when such inclusion meets the standards set forth and will contribute to the basic objectives of library development in Washington state. Interstate compact legislation facilitates such programs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 304-12-015 SERVICES GRANT PROGRAMS IN WASHINGTON—PRINCIPLES.

AMENDATORY SECTION (Amending Order 1-80, filed 1/11/80)

WAC 304-25-040 NETWORK ORGANIZATION. (1) The network members shall consist of autonomous, geographically dispersed libraries, library systems, and related organizations and institutions which have accepted by written agreement the purposes of the network and the responsibilities and rights of membership.

(2) The library service area shall participate in the determination of network programs, services and activities through representation on the executive council.

~~(3) ((An executive council shall be composed of representatives from the network membership, elected by and from the library service areas, and shall have the responsibilities and rights outlined in WAC 304-25-100.~~

~~((4))~~ The Washington state library, shall provide assistance for the efficient, effective, and coordinated development and utilization of the network components.

REPEALER

The following sections of the Washington Administrative Code are repealed:

(1) WAC 304-25-090 WLN EXECUTIVE COUNCIL.

(2) WAC 304-25-100 WLN EXECUTIVE COUNCIL, RESPONSIBILITIES AND RIGHTS.

WSR 84-04-090

EMERGENCY RULES

UNIVERSITY OF WASHINGTON

[Order 84-1—Filed February 1, 1984]

I, William P. Gerberding, President of the University of Washington, do promulgate and adopt at Seattle, Washington, the annexed rules relating to parking fees at the University of Washington.

Authority to issue this emergency rule is delegated to the president by the standing orders of the board of regents, contained in Volume I, Chapter 1(2) of the University Handbook.

I, William P. Gerberding, find that an emergency exists and that this 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 the emergency is in compliance with RCW 82.08.010, the University of Washington, as a state institution, must immediately impose the collection of the Washington state sales tax on all revenues generated by parking fees on its campus.

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

This rule is promulgated pursuant to RCW 82.08.010 and is intended to administratively implement that statute.

The undersigned hereby declares that the institution has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED February 1, 1984.

By William P. Gerberding
President

AMENDATORY SECTION (Amending Order 82-1, filed 6/23/82)

WAC 478-116-600 FEES. (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, E13;
 - (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, N2E;
 - (iv) South Campus: S1, S4, S5, S6, S7, S8, S9, S10;
 - (v) West Campus: W3, W4, W5, W6, W7, W8, W9, W10, W11, W12, W13, W14, W18, W19, W20, W21, W22, W23, W24, W25, W34, W39, W41, W42.
 - (b) Zone B —
 - (i) East Campus: E2, E9, E10, E11, E12, E15;
 - (ii) North Campus: N1, N5, N25;
 - (iii) South Campus: S13;
 - (iv) West Campus: W2, W26, W27, W28, W29, W30, W31, W32, W33, W35, W36, W38, W40, W43.
- (2) The following schedule of parking fees is hereby established:

	Per	Amount
(a) Type of Permit —		
(i) Annual Permits:		
(A) Zone A Permits	Year	(\$156.00) \$168.00
(B) Zone B Permits	Year	(114.00) 122.88
(C) Reserved — General	Year	(300.00) 324.00
(D) Wheelchair Permits	Year	(114.00) 122.88
(E) Motorcycles, Scooters and Mopeds	Year	(24.00) 25.92
(F) Drive through permits (Fulltime faculty and staff only)	Year	(6.00) 6.48
(G) 24-hour storage, garages	Year	(180.00) 194.40
(H) Carpool Permits	Year	(24.00) 25.92
(ii) Quarterly Permits		
(A) Zone A Permits	Quarter	(\$39.00) \$42.00
(B) Zone B Permits	Quarter	(28.50) 30.72
(C) Reserved — General	Quarter	(75.00) 81.00
(D) Wheelchair Permits	Quarter	(28.50) 30.72
(E) Drive through permits (Fulltime faculty and staff only)	Quarter	(2.00) 2.16
(F) Motorcycles, Scooters and Mopeds	Quarter	(6.00) 6.48

	Per	Amount
(G) 24-hour storage, garages	Quarter	(45.00) 48.60
(H) Carpool Permits	Quarter	(6.00) 6.48
(iii) Night Permits (4:00 p.m. to 7:30 a.m. and Saturday morning only)		
(A) Zone A Permits	Year	(72.00) 78.00
(B) Zone B Permits	Year	(42.00) 45.60
(C) Zone A Permits	Quarter	(18.00) 19.50
(D) Zone B Permits	Quarter	(10.50) 11.40
(iv) Academic Year Permits (9 months — 24 hour storage)		
(A) Zone A Permits	Academic Year	(117.00) 126.00
(B) Zone B Permits	Academic Year	(85.50) 92.16
(C) 24-hour storage, garages	Academic Year	(135.00) 145.80
(b) Hourly Parking Rates for Designated Areas on Main Campus and South Campus (6:45 a.m. to 11:00 p.m. weekdays only)		
(i) 0-15 minutes	No Charge	
(ii) 15 minutes to 30 minutes		.75
(iii) to 1 hour		1.00
(iv) 1 hour to 2 hours		1.50
(v) 2 hours to 3 hours		1.75
(vi) over 3 hours		(2.00) 2.25
(vii) gate issued	Week	(6.00) 6.50
(b1) Hourly Parking Rates for Designated Areas on the Periphery of Campus (6:45 a.m. to 11:00 p.m. weekdays only)		
(i) 0-15 minutes	No Charge	
(ii) 15 minutes to 1 hour		.50
(iii) 1 hour to 2 hours		1.00
(iv) over 2 hours		(1.25) 1.35
(c) Evening Parking (4:00 p.m. to 12:00 midnight)		
(i) 0-15 minutes	No Charge	
(ii) 15 to 30 minutes		.50
(iii) over 30 minutes		1.00

	Per	Amount		Per	Amount
(d) Special Permits					
(i) Short term	Week	(4.00) <u>4.30</u>			
(ii) Short term — Motorcycle	Day	(.35) <u>.40</u>			
(iii) Ticket Books (person identified in WAC 478-116-240(6) and WAC 478-116-250(1) only)					
(A) 5 Ticket book-Dept/Indiv.		(3.25) <u>3.50</u>			
(B) 10 Ticket book-Dept/Indiv.		(6.50) <u>7.00</u>			
(C) 25 Ticket book-Dept/Indiv.		(16.25) <u>17.50</u>			
(iv) Steno Personnel (SP) and Special Services (SS)	Year	(156.00) <u>168.00</u>			
	Quarter	(39.00) <u>42.00</u>			
(e) Mechanically Controlled Parking Areas as Designated (Parking meters, ticket dispensers, automatic gates, etc.)					.10-.75
(f) Athletic Events					
(i) Football					
(A) Automobiles		(2.00) <u>2.25</u>			
(B) Motorhomes		(4.00) <u>4.30</u>			
(C) Buses		(6.00) <u>6.50</u>			
(ii) All Other Events — Pavilion and stadium lots					
(A) When staffed by attendants					1.50
(B) When controlled by mechanical equipment (E1 only)					.50
(g) Miscellaneous Fees					
(i) Transfer from one area to another by request of individual					2.00
(ii) Gate keycard replacement — not to exceed		(5.00) <u>5.40</u>			
(iii) Vehicle gate keycard deposit (Amount to be set by the Manager of the Parking Division. Deposit will be returned to individual when keycard is					

Not to

returned to the Parking Division)	exceed	10.00
(iv) Permit Replacement		
(A) With signed certificate of destruction or theft		(1.00) <u>1.10</u>
(B) Without certificate of destruction or theft		(2.00) <u>2.15</u>
(v) Impound Fee	At Cost	
(iv) Carpools (Daily pay parking in certain designated areas for two or more persons)		(.25-.50) <u>.25-.55</u>

NOTE: The schedule above incorporates the 7.9% Washington State sales tax.

Reviser's note: RCW 28B.19.077 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 84-04-091
PROPOSED RULES
DEPARTMENT OF FISHERIES

[Filed February 1, 1984]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Department of Fisheries intends to adopt, amend, or repeal rules concerning commercial fishing rules;

that the agency will at 10:00 a.m., Friday, March 16, 1984, in the Large Conference Room, General Administration Building, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 23, 1984.

The authority under which these rules are proposed is RCW 75.08.080.

The specific statute these rules are intended to implement is RCW 75.08.080.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 16, 1984.

Dated: February 1, 1984

By: Gary C. Alexander
for William R. Wilkerson
Director

STATEMENT OF PURPOSE

Title: WAC 220-16-085, 220-16-100, 220-20-010, 220-22-410, 220-32-044, 220-36-03001, 220-40-030, 220-44-020, 220-44-030, 220-44-040, 220-44-050, 220-44-060, 220-44-070, 220-48-011, 220-48-015, 220-48-017, 220-48-029, 220-48-031, 220-48-071, 220-49-020, 220-52-001, 220-52-010, 220-52-018, 220-52-019, 220-52-01901, 220-52-020, 220-52-030, 220-52-040, 220-52-043, 220-52-046, 220-52-050,

220-52-053, 220-52-063, 220-52-066, 220-52-069, 220-52-075, 220-69-230 and 220-69-250.

Description of Purpose: Modify rules affecting commercial marine fish and shellfish fisheries.

Statutory Authority: RCW 75.08.080.

Summary of Rule: WAC 220-16-085, redefine ring net; 220-16-100, redefine shellfish pot; 220-20-010, expands unlawful activity to include possession in violation of harvest regulations for area fished; makes buoy brand requirement apply to gear operator; 220-22-410, creates new catch area; 220-32-044, includes candlefish in baitfish regulations; 220-36-03001, includes candlefish in baitfish regulations; 220-40-030, includes candlefish in baitfish regulations; 220-44-020, limit size of smelt rakes; 220-44-030, drops setline and hook restrictions; seasonally closes inshore lingcod fishery; 220-44-040, adds new area; 220-44-050, changes catch limits; prohibits commingling of catch; 220-44-060, create logbook requirements; 220-44-070, create logbook requirements; 220-48-011, changes minimum pelagic trawl mesh; 220-48-015, prohibits bottom trawl for whiting; 220-48-017, changes whiting season; 220-48-029, adds new area; 220-48-071, adds new area; 220-48-031, clarifies hook sizes; 220-49-020, allows zoo food usage by permit; 220-52-001, defines areas; 220-52-010, allows intertidal geoduck harvest; 220-52-018, clarifies regulation; 220-52-01901, adds vessel owner as responsible party; 220-52-020, exempts razor clams from clam farm requirement; 220-52-030, prohibits commercial razor clam digging; 220-52-040, requires irretrievable pot notice prior to season closure; makes hull inspection mandatory; 220-52-043, changes buoy and line requirements; 220-52-046, creates gear setting period; 220-52-050, limits Hood Canal shrimp gear number; 220-52-053, restricts Hood Canal shrimp gear material; 220-52-063, creates Puget Sound octopus closed area; limits octopus gear except by permit; 220-52-066, changes squid gear; 220-52-069, allows rock scallop aquaculture; 220-52-075, adds squid and octopus logbook requirements; 220-69-230, requires segregation of species with vessel trip limit; and 220-69-250, makes crab hold inspections mandatory on coast.

Reasons Supporting Proposed Action: WAC 220-16-085 and 220-16-110, these definitions clarify the distinction between pot gear and ring net gear; WAC 220-20-010, because of differing area regulation, possession in violation of area restrictions is necessary to enforce those restrictions; restricting buoy brand use to the registered operator allows identification of gear; WAC 220-22-410, the resource protection needs in coastal areas at the mouth of the Strait of Juan de Fuca differ from offshore and southerly areas; WAC 220-32-044, 220-36-03001 and 220-40-030, candlefish are a bait species; WAC 220-44-020, the smelt rake restriction was dropped during a consolidation of definitions under dip bag net and needs to be reinstated; WAC 220-44-030, the line and hook restrictions are no longer in the licensing statute. The seasonal commercial closure is also reflected in a seasonal sport closure to protect lingcod stocks; WAC 220-44-050, commercial catch limitations

have been put into effect by the Pacific Fisheries Management Council. The commingling prohibition will allow easier enforcement of the limits; WAC 220-44-060 and 220-44-070, logbooks are now required in Area 29 and, as 59B and 29 will be managed as one unit, this standardizes requirements; WAC 220-48-011, this reduces the catch of immature whiting; WAC 220-48-015, as most whiting are taken in pelagic trawl, prohibiting bottom trawl provides better protection for other species; WAC 220-48-017, juvenile whiting make adult estimation by biomass impractical in the fall, so a spring fishery, together with increased mesh size in WAC 220-48-011, will protect whiting stocks; WAC 220-48-029, the new catch Area 29D, created from Area 23C, has identical conservation needs for dogfish; WAC 220-48-031, the use of circle-type hooks, with a different numbering system, requires that the appropriate size be defined; WAC 220-48-071, the new catch Area 29D, created from Area 23C, has identical conservation needs for bottomfish pot gear; WAC 220-49-020, use of herring for zoo food has been allowed on an emergency basis, if justified, and this formalized the requirements; WAC 220-52-001, area descriptions are needed; WAC 220-52-010, a permit-only intertidal geoduck fishery on licensed clam beds is feasible; WAC 220-52-018, clarification of the existing regulation; WAC 220-52-019, allows intertidal geoduck harvest; WAC 220-52-01901, the vessel operator, who is directing the harvest vessel, should be liable for any illegal activities; WAC 220-52-020, exemption of razor clams from the clam farm requirement will be necessary when commercial harvest resumes; WAC 220-52-030, clam preservation needs preclude commercial harvest; WAC 220-52-040, a pre-season crab inspection prevents early harvest; WAC 220-52-043, better float and sinking line regulations will prevent pot loss; WAC 220-52-046, the gear setting period has been established by emergency regulation in the past; WAC 220-52-050, the pot limitation in Hood Canal was established by the legislature; WAC 220-52-053, standardization of gear is necessary to prevent juvenile shrimp harvest; WAC 220-52-063, will allow recovery of depleted Puget Sound octopus stocks and limit overharvest; WAC 220-52-066, expands squid gear allowable to increase harvest opportunity; WAC 220-52-069, creation of a scallop aquaculture fishery is feasible; WAC 220-52-075, harvest records of squid and octopus provide management data; WAC 220-69-230, this requirement will allow enforcement of vessel trip limits; and WAC 220-69-250, this will prevent the early harvest of coastal crab.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, Washington, 754-2429; Implementation: Gene DiDonato and Ronald E. Westley, 115 General Administration Building, Olympia, Washington, 753-6600; and Enforcement: James W. McKillip, 115 General Administration Building, Olympia, Washington, 753-6585.

These rules are proposed by the Washington Department of Fisheries.

Comments: None.

These rules are not the result of federal law or court order.

Small Business Economic Impact Statement: No effect. These rules regard resource management and apply equally.

AMENDATORY SECTION (Amending Order 810, filed 4/17/69)

WAC 220-16-085 DEFINITIONS—RING NET. "Ring net" shall be defined (~~(as a circular or hoop-shaped net distended by a)~~) to include all fishing gear having a rigid frame that is used to take shellfish in a live condition in such a manner that the free movement of shellfish is not restricted until lifted, measuring not to exceed ten feet in diameter (~~(, and with a recovery or buoy line attached)~~) or on the diagonal.

AMENDATORY SECTION (Amending Order 1179, filed 11/19/74)

WAC 220-16-100 DEFINITIONS—SHELLFISH POT. "Shellfish pot" shall be defined as a movable trap with one or more (~~(throats or)~~) entrance tunnels used (~~(for the purpose of taking any species of)~~) to entrap shellfish (~~(or mollusk)~~) in a live condition.

AMENDATORY SECTION (Amending Order 82-83, filed 7/15/82)

WAC 220-20-010 GENERAL PROVISIONS—LAWFUL AND UNLAWFUL ACTS—SALMON, OTHER FOOD FISH AND SHELLFISH. (1) It shall be unlawful to take, fish for, possess or transport for any purpose food fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department of fisheries.

(2) It shall be unlawful for any person (~~(, corporation, business, or company)~~) to have in possession or under control or custody any (~~(salmon or other)~~) food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the director of fisheries, unless otherwise provided.

(3) It shall be lawful to (~~(take,)~~) fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided; that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	(Hippoglossus stenolepis)
Pacific herring	(Clupea harengus pallasi)
(except ((when lawfully taken from Marine Fish Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, and 21B))) as prescribed in WAC 220-49-020)	
Salmon	
Chinook	(Oncorhynchus tshawytscha)
Coho	(Oncorhynchus kisutch)
Chum	(Oncorhynchus keta)
Pink	(Oncorhynchus gorbuscha)
Sockeye	(Oncorhynchus nerka)
Masu	(Oncorhynchus masu)

(4) It shall be unlawful for any person to (~~(take,)~~) fish for or possess food fish or shellfish (~~(smaller than the lawful commercial sizes while aboard any craft engaged in commercial fishing or having commercially caught fish aboard)~~) in violation of the harvest regulations for the area being fished.

(5) It shall be unlawful for the (~~(owner or)~~) operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked with a buoy to which shall be affixed in a visible and legible manner the approved department of fisheries (~~(approved and registered)~~) buoy brand registered to the operator of said gear, provided that(~~(:)~~):

(a) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(b) (~~(Effective January 1, 1975,)~~) When two or more shellfish pots are attached to a common ground line the number of pots so attached must be clearly labeled on the required buoy.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided; that this

provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department of fisheries, provided further that it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47° 20' from August 15 through November 30 except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department of fisheries.

(8) It shall be unlawful for any person taking or possessing food fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington or the Pacific Ocean for any purpose to fail to submit such food fish or shellfish for inspection by authorized representatives of the department of fisheries.

(9) It shall be unlawful for any person licensed under the Fisheries Code of Washington to fail to make any report or return required of him by the department of fisheries relative to the taking, selling, possessing, transporting, processing, freezing and storing of food fish or shellfish whether taken within the jurisdiction of the state of Washington or beyond or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for or possess or to injure, kill or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, shoot, snag, snare, dip net, harass, spear, stone or otherwise molest, injure, kill or destroy any food fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, provided; that it shall be lawful to use a dip net, gaff or club in the landing of food fish taken by personal-use angling.

(12) It shall be unlawful to take or possess for any purpose any food fish or shellfish smaller than the lawful minimum size limits. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish and it shall be unlawful to allow undersized salmon entangled in commercial nets to pass through a power block or onto a power reel or drum.

(13) It shall be unlawful to possess aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any (~~(salmon or other)~~) food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, length, weight, or sex limit is prescribed for said species.

(14) It shall be unlawful in any area to use, operate or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department of fisheries.

(15) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director of fisheries, or to perform any act not specifically authorized in said document or in the regulations of the director of fisheries.

(16) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting food fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director of fisheries.

(17) It shall be (~~(lawful)~~) unlawful to test commercial fishing gear except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts and south of the International boundary in waters 10 fathoms and deeper during times not under IPSFC control.

(c) San Juan Channel - within a 1 mile radius of Point Caution during times not under IPSFC control.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2 mile radius of the entrance to Everett breakwater in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe and Skiff Point to West Point in waters 50 fathoms and deeper.

(g) East Pass – between lines from Point Robinson true east to the mainland and from Dash Point to Point Piner in waters 50 fathoms and deeper.

(h) Port Townsend – westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Codends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fisheries patrol office in Olympia prior to testing.

(18) It is unlawful for any person or corporation licensed by the department of fisheries to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from food fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other food fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

AMENDATORY SECTION (Amending Order 82-72, filed 7/1/82)

WAC 220-22-410 MARINE FISH-SHELLFISH MANAGEMENT AND CATCH REPORTING AREAS, COASTAL WATERS. (1) Area 50 shall include waters of the Bering Sea north of the Aleutian Islands.

(2) Area 51 shall include waters south of the Aleutian Islands and west of longitude 159° W.

(3) Area 52 shall include waters west of longitude 154° W and east of Area 51.

(4) Area 53 shall include waters west of longitude 147° W and east of Area 52.

(5) Area 54 shall include waters west of longitude 137° W and east of Area 53.

(6) Area 55 shall include waters north of latitude 54° 40' N and east of Area 54.

(7) Area 56 shall include waters north of latitude 50° 30' N and south of Area 55.

(8) Area 57 shall include waters north of latitude 48° 26' N and south of Area 56.

(9) Area 58A shall include waters north of the United States – Canada boundary and south of Area 57.

(10) Area 58B shall include waters west of a line projected 220° true southwest from the equidistant point between the United States and Canada along the Cape Flattery to Bonilla Point line, north of a line projected true west from Point Grenville and south of Area 58A.

(11) Area 59A shall include waters east of the 220° true line, west of a line from Cape Flattery to Bonilla Point, and north of a line true west from Point Grenville excluding coastal waters (0-3 miles) north of a line projected true west from Cape Alava.

(12) Area 59B shall include coastal waters (0-3 miles) northerly of a line projected true west from Cape Alava and west of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light and then to the most westerly point of Cape Flattery.

(13) Area 60A shall include waters north of a line projected true west from the Washington-Oregon boundary in the Columbia River, and south of Areas 58 (~~and~~), 59A, and 59B exclusive of the Columbia River estuary, Grays Harbor and Willapa Bay.

~~((+3))~~ (14) Area 60B shall include the waters of Grays Harbor east of a line projected from the outermost end of the north jetty to the outermost end of the south jetty.

~~((+4))~~ (15) Area 60C shall include the saltwater areas of Willapa Bay east of a line from Leadbetter Point to Cape Shoalwater light.

~~((+5))~~ (16) Area 60D shall include waters of the Columbia River east of a line projected from the inshore end of the north jetty in the state of Washington to the knuckle of the south jetty in the state of Oregon, and west of the Megler-Astoria Bridge.

~~((+6))~~ (17) Area 61 shall include waters north of latitude 42° 00' N, and south of Area 60A, exclusive of the Columbia River estuary.

~~((+7))~~ (18) Area 62 shall include waters north of latitude 38° 00' N, and south of Area 61.

~~((+8))~~ (19) Area 63 shall include waters north of latitude 32° 00' N, and south of Area 62.

~~((+9))~~ (20) Area 64 shall include all waters south of Area 63.

~~((+20))~~ (21) This WAC will not apply to hardshell clams, oysters, or geoducks.

AMENDATORY SECTION (Amending Order 77-14, filed 4/15/77)

WAC 220-32-044 AREA AND GEAR—HERRING, ANCHOVIES, CANDLEFISH, AND PILCHARDS. It shall be lawful at any time to take, fish for and possess herring, anchovies, candlefish, and pilchards for commercial purposes taken with purse seine, lampara or roundhaul gear not exceeding 1400 feet in length nor containing meshes of less than one-half inch stretch measure in Marine Fish-Shellfish Management and Catch Reporting Area 60D. All species of fish other than herring, anchovies, candlefish, and pilchards taken in operation with such gear must be immediately with care, returned to the water.

AMENDATORY SECTION (Amending Order 80-69, filed 7/18/80)

WAC 220-36-03001 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 220-36-03001(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 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. Sturgeon must be of lawful commercial size as provided in WAC 220-20-020.

(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, candlefish, 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, candlefish, 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, candlefish, 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, candlefish, 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.

AMENDATORY SECTION (Amending Order 80-69, filed 7/18/80)

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 in Willapa Harbor Salmon Management and Catch

Reporting Areas 2G and 2J, and bottomfish in Marine Fish-Shellfish Management and Catch Reporting Area 60C, at anytime 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, candlefish 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, candlefish 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. Sturgeon must be of lawful commercial size as provided in WAC 220-20-020.

(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 220-44 WAC
COASTAL WATERS—MARINE FISH

AMENDATORY SECTION (Amending Order 79-38, filed 6/4/79)

WAC 220-44-020 ~~((SEASONS))~~ COASTAL BAITFISH GEAR. (1) ~~((It shall be unlawful to take, fish for or possess salmon taken for commercial purposes in that portion of Coastal Salmon Management and Catch Reporting Area 4 north of Point of the Arches and inside the 3-mile limit during weekly closed periods extending from 11:59 p.m. Friday to 12:01 a.m. Monday.~~

~~(2) It shall be unlawful to take, fish for or possess salmon taken for commercial purposes with purse seine, drag seine, or gill net gear from Coastal Salmon Management and Catch Reporting Areas 1, 2, 3 and 4.~~

~~((3))~~ (3) It shall be unlawful to take, fish for or possess smelt taken for commercial purposes with purse seine, drag seine, or gill net gear from Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, 60A, and that portion of Area 58 within the United States 200-mile fishery conservation zone.

~~((4))~~ (2) It shall be ~~((lawful))~~ unlawful to take, fish for and possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width in Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, and 60A ~~((except))~~. It is unlawful to take smelt for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, and 60A during weekly closed periods extending from 8:00 a.m. Friday to 8:00 a.m. Sunday.

~~((5))~~ (3) It shall be lawful to take, fish for and possess for commercial purposes sturgeon, shad, candlefish, anchovies and pilchards taken in Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, 60A, and that portion of Area 58 within the United States 200-mile fishery conservation zone with any lawful commercial fishing gear.

~~((6))~~ (4) It shall be unlawful except by permit to take and fish for herring for commercial purposes or possess herring taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, 60A, and that portion of Area 58 within the United States 200-mile fishery conservation and management zone with any type of gear.

~~((7))~~ ~~It shall be unlawful to transport through Coastal Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 or to land in the state of Washington, any salmon taken for commercial purposes contrary to the provisions of chapter 220-47 WAC relative to seasons and species and as provided in WAC 220-24-020.)~~

AMENDATORY SECTION (Amending Order 82-72, filed 7/1/82)

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

(1) Otter trawl and beam trawl.

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

(b) ~~((Effective January 1, 1983;))~~ It is unlawful to use or operate any bottom trawl having meshes less than 4.5 inches. A bottom trawl must have a minimum of two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend if the fishing vessel is simultaneously carrying aboard a net of less than 4.5-inch minimum mesh size.

For all bottom trawls, chafing gear must have a minimum mesh size of 15 inches unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(c) ~~((Effective January 1, 1983;))~~ It is unlawful to use or operate a roller or bobbin trawl with meshes less than 3.0 inches. It is unlawful to use a double wall codend in any roller or bobbin trawl. Chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6.0 inches. Rollers, bobbins, or discs used in roller or bobbin trawls must be a minimum of 14 inches in diameter.

(d) ~~((Effective January 1, 1983;))~~ It is unlawful to use or operate a pelagic trawl with meshes less than 3.0 inches. It is unlawful to use a double wall codend in any pelagic trawl. Chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches. Footropes of pelagic trawls must be less than 1.75 inches in diameter, including twine necessary for seizing material. Sweepines, including the bottom leg of the bridle, must be bare.

(2) Set lines. ~~((In fishing with set lines within state waters, it is unlawful to use more than three lines and more than 500 hooks per line.))~~ It is unlawful for the operator of set lines to leave such gear unattended unless marked as provided in WAC ~~((222-16-090))~~ 220-20-010(5). Set lines must be attended at least once every seven days. Set lines must be marked at the surface at each terminal end with a pole, flag, light, radar reflector, and a buoy displaying clear identification of the owner or operator.

(3) Bottomfish pots. It is unlawful for the operator of bottomfish pots to leave such gear unattended unless marked as provided in WAC ~~((220-16-145))~~ 220-20-010(5). Bottomfish pots must be attended at least once every seven days. Bottomfish pots set individually must be marked at the surface with a pole and a flag, light, or radar reflector, and a buoy displaying clear identification of the owner. Bottomfish pots laid on a groundline must be marked at the surface at each terminal end of the groundline with a pole and a flag, light, and radar reflector, and a buoy displaying clear identification of the owner or operator.

(4) ~~((Hand line))~~ Commercial jig gear. ~~((In fishing with hand line jig gear within state waters, it is unlawful to use more than three hooks per license with a maximum of six hooks per vessel unless otherwise authorized by a permit from the director of the department of fisheries.))~~

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

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

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

(8) It is unlawful to take or possess lingcod taken for commercial purposes with any gear from December 1 through April 14 in Coastal Marine Fish-Shellfish Management and Catch Reporting Area 59B.

AMENDATORY SECTION (Amending Order 83-31, filed 4/26/83)

WAC 220-44-040 COASTAL BOTTOMFISHING SEASONS. It is lawful to take, fish for, and possess for commercial purposes bottomfish in coastal waters taken with gear described in WAC 220-44-

030 all year in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, and 60A, unless otherwise provided.

AMENDATORY SECTION (Amending Order 83-88, filed 8/10/83)

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

(1) Widow rockfish (*Sebastes entomelas*) - ~~((30,000))~~ 50,000 pounds per vessel trip; no minimum size. It is unlawful for any vessel to make more than one landing in excess of 3,000 pounds of widow rockfish in any calendar week, defined as Sunday through the following Saturday.

(2) Shortbelly rockfish (*Sebastes jordani*) and Idiot Rockfish (*Sebastolomus* spp.) - no maximum poundage per vessel trip; no minimum size.

(3) Pacific ocean perch (*Sebastes alutus*) - 5,000 pounds or 10 percent of total weight of fish on board, whichever is greater, per vessel trip; no minimum size.

(4) All other species of rockfish (*Sebastes* spp.) - ~~((40,000))~~ 30,000 pounds of all other species combined per vessel trip; no minimum size. It is unlawful for any vessel to make more than one landing in excess of 3,000 pounds of other rockfish species in any calendar week, defined as Sunday through the following Saturday.

(5) Sablefish - minimum size 22 inches in length, unless dressed in which case minimum size 16 inches in length from the anterior insertion of the first dorsal fin to the tip of the tail, except that an incidental catch less than the minimum size of 5,000 pounds is allowed.

(6) It is unlawful to commingle with any other species a species or category of bottomfish having a vessel trip limit.

NEW SECTION

WAC 220-44-060 COMMERCIAL JIG LOGBOOK REQUIRED. It shall be unlawful for any operator of commercial jig gear to fail to possess and maintain a Washington department of fisheries Commercial Line Logbook while fishing in Area 59B. A logbook must be obtained from the Washington department of fisheries and must be kept aboard the vessel while the vessel is engaged in harvesting in Area 59B or has commercially caught bottomfish aboard which were caught in Area 59B. The vessel operator must submit the log for inspection upon request by authorized department of fisheries representatives. Each day fished, vessel operators shall record the vessel registration number, and, for each date and ground fished, the number of lures, hours fished, and number and estimated weight of each species caught (including discards). The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. Departmental copies must be received within ten days following any calendar month in which fishing activity occurred and by the tenth day following the termination of commercial fishing activity, whichever occurs first.

NEW SECTION

WAC 220-44-070 BOTTOMFISH TROLL LOGBOOK REQUIRED. Bottomfish Troll Logbooks. It shall be unlawful for any operator of bottomfish troll gear to fail to possess and maintain a Washington department of fisheries Commercial Line Logbook while fishing in Area 59B. A logbook must be obtained from the Washington department of fisheries and must be kept aboard the vessel while the vessel is engaged in harvesting in Area 59B or has commercially caught bottomfish aboard which were caught in Area 59B. The vessel operator must submit the log for inspection upon request by authorized department of fisheries representatives. Each day fished, vessel operators shall record the vessel registration number, and, for each date and ground fished, the number of lures, hours fished, and number and estimated weight of each species caught (including discards). The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. Department copies must be received within ten days following any calendar month in which fishing activity occurred and by the tenth day following the termination of commercial fishing activity, whichever occurs first.

AMENDATORY SECTION (Amending Order 83-200, filed 11/30/83, effective 1/1/84)

WAC 220-48-011 BEAM TRAWL AND OTTER TRAWL—GEAR. (1) Mesh sizes. It is unlawful to use or operate beam trawls or otter trawls having mesh size in the codend section less than 4 1/2 inches in waters of Puget Sound, unless otherwise provided.

(a) It is lawful to use or operate bottom trawl gear having mesh size in the codend section of not less than 3 inches in Marine Fish-Shellfish Catch Reporting Areas 28A, 28B, 28C, and 28D, during December 1 through March 31, and in Area 20A from March 1 through April 15.

(b) It is lawful to use or operate roller trawl gear having mesh size in the codend section of not less than 3 inches in Marine Fish-Shellfish Catch Reporting Area 20A from March 1 through April 15.

(c) It is lawful to use or operate pelagic trawl gear having mesh size of not less than ~~((2))~~ 3 1/2 inches while fishing for Pacific whiting during the season provided in WAC 220-48-017(1), and not less than 3 inches while fishing for walleye pollock during the season provided in WAC 220-48-017(2).

(2) Chafing gear.

(a) For bottom trawls, chafing gear must have a minimum mesh size of 15 inches unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(b) For roller trawls and pelagic trawls chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6.0 inches.

AMENDATORY SECTION (Amending Order 83-200, filed 11/30/83, effective 1/1/84)

WAC 220-48-015 BEAM TRAWL AND BOTTOM TRAWL—SEASONS. (1) It is lawful to take, fish for and possess bottomfish taken with bottom trawl and beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 22A, 22B, 23A, 23B, 23C, 25A, 25B, 25D, and 29 the entire year with the following exceptions:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A east of a line projected from Point Whitehorn to Sandy Point shall be closed the entire year.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A lying southerly and westerly of a line projected from Kiapot Point to Gibson Spit (Sequim Bay) are closed the entire year.

(2) It is lawful to take, fish for and possess bottomfish with bottom trawl and beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 26A, 26B, and 26D from April 15 through February 14 with the following exceptions:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A west of a line from Strawberry Point on Whidbey Island to Brown Point on Camano Island, are closed except from June 15 through February 14.

(b) Elliot Bay inside a line projected from Four Mile Rock to Alki Point is closed the entire year.

(c) Those waters of Area 26D south of lines projected from Dash Point to Point Piner on Maury Island, and from Point Dalco on Vashon Island true west to the Kitsap Peninsula are closed the entire year.

(d) Those waters provided for in WAC 220-20-020(4).

~~((e) It is lawful to take, fish for and possess Pacific whiting taken with bottom trawl and beam trawl gear the entire year.))~~

(3) It is unlawful to take, fish for or possess bottomfish taken with bottom trawl and beam trawl gear for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 24D (Holmes Harbor), 25C, 27A, 27B, and 27C (Hood Canal) except on Mondays and Tuesdays from December 1 through February 14.

(4) It is unlawful to take, fish for, or possess bottomfish taken with bottom trawl or beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Area 25E except on Monday through Thursday from December 1 through February 14 with the following exception: Those waters of Area 25E lying southerly of a line projected from Mill Point due east to the opposite shore, are closed the entire year.

(5) It is lawful to take, fish for and possess bottomfish taken with bottom trawl and beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 28A, 28B, 28C, and 28D from December 1 through April 14, with the exception of the following closed waters:

(a) Those waters of Hale Passage and the Narrows east and north of lines projected from Fox Point on Fox Island true east to the mainland, and from the northwest point on Fox Island true north to the mainland.

(b) Budd Inlet south of the northern boundary of the restricted berthage area shown on United States Coast Guard Chart No. 6460.

(c) Eld Inlet south and west of a line projected true south from Flapjack Point.

(d) Totten Inlet south and west of lines projected true north and true east from the outermost point on the west side of Gallagher Cove.

(e) Henderson Inlet south of a line projected true east from Dickerson Point; the waters inside Hartstene Island between lines projected from Unsal Point to Brisco Point and Salmon Point true east to Hartstene Island; and all of Hammersley Inlet.

(f) Those waters provided for in WAC 220-20-010(6).

(g) Those waters of Area 28A south of a line due west from the northernmost point of McNeil Island; west of a line running north and south between McNeil and Anderson Islands through Eagle Island; and west of a line projected southerly from Lyle Point on Anderson Island through the quick flashing buoy on Nisqually flats and southerly of a line from Johnson's Point to Devil's Head.

(h) Those waters of Area 28A south of a line projected due west from Johnson Point to Hartstene Island (Dana Passage).

(6) It is unlawful to take, fish for or possess bottomfish taken with bottom trawl or beam trawl gear for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Areas 21B, 23D, and 26C the entire year.

AMENDATORY SECTION (Amending Order 82-72, filed 7/1/82)

WAC 220-48-017 PELAGIC TRAWL—SEASONS. It is ~~((lawful))~~ unlawful to take, fish for and possess bottomfish taken with pelagic trawl gear~~((:))~~:

~~((All year))~~ except in the Marine Fish-Shellfish Catch Reporting Areas ~~((22B, 24A,))~~ and during the times as follows:

(1) Areas 24B~~((:))~~ and 26A~~((, 26B, and 26D))~~ - Open Monday through Thursday, January 1 until the in-season quota is taken but not beyond May 15 in any case.

~~((March 1 through April 15 in Marine Fish-Shellfish Catch Reporting))~~ Area 20A - Open March 1 through April 14.

(3) In any area at any time so designated by a permit issued by the director of the department of fisheries.

AMENDATORY SECTION (Amending Order 82-215, filed 12/1/82, effective 1/1/83)

WAC 220-48-029 SET NET—DOGFISH—SEASONS. It is lawful to take, fish for and possess dogfish and other species of bottomfish, except halibut, salmon and shellfish, taken with dogfish set gear for commercial purposes in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

(1) Areas 20A and 20B - November 1 through June 15.

(2) Area 21A - March 1 through June 15.

(3) Areas 21B, 22A, 22B, 23A, and 23B - Closed all year.

(4) Areas 23C and 23D - Open all year.

(5) Areas 24A, 24B, and 24D - Open all year.

(6) Area 24C - Open all year, except those waters south of a line projected due east of East Point on Whidbey Island are closed all year.

(7) Areas 25A, 25B and that portion of Area 25C west of a line from Twin Spits to the Port Gamble Millstack - Open all year.

(8) Area 25D and that portion of 25C east of line from Twin Spits to the Port Gamble Millstack - Closed all year.

(9) Area 25E - Closed all year except by permit issued by the director.

(10) Area 26A - Open all year, except those waters southerly and westerly of a line between the ferry dock at Mukilteo and the ferry dock at Clinton are closed all year.

(11) Area 26B - Open all year except those waters provided for in WAC 220-20-020(4) (Shilshole Bay).

(12) Area 26C - Open all year, except those waters north of a line projected true east of Point Bolin are closed all year.

(13) Area 26D - Open all year, except those waters south of lines projected from Dash Point to Point Piner on Maury Island and from Point Dalco true west to the Kitsap Peninsula are closed all year.

(14) Areas 27A, 27B, and 27C - Open all year.

(15) Area 28A - Open all year, except those waters north of a line projected true east of Fox Point on Fox Island, and east of a line projected due north from the northwest tip of Fox Island are closed all year.

(16) Areas 28B, 28C, and 28D - Open all year except those waters provided for in WAC 220-20-010(6) (upper Carr Inlet).

(17) Area 29 - Open all year.

AMENDATORY SECTION (Amending Order 83-200, filed 11/30/83, effective 1/1/84)

WAC 220-48-031 SET LINE—GEAR. It is unlawful to take, fish for, and possess bottomfish in Puget Sound except with set line gear as described below:

(1) Hook size must not be smaller than size 7/0 for Kirby style hooks or size 8 for tuna circle style hooks.

(2) Gangions made of single strand monofilament synthetic material are unlawful.

(3) Set lines must be marked at the surface at each terminal end as described in WAC 220-20-010(5).

AMENDATORY SECTION (Amending Order 82-215, filed 12/1/82, effective 1/1/83)

WAC 220-48-071 BOTTOMFISH POTS—GEAR AND SEASONS. It shall be unlawful to take, fish for, and possess bottomfish for commercial purposes with bottomfish pot gear as described in WAC 220-16-145, except in the following Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas during the seasons designated below:

(1) Areas 20A, 21A, 21B, 23A, and 23B - Open April 15 through November 30.

(2) Areas 23C and 23D - Open December 1 through April 14.

(3) Area 29 - Open all year.

(4) All other areas are closed the entire year, except by permit from the director.

AMENDATORY SECTION (Amending Order 83-200, filed 11/30/83, effective 1/1/84)

WAC 220-49-020 SEASONS—LAWFUL GEAR—PURPOSES. It shall be unlawful to take, fish for or possess for commercial purposes herring, candlefish, anchovy or pilchards in Puget Sound except during lawful seasons, with lawful gear and for such purposes as provided for hereinafter in each respective fishing area:

(1) Areas 20A, 20B, 21A, and 21B.

(a) Closed September 1 through April 15 to all commercial fishing gear.

(b) Open April 16 through May 31, with purse seine, lampara, dip bag net, and gill net, except as provided in WAC 220-49-021.

(c) Open June 1 through August 31 with drag seine, purse seine, lampara, and dip bag net for bait and human consumption only except as provided in subsection (4) of this section.

(2) Areas 22A, 22B, 23A, 23B, 23C, and 29 - Open entire year with drag seine, purse seine, lampara, and dip bag net for human consumption or bait only except as provided in subsection (4) of this section.

(3) Areas 24A, 24B, 24C, 24D, 25A, 25B, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D - Open entire year, with drag seine, lampara, or dip bag net, for human consumption or bait only except as provided in subsection (4) of this section: PROVIDED, That it shall be unlawful for any fisherman, including treaty Indian fishermen, to take, fish for or possess herring with any net gear which exceeds 200 feet in length, except drag seine gear (350 foot length).

(4) The director may authorize by permit the taking of herring in specified areas, quantities, and times, for emergency use as food for zoo animals; permit application requires written certification from the zoo director that no other source of herring suitable for zoo food is available and the shortage will damage the health or well-being of the zoo animals in custody of the zoo director.

NEW SECTION

WAC 220-52-001 SHELLFISH—GEOGRAPHICAL DEFINITIONS. (1) "Puget Sound" means Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 23D, 24A, 24B, 24C, 25A, 25B, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D, and 29.

(2) "Grays Harbor" means Marine Fish-Shellfish Management and Catch Reporting Area 60B.

(3) "Willapa Harbor" means Marine Fish-Shellfish Management and Catch Reporting Area 60C.

(4) "Columbia River" means Marine Fish-Shellfish Management and Catch Reporting Area 60D.

(5) "Coastal Waters" means Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, and 60A.

AMENDATORY SECTION (Amending Order 77-145, filed 12/13/77)

WAC 220-52-010 (~~CLAMS~~) SHELLFISH—UNLAWFUL ACTS. (1) It shall be unlawful to take, dig for or possess geoduck clams for commercial purposes (~~provided that it shall be lawful to take, dig for and possess geoduck clams for commercial purposes~~) except from licensed clam farms under permit issued by the director or as provided in WAC 220-52-019.

(2) It shall be unlawful to take, dig for or possess clams taken for commercial purposes within the boundaries of any state park located on tidewater.

(3) It shall be unlawful to take oysters or clams for commercial purposes from tidelands reserved for public use.

(4) It shall be unlawful to take oysters, clams, or mussels for commercial purposes from state oyster reserves without being licensed under RCW 75.28.290 and having permission of the director of fisheries.

(5) It shall be unlawful to take from any building, scow, boat, live-box, container, trap, net or vehicle any caught or impounded shellfish with intent to deprive the rightful owner of such shellfish.

~~((5))~~ (6) All geoduck and mechanical clam harvester vessels shall be issued an identification number. This number will be placed in a visible location on each side of the vessel and on the top of the cabin or deck awning to be visible from the air. A sign board or banner arranged so the numbers can be seen at all times from directly overhead may be substituted if the vessel does not have a fixed roof. The numbers shall be black on a white background and shall be not less than 18 inches high and of proportionate width.

~~((6))~~ (7) It shall be unlawful for a commercial clam digger to harvest clams from intertidal ground without having on his person a signed authorization from the licensed clam farmer for whom he is harvesting. The digger will also be required to have suitable personal identification with him when engaged in clam harvesting. The authorization from the licensed clam farmer must be legible, dated and must contain the date on which the authorization expires, provided that in no instance may the authorization go beyond the end of any calendar year. The authorization must additionally contain the name of each bay or area where the licensed clam farmer has owned or leased ground from which the named clam digger is authorized to harvest.

AMENDATORY SECTION (Amending Order 79-6, filed 1/30/79)

WAC 220-52-018 CLAMS—GEAR. It shall be unlawful to take, dig for or possess clams, geoducks, 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~~), except that permits for the use of mechanical clam digging devices to take clams other than geoducks 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) 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.

(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.

(8) All permits to take or harvest shellfish by mechanical means shall expire on December 31 of the year of issue.

(9) All mechanical clam harvesting machines must have approved instrumentation that will provide deck readout of water pressure.

~~((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.~~

~~((+))~~ All clam harvest machines operating on intertidal grounds where less than 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 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.

~~((+2))~~ (11) Clam harvest machines operating in fine substrate material where less than 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.

~~((+3))~~ (12) Clam harvest machines operating in coarser substrate material where more than 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.

~~((+4))~~ (13) 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 ~~((+2) or 220-52-018(+3))~~ (11) or (12) of this section. 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.~~

~~((+5))~~ (14) 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.

~~((+6))~~ (15) 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 81-31, filed 5/11/81)

WAC 220-52-019 GEODUCK CLAMS—GEAR AND UNLAWFUL ACTS. (1) It is unlawful to take, fish for or possess geoduck clams taken for commercial purposes from any of the ~~((tidelands))~~ beds of navigable waters of the state of Washington ~~((PROVIDED, That pursuant to))~~ except as provided for in RCW 75.24.100(2).

(2) Validations for the use of hand-held manually operated water jet or suction devices for harvesting geoduck clams for commercial purposes, pursuant to RCW 75.24.100, may be obtained from the director of fisheries subject to the following conditions:

~~((+))~~ (a) 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:

~~((a) The)~~ Any water jet ~~((must have))~~ having an automatic spring-triggered shutoff valve or a manual valve capable of being operated from full flow to completely off within one-half turn~~((:~~

~~(b) The device must consist))~~ and consisting of not more than one jet, the nozzle of which shall not exceed 5/8 inch inside diameter.

~~((c))~~ (b) It is unlawful in the commercial harvest of geoducks for through-hull fittings for water discharge hoses connected to the harvest gear to be below the surface of the water. Any through-hull fitting connected to the harvest gear which is above the surface of the water must be visible at all times.

~~((2) One geoduck validation must be physically present on board the harvest vessel for each and every geoduck personal commercial fishing license in use. It is the responsibility of the holder of the harvest agreement to issue validations only to divers authorized to harvest on the specific tract or tracts. It is the responsibility of the holder of the harvest agreement to ensure that the required number of validation cards are on board the harvesting vessel engaged in geoduck harvesting.))~~

(3) It is unlawful to take, fish for or possess geoduck clams taken from one-half hour before official sunset to official sunrise or to 6:00 a.m. whichever is later. It is unlawful to take, fish for or possess geoduck clams taken on Sunday.

(4) It is unlawful to harvest geoduck clams with any instrument that penetrates the skin, neck or body of the geoduck.

(5) It is 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 chapter 75.28 RCW ((75.24-100)). It is unlawful to take, fish for or possess sea cucumbers during geoduck clam harvesting operations, or possess sea cucumbers on a vessel that has geoducks aboard.

(6) It ~~((shall be))~~ is unlawful for more than six divers to harvest geoducks at any one time on a single geoduck tract. It ~~((shall be))~~ is the responsibility of the holder of the harvest agreement to assure that no more than six divers are harvesting at one time.

(7) 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.

(8) ~~((No processing of))~~ It is unlawful to process geoducks ~~((is permitted))~~ on board ~~((the))~~ any harvest vessel.

(9) It shall be unlawful to take, fish for or possess geoduck clams for commercial purposes except those taken within boundaries of subtidal tracts for which geoduck harvest agreements have been issued by the department of natural resources ~~((or from subtidal tracts which were leased from the department of natural resources prior to June 30, 1979 for geoduck harvest))~~.

(10) ~~((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 on subtidal tracts which were leased for geoduck harvest prior to June 30, 1979.~~

~~((+))~~ It shall be unlawful to harvest from bottoms which are shallower than 18 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 200 yards seaward from and parallel to said line of ordinary high tide on subtidal tracts ~~((for which geoduck harvest agreements have been issued after June 30, 1979)).~~

AMENDATORY SECTION (Amending Order 80-123, filed 9/17/80)

WAC 220-52-01901 GEODUCK VALIDATIONS. (1) Numbered validations will be issued only to holders of valid subtidal geoduck harvest agreements issued by the department of natural resources and persons who hold current geoduck tract licenses issued by the department of fisheries. The validation will be issued for each licensed tract.

(2) The number of validations to be issued to each holder of a harvest agreement shall be determined by the director of fisheries based upon the number of individual geoduck tracts for which harvest agreements have been issued by the department of natural resources, their total acreage, past geoduck production, present number of nozzle licenses held for the operation, and other factors as deemed appropriate by the director of fisheries.

(3) The number of geoduck validations held by the holder of the harvest agreement may be adjusted from time to time as deemed necessary by the director of fisheries and when changes in leases occur.

(4) The geoduck validation will expire at the end of each calendar year, provided that the director may issue temporary validations for restricted time periods. In the event a validation is lost, a new validation will be issued upon receipt of a signed affidavit from the holder of the harvest agreement attesting to the loss. Any request to assign or transfer a validation from one holder of a harvest agreement to another must be made in writing. No validation will be assigned or transferred without the written approval of the director of fisheries.

(5) The holder of the harvest agreement is ~~((held))~~ responsible for notifying each vessel operator and diver to whom he provides a validation of all the laws and regulations of the state of Washington department of fisheries pertaining to commercial geoduck harvest. The holder of the harvest agreement ~~((and/or))~~, vessel operator or diver may be held criminally or civilly liable for violation of the applicable rules and regulations of the department of fisheries. ~~((Any))~~ Violations by ~~((either))~~ the holder of the harvest agreement ~~((and/or))~~, vessel operator or the diver can result in suspension ~~((and a))~~ or cancellation of the validation subject to the holder's right to opportunity for a hearing as specified in chapter 34.04 RCW. The director of fisheries may refuse to issue a validation to any holder of a harvest agreement who has failed to comply with these regulations.

(6) Applications for geoduck validations must be made on forms provided by the department of fisheries.

(7) At all times when geoduck harvest is occurring, the geoduck personal commercial fishing license and validation card for each and every diver who is harvesting or attempting to harvest geoducks from that tract must be physically on board the harvesting vessel, and evidence of the geoduck tract license for the specific tract must be prominently displayed on board the vessel. It is the responsibility of the holder of the harvest agreement to ensure that the required number of validation cards are on board the harvesting vessel during geoduck harvesting.

AMENDATORY SECTION (Amending Order 807, filed 1/2/69, effective 2/1/69)

WAC 220-52-020 CLAMS—PUGET SOUND—SEASONS AND AREAS. (1) It shall be ~~((lawful))~~ unlawful to take, dig for or possess clams, cockles, borers, and mussels, not including geoduck clams, taken for commercial purposes from the tidelands of licensed clam farms in Puget Sound except during the following seasons:

(a) Those tidelands lying west of the tip of Dungeness Spit from November 1 through March 31.

(b) Elsewhere on Puget Sound the entire year.

(2) It shall be unlawful to take, dig for or possess clams, cockles, borers and mussels except razor clams taken for commercial purposes from the tidelands of the state of Washington except from licensed clam farms.

AMENDATORY SECTION (Amending Order 807, filed 1/2/69, effective 2/1/69)

WAC 220-52-030 CLAMS—COASTAL—SEASONS AND AREAS. (1) It shall be lawful to take, dig for or possess clams, cockles, borers and mussels taken for commercial purposes, not including razor clams, from the tidelands of licensed clam farms in Grays Harbor and Willapa Harbor the entire year.

(2) ~~((It shall be lawful to take, dig for or possess razor clams taken for commercial purposes the entire year from that portion of Razor Clam Area No. 1, the detached Willapa Harbor spits lying north of the Leadbetter Channel, west of Ellen Sands and south of the Willapa Bay Ship Channel.~~

~~((3))~~ It shall be unlawful to take, dig for or possess razor clams taken for commercial purposes ~~((from Razor Clam Areas 2 and 3.~~

~~((4) It shall be unlawful to take, dig for or possess razor clams taken for commercial purposes from that portion of Razor Clam Area No. 1 lying southerly of the Willapa Bay Leadbetter Channel))~~ except as provided for in subsection (3) of this section.

~~((5))~~ (3) It shall be lawful to possess razor clams for commercial purposes for use within the state of Washington that are lawfully taken from within the boundaries of the Quinault Indian Reservation.

AMENDATORY SECTION (Amending Order 82-221, filed 12/8/82)

WAC 220-52-040 CRAB FISHERY—LAWFUL AND UNLAWFUL. (1) It is 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 is 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 is unlawful to have in the water 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: PROVIDED, That following the close of a commercial crab season, permission may be granted by the director on a case-by-case basis for fishermen to recover shellfish pots that have become irretrievable due to extreme weather conditions. Fishermen must apply to fisheries patrol for such permission within twenty-four hours ~~(of)~~ prior to the close of season.

(4) It is unlawful for any person to take, or possess for commercial purposes female Dungeness crabs, or male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(5) It is unlawful for any person to take or fish for crabs for commercial purposes in the Puget Sound licensing district 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.

(6) It is unlawful for any fisherman to land or for any wholesale dealer or buyer to purchase Dungeness crab taken from Pacific Ocean, Washington Coastal, Grays Harbor, Willapa Harbor, or Columbia River waters from December 1 through December 15 from any vessel that has not received a crab inspection certificate. The crab inspection certificate will be issued free of charge to licensed vessels made available for inspection at a Washington coastal port during the twelve-hour period prior to the opening of the season to determine that no Dungeness crab are on board the vessel prior to the season opening.

AMENDATORY SECTION (Amending Order 79-6, filed 1/30/79)

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 Dungeness 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 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 inside diameter.

~~((c))~~ (b) Escape rings or ports described above must be located in the upper half of the trap.

(3) All buoys attached to commercial crab gear in Puget Sound waters must consist of a durable material and remain floating on the water's surface when five pounds of weight is attached. It is unlawful to use bleach or antifreeze bottles or any other container as a float.

(4) The line that attaches any buoy to commercial crab gear set in Puget Sound waters must not float on the water's surface.

AMENDATORY SECTION (Amending Order 82-221, filed 12/8/82)

WAC 220-52-046 CRAB FISHERY—SEASONS AND AREAS. (1) It is unlawful to take, fish for, land or possess Dungeness crabs for commercial purposes except during the lawful open seasons and areas as follows:

(a) All Puget Sound Marine Fish-Shellfish Areas except 27A, 27B, and 27C, open October 1 through April 15, provided that it shall be unlawful to set any crab gear prior to 9:00 a.m. on the opening day of the season.

(b) Coastal, Pacific Ocean, Grays Harbor, Willapa Harbor and Columbia River waters - open December 1 through September 15 except that it shall be lawful to set baited crab gear beginning at 8:00 a.m. November 27.

(2) It is unlawful for any person to take or possess for commercial purposes red rock crabs in the Puget Sound licensing district without having first obtained a license ~~(-endorsement-)~~ and permit to fish for red rock crabs for commercial purposes authorized by the director of the department of fisheries. The permit must accompany the fisherman at all times while fishing for red rock crabs for commercial purposes and must be made available for inspection by any authorized representative of the department of fisheries.

AMENDATORY SECTION (Amending Order 83-04, filed 1/27/83)

WAC 220-52-050 SHRIMP FISHERY—LAWFUL AND UNLAWFUL. (1) It is unlawful to land or possess shrimp exceeding an average of 160 whole shrimp per pound in or from the coastal waters of the state of Washington and the adjoining waters of the Pacific Ocean. The count must average no more than 160 shrimp per pound for a minimum of two samples increasing at a rate of one sample per one thousand pounds landed or in possession up to a maximum requirement of twenty samples. Such samples shall consist of at least one pound each of whole unbroken shrimp taken at random from throughout the individual load landed or in possession. This subsection applies only to loads of 3,000 pounds of shrimp or more.

(2) It is unlawful for any person to take or fish for shrimp for commercial purposes in Puget Sound with more than 100 shellfish pots, and it is 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 except:

(a) It is 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 Management and Catch Reporting Area 28B ~~((as described in WAC 220-22-400)).~~

(b) It is unlawful for any person to take or fish for shrimp for commercial purposes in that portion of Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area ~~((23C))~~ 23D inside and westerly of a line projected from the tip of Ediz Hook to the ITT Rayonier Dock with more than 10 shellfish pots.

(c) It is unlawful to use more than 50 shrimp pots while commercially fishing for shrimp in Hood Canal south of the Hood Canal floating bridge (see RCW 75.28.134).

(3) It is unlawful to operate, set or have in the water 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 83-24, filed 4/12/83)

WAC 220-52-053 SHRIMP FISHERY—SEASONS—AREAS AND GEAR. (1) It is unlawful except during the period May 15 through September 15 of each year to take, fish for, or possess shrimp taken for commercial purposes with shellfish pot gear in the waters of Puget Sound, except 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 are closed except as specifically provided for by emergency regulation.

(2) It is unlawful except during the period April 15 through October 15 of each year to take, fish for, or possess shrimp taken for commercial purposes with beam trawl gear in any Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area described in WAC 220-22-400, except that the following areas are closed: 27A, 27B, 27C, 28A, 28B, 28C, 28D, and all waters not open to beam trawl and bottom trawl as provided for in WAC 220-48-015.

(3) It is 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 is unlawful except during the period April 1 through October 31 of each year to take, fish for, land, or possess shrimp for commercial purposes taken with shrimp trawl or beam trawl gear in or from the coastal waters of the state of Washington or the adjoining waters of the Pacific Ocean.

(5) It is lawful the entire year to take, fish for, land, or possess shrimp for commercial purposes taken with shellfish pot gear in or from the coastal waters of the state of Washington and the adjoining waters of the Pacific Ocean.

(6) It is 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 entire top, bottom, and ~~((at least one-half of the area of the))~~ sides of the shellfish pots must ~~((have a minimum))~~ be constructed of mesh ~~((size of a square or rectangular mesh such that the inside distance between any knot or corner and each adjacent knot or corner is no less than 7/8 of an inch provided that the shortest inside diagonal of each mesh is no less than 1-1/8 inches))~~ material and, except for entrance tunnels, have a minimum mesh opening through which a 7/8-inch square peg can pass without changing the shape of the opening.

(b) All entrance tunnels must open into shellfish pot gear from the sides.

(c) The sum of the maximum widths of all entrance tunnels into shellfish pot gear must not exceed one-half of the perimeter of the bottom of the pot.

~~((b))~~ (d) All buoys attached to commercial shrimp gear must be orange in color and consist of a durable material that will remain floating on the surface when five pounds of weight is attached; it is unlawful to use bleach or antifreeze bottles or any other container.

~~((c))~~ (e) The line attaching the buoy to the shellfish pot must be weighted sufficiently to prevent the line from floating on the surface, if the gear is unattended.

AMENDATORY SECTION (Amending Order 80-123, filed 9/17/80)

WAC 220-52-063 OCTOPUS FISHERY. (1) It shall be lawful at any time to take or fish for octopus for commercial purposes with shellfish pot or ring net gear in any of the waters of the state of Washington except in those waters of the Tacoma Narrows between a line from the north end of Days Island to the southern tip of Point Fosdick and a line from the navigational buoy at Point Defiance to the navigational buoy at the entrance to Gig Harbor.

(2) It shall be lawful to possess octopus for commercial purposes taken incidentally to any other lawful bottom fish or shellfish fishery, except that it shall be unlawful for divers to take octopus.

(3) It shall be unlawful to possess any octopus mutilated in the process of its fishing or taking.

(4) It is unlawful to fish for octopus using more than 200 shellfish pots without first having obtained a permit authorized by the director.

AMENDATORY SECTION (Amending Order 80-123, filed 9/17/80)

WAC 220-52-066 SQUID FISHERY. (1) It ~~((shall be))~~ is lawful at any time to take or fish for squid for commercial purposes with drag seine gear not exceeding 350 feet in length and having meshes of not less than 1-1/4 inches stretch measure, ~~((or with))~~ dip bag net, brail, and ~~((shellfish pot))~~ squid jigging gear. Dip bag net and brail may not exceed 10 feet in diameter nor have a mesh less than one inch stretch measure. Other gear may be used to fish for squid commercially if authorized by a permit issued by the director.

(2) Food fish, other shellfish, and squid eggs caught while fishing for squid must be returned to the water immediately. It ~~((shall be))~~ is lawful to retain for commercial purposes squid ~~((or inkfish))~~ taken incidental to ~~((any other lawful))~~ another commercial fishery.

(3) Each vessel fishing for squid may use a lighting system with a combined power of not more than 10 kilowatts (10,000 watts). Lights of 200 watts or greater must be shielded and may not be directed to any point more than 100 feet from the vessel while fishing.

(4) It is unlawful to fish for squid for commercial purposes within 1/4 mile of the shoreline of an incorporated city or town.

AMENDATORY SECTION (Amending Order 82-6, filed 1/19/82)

WAC 220-52-069 SCALLOP FISHERY. (1) It is lawful at any time to take or fish for scallops for commercial purposes with otter trawl or beam trawl or scallop dredge gear, ~~((provided))~~ except that it is unlawful at any time to take or possess rock scallop ~~((of the species~~

~~*Himmites multirugosus*))~~ unless a person has first obtained an aquaculture license and a rock scallop aquaculture permit issued by the department. The permit will specify location, time, and quantity of rock scallop that can be taken for brood stock purposes.

(2) It is unlawful to take or fish for scallops for commercial purposes in any waters of the state of Washington or the Pacific Ocean with scallop dredges having a ring size less than three inches inside diameter.

AMENDATORY SECTION (Amending Order 83-24, filed 4/12/83)

WAC 220-52-075 SHELLFISH HARVEST LOGS. It is unlawful for any vessel operator engaged in commercial crawfish, sea cucumber, sea urchin, scallop, ~~((or))~~ shrimp, squid, or octopus fishing or operator of mechanical clam digging device 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, sea cucumbers, sea urchins, shrimp, scallops, 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 activity occurred and by the tenth day following the termination of commercial fishing activity, whichever occurs first. ~~((Vessel operators engaged in commercial harvest of:))~~

(1) Vessel operators engaged in commercial harvest of shrimp or crawfish with shellfish pot or ring net gear must record the vessel Washington department of fisheries boat registration number, number of pots or ring nets pulled, date pulled, soak time~~((t))~~, and gear location before leaving the catch area where taken~~((t))~~, and weights must be recorded upon landing or sale. In addition, vessel operators engaged in commercial harvest of shrimp in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, or 27C (Hood Canal) must record the total number of pots they have in the water and the total number of buoys attached to those pots, and the department's copy of the completed harvest log must be submitted weekly, postmarked no later than Friday and showing harvest activity for the period Thursday of the week previous to submission through Wednesday of the week the harvest log is submitted.

(2) Vessel operators engaged in commercial harvest of 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) Vessel operators engaged in commercial harvest of sea urchins or sea cucumbers must record the vessel identity, date, location, and ~~((t))~~ the approximate number of sea urchins or sea cucumbers before leaving the catch area where taken and the exact weight must be recorded upon landing or sale.

(4) Vessel operators engaged in commercial harvest of clams with mechanical digging devices must record the vessel identity, location, and date of harvest before the end of each day's fishing and the weights by clam species must be recorded upon landing or sale.

(5) Vessel operators engaged in commercial harvest of scallops with dredge or trawl gear must record the vessel identity, date, location, and duration of harvest and estimated weight of scallops caught for each tow before leaving the catch area where taken.

(6) Vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, must record before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel WDF boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned. Weights of squid must be recorded on landing or sale.

(7) Vessel operators engaged in commercial harvest of octopus, except when taken incidental to any other lawful fishery, must record before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel WDF boat registration number, gear type and amount, catch area and hours fished. Weights of octopus must be recorded on landing or sale.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-015 CLAMS—LAWFUL ACTS.

AMENDATORY SECTION (Amending Order 83-203, filed 12/2/83)

WAC 220-69-230 DESCRIPTION OF WASHINGTON STATE NONTREATY FISH RECEIVING TICKETS. (1) There is hereby created the following nontreaty fish receiving ticket forms to be prepared, printed, and distributed upon request, by the department of fisheries: Cannery, troll, marine, utility, and shellfish. These forms shall contain space for the following information:

- (a) Fisherman: Name of licensed deliverer.
 - (b) Address: Address of licensed deliverer.
 - (c) Boat name: Name or Coast Guard number of landing vessel.
 - (d) WDF boat registration: Washington department of fisheries boat registration number.
 - (e) Gear: Code number or name of specific type of gear used.
 - (f) Fisherman's signature: Signature of licensed deliverer.
 - (g) Date: Date of landing.
 - (h) Dealer: Name of dealer, and department of fisheries' number assigned to dealer.
 - (i) Buyer: Name of buyer, and department of fisheries' number assigned to buyer.
 - (j) Receiver's signature: Signature of original receiver.
 - (k) Number of days fished: Days spent catching fish.
 - (l) Fish caught inside or outside 3-mile limit: Check one box.
 - (m) Catch area: Salmon catch area code if salmon are caught. Marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.
 - (n) Tally space for dealer's use: Used at dealer's discretion.
 - (o) Species code: Department of fisheries' assigned species code.
 - (p) Number of fish, species description, pounds, and value: Summary information for species landed. All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).
 - (q) Work area for dealer's use: Used at dealer's discretion.
- (2) The cannery fish receiving ticket shall be used for:
- (a) Deliveries of nontreaty salmon caught in inland waters.
 - (b) Any other delivery of nontreaty salmon where the catch may be easily recorded.
 - (c) Any imports of fresh salmon into the state of Washington.
- (3) The troll fish receiving ticket shall be used for:
- (a) Deliveries of nontreaty coastal salmon and incidental catch.
 - (b) Any other nontreaty deliveries where the species delivered may be easily recorded.
 - (c) Any imports of fresh salmon into the state of Washington.
- (4) The marine fish receiving ticket shall be used for:
- (a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon.
 - (b) Any imports of fresh marine fish or bottomfish.
- (5) The utility fish receiving ticket shall be used for:
- (a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate.
 - (b) Any imports of fresh fish or shellfish that do not include salmon.
- (6) The shellfish receiving ticket shall be used for:
- (a) Any nontreaty deliveries of shellfish.
 - (b) Any imports of fresh shellfish.
 - (c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

AMENDATORY SECTION (Amending Order 83-203, filed 12/2/83)

WAC 220-69-250 REQUIRED INFORMATION ON NONTREATY FISH RECEIVING TICKETS. (1) Entries (a) through (m) and entry (p) of subsection (1) of WAC 220-69-230 shall be required on each completed nontreaty fish receiving ticket.

~~((PROVIDED, That))~~ (2) A valid license card or duplicate license card issued by the department of fisheries shall be used in conjunction with an approved mechanical imprinter in lieu of entries (a) through (e) of subsection (1) of WAC 220-69-230 except as provided in WAC 220-69-273.

~~((PROVIDED FURTHER, That))~~ (3) A valid dealer or buyer card issued by the department of fisheries shall be used in conjunction with an approved mechanical imprinter in lieu of entries (h) through (j) of subsection (1) of WAC 220-69-230 except as provided in WAC 220-69-273.

(4) During the period December 1 through December 15, the crab inspection certificate number is a required entry on all Shellfish Receiving Tickets documenting landings and sale of Dungeness crab from Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters. The crab inspection certificate number must be entered legibly on the left hand side of the ticket in the space indicated for dealer's use.

Table of WAC Sections Affected

KEY TO TABLE

Symbols:

- AMD = Amendment of existing section
- NEW = New section not previously codified
- REP = Repeal of existing section
- READOPT = Readoption of existing section
- REVIEW = Review of previously adopted rule
- STMT = Statement regarding previously adopted rule

Suffixes:

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- W = Withdrawal of proposed action
- No suffix means permanent action

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

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WHATCOM COMMUNITY COLLEGE (District 21)			
Meetings	84-01-056		
	84-02-048		
WHATCOM COUNTY			
Shoreline management master program	84-01-085		
WORKFARE (See SOCIAL AND HEALTH SERVICES, DEPARTMENT OF)			