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DENNIS W. COOPER  
Code Reviser

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# WASHINGTON STATE REGISTER

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## STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

### 1. ARRANGEMENT OF THE REGISTER

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

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

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

- (a) **Proposed rules** are those rules pending permanent adoption by an agency and set forth in eight point type.
- (b) **Adopted rules** have been permanently adopted and are set forth in ten point type.
- (c) **Emergency rules** *have been adopted on an emergency basis and are set forth in ten point oblique type.*

### 3. PRINTING STYLE—INDICATION OF NEW OR DELETED MATTER

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

- (a) In amendatory sections —
  - (i) underlined matter is new matter;
  - (ii) ~~deleted matter is ((lined out and bracketed between double parentheses))~~;
- (b) Complete new sections are prefaced by the heading NEW SECTION;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading REPEALER.

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

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

### 5. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules take effect thirty days after the rules and the agency order adopting them are filed with the code reviser. This effective date may be delayed, but not advanced, and a delayed effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser and remain effective for a maximum of ninety days from that date.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

### 6. EDITORIAL CORRECTIONS

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

### 7. INDEX AND TABLES

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

1985

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates <sup>1</sup>			Distribution Date	First Agency Action Date <sup>3</sup>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS		
For Inclusion in—	File no later than—			Count 20 days from—	For hearing/adoption on or after
85-01	Nov 21	Dec 5	Dec 19, 1984	Jan 2, 1985	Jan 22
85-02	Dec 5	Dec 19, 1984	Jan 2, 1985	Jan 16	Feb 5
85-03	Dec 26, 1984	Jan 9, 1985	Jan 23	Feb 6	Feb 26
85-04	Jan 9	Jan 23	Feb 6	Feb 20	Mar 12
85-05	Jan 23	Feb 6	Feb 20	Mar 6	Mar 26
85-06	Feb 6	Feb 20	Mar 6	Mar 20	Apr 9
85-07	Feb 20	Mar 6	Mar 20	Apr 3	Apr 23
85-08	Mar 6	Mar 20	Apr 3	Apr 17	May 7
85-09	Mar 20	Apr 3	Apr 17	May 1	May 21
85-10	Apr 3	Apr 17	May 1	May 15	Jun 4
85-11	Apr 24	May 8	May 22	Jun 5	Jun 25
85-12	May 8	May 22	Jun 5	Jun 19	Jul 9
85-13	May 22	Jun 5	Jun 19	Jul 3	Jul 23
85-14	Jun 5	Jun 19	Jul 3	Jul 17	Aug 6
85-15	Jun 26	Jul 10	Jul 24	Aug 7	Aug 27
85-16	Jul 10	Jul 24	Aug 7	Aug 21	Sep 10
85-17	Jul 24	Aug 7	Aug 21	Sep 4	Sep 24
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85-19	Aug 21	Sep 4	Sep 18	Oct 2	Oct 22
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85-21	Sep 25	Oct 9	Oct 23	Nov 6	Nov 26
85-22	Oct 9	Oct 23	Nov 6	Nov 20	Dec 10
85-23	Oct 23	Nov 6	Nov 20	Dec 4	Dec 24
85-24	Nov 6	Nov 20	Dec 4	Dec 18	Jan 7, 1986

<sup>1</sup>All documents are due at the code reviser's office by 5:00 p.m. on the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-12-035 or 1-13-035.

<sup>2</sup>A 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.

<sup>3</sup>"No 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 85-04-001  
BOARD OF PRISON  
TERMS AND PAROLES  
[Filed January 24, 1985]

**Reviser's note:** The following material has **not** been adopted under the Administrative Procedure Act, chapter 34.04 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

S T A T E   O F   W A S H I N G T O N

B O A R D   O F

P R I S O N   T E R M S   A N D   P A R O L E S

G u i d e l i n e s   f o r  
F i x i n g   o f   M i n i m u m   T e r m s  
a n d   R e c o n s i d e r a t i o n   o f  
L e n g t h   o f   C o n f i n e m e n t

O l y m p i a ,   W a s h i n g t o n .

E f f e c t i v e   D e c e m b e r   1 ,   1 9 7 8

A m e n d e d   D e c e m b e r   1 2 ,   1 9 8 3

## SUMMARY

GUIDELINES FOR FIXING OF MINIMUM TERMS  
AND  
GUIDELINES FOR THE RECONSIDERATION OF LENGTH OF CONFINEMENT

The Board of Prison Terms and Paroles has adopted guidelines designed to channel its discretion in fixing minimum terms of confinement and the review of those terms.

Minimum Terms

The guidelines for fixing minimum terms specify a period of incarceration for offenders based on:

1. The offender's behavior in criminal acts leading to the current incarceration.
2. The offender's record of criminal convictions and parole revocations (hereafter referred to as prior record).

Criminal acts are grouped into seven offense categories (see Table 1). Acts in a given category are assigned time (in months of potential confinement) to which further time is added for the presence of certain aggravating circumstances (see Tables 2A-2G). Additional time is given to offenders based on the number and type of prior convictions or parole revocations and on the category of the felony acts leading to the current incarceration (see Tables 3 and 4).

Outside Guidelines

The Board may go outside the guidelines, provided members give written reasons for such decisions. Certain of the more commonly cited reasons have been codified and may be found in the pages following the section devoted to the minimum term guidelines (between blue and yellow pages).

Reconsideration of Minimum Terms

Reconsideration guidelines provide a means for modifying the length of sentence based upon probability statements about parole performance for various groups of offenders. Offender groups are defined in Table 1 (yellow pages).

The scores associated with the probability statements, termed "public safety scores" are based upon offender attributes found to be positively correlated with parole success. The attributes are listed by offense group in Exhibit 1A-1F. The possible percent reductions in length of confinement associated with public safety scores may be found in Table 2A-2I.

## Guidelines for Fixing of Minimum Terms

To promote consistent exercise of discretion and to effect fair and equitable decision making without removing individual case consideration, the Board has established guidelines for fixing minimum terms of confinement.

1. These guidelines establish the customary range of minimum terms to be fixed for various admission classes, based on aggravating circumstances and prior criminal record.
2. All admissions subsequent to a court commitment are subject to the provisions of these guidelines.
3. The guidelines shall apply to all persons committed to Board authority in accordance with the Revised Code of Washington on or after the date of adoption of the guidelines. Decisions concerning persons admitted for behavior not specifically covered in the guidelines shall be made on a case-by-case basis.
4. Decisions outside the guidelines may be made by panels of the Board, provided that written reasons are given. Written reasons for the Board's decision need not be given if the minimum term of confinement falls within the guidelines.
5. All minimum terms fixed at more than 18 months above or below the high point or low point of the guideline range must be referred to the full Board for approval.
6. Mandatory minimum terms shall be fixed in accordance with the Revised Code of Washington and Board rule 3.140. When the guideline term is less than the mandatory minimum term, the mandatory minimum term takes precedence.
7. When the guideline term is greater than the statutory maximum term, the statutory maximum term takes precedence.
8. The Board shall review the guidelines six months after adoption and at least annually thereafter, and may revise or modify the guidelines based on appropriate new information.
9. The Board shall disclose to the offender all adverse information used to determine the guideline minimum term.

- GUIDELINES FOR FIXING OF MINIMUM TERMS -  
WASHINGTON STATE BOARD OF PRISON TERMS AND PAROLES

COURT COMMITMENT

I. Defining and Measuring the Severity of Criminal Behavior

A. Defining the Unit of Criminal Behavior - The Criminal Act

A criminal act is the set of all behaviors and circumstances that results in a felony conviction. The criminal act includes all actions related by their closeness in time, location, intent or consequences.

B. Measuring the Severity of the Criminal Act - Felony Class and Act Circumstances

The severity of a criminal act is determined by the felony class of the act and circumstances which are present in the act. The measure of the severity of a criminal act is the number of months of confinement for the act.

1. Felony Classes

a. Definition

Felony offenses defined in the Revised Code of Washington are grouped into felony classes according to common elements. These felony classes, listed in decreasing order of severity, and the most common offenses within them are given below in Table 1.

b. Nonguideline Felonies

Certain felony offenses are not grouped within the guideline felony classes. Some of these felonies encompass a wide variety of behaviors and circumstances difficult to classify within the standardized structure of the guidelines. Others occur so infrequently that standardization is not possible. Still other felonies are statutorily removed from Parole Board jurisdiction. These felonies are classified as nonguideline offenses. Table 1A below lists all nonguideline felony offenses.

c. Nonguideline Offenders

Certain conditions eliminate offenders from being considered a guideline case. Offenses committed while the offender is incarcerated or on escape status are not subject to guideline rules. This includes incarceration or escape from state juvenile institutions.



TABLE 1 - OFFENSES INCLUDED IN BOARD FELONY CLASSES

FELONY CLASS	OFFENSES INCLUDED IN FELONY CLASS
1. Murder 2	Murder 2
2. Manslaughter	Manslaughter 1, 2, 3, Motor Vehicular Homicide
3. Sexual Molestation	Rape 1, 2, 3, Statutory Rape 1, 2, 3, Indecent Liberties, other sex offenses
4. Robbery	Robbery 1, 2, Extortion 1, 2
5. Assault	Assault 1, 2, 3, Kidnapping 1, 2, Unlawful Imprisonment, Felon in Possession of Firearm
6. Property	Burglary 1, 2, Auto Theft, Theft 1, 2, Credit Card Theft, other Thefts, Possession of Stolen Property 1, 2, Forgery 1, 2, Unlawful Issuance of Bank Checks, Credit Card Forgery, Uttering a Forged Instrument
7. Drugs	Sale of Controlled Substance for Profit; Sale of Heroin for Profit; Sale, Delivery or Possession of Drugs with Intent to Sell; Violation of the Uniform Controlled Substance Act; Uttering a Forged Prescription

## TABLE 1A - COMMON NONGUIDELINE OFFENSES

Accomplice to 2nd Degree Introducing Contraband  
Arson 1  
Arson 2  
Attempted Possession of an Incendiary Device  
Attempting to Elude Pursuing Police Vehicle  
Bail Jump  
Conspiracy  
Communicating with a Minor for Immoral Purposes  
Defrauding Innkeeper  
Escape 1  
Escape 2  
Failure to Comply with Police Order to Stop  
Failure to Return from Work Release/Furlough  
Felony Hit and Run  
Intimidating Witness  
Malicious Mischief  
Murder 1  
Parole Violators  
Perjury  
Promoting Prostitution  
Rendering Criminal Assistance  
Unlawful Delivery of a Controlled Substance in Lieu of a  
Controlled Substance

d. Classification of Criminal Acts

The commitment act is assigned to the felony class of that conviction according to Table 1.

2. Minimum Measure of Criminal Act Severity - Base Time

For each felony class, the base time defines the minimum measure of act severity for the class. The base times for the 7 felony classes are given in Tables 2A to 2G beginning on page 13.

3. Circumstances of Each Felony Class

a. Definition

Act circumstances are those behaviors and circumstances which determine the severity of the act within a felony class.

The act circumstances indicate what acts within a felony class are viewed by the Board as differing in severity. That is, the label of the felony class does not sufficiently define the severity of the act.

b. Specifying and Measuring Act Circumstances

The presence of each aggravating circumstance in an act increases the guideline recommendation for the act. The presence of each mitigating circumstance decreases the guideline recommendation for the act. Through the guidelines the Board has specified a set of circumstances for each felony class and the number of months of increased or decreased guideline recommendation for each circumstance.

Tables 2A to 2G give the circumstances and corresponding months of increased or decreased confinement for all felony classes. These months of increased or decreased confinement are referred to as act circumstance times.

Detailed definitions for each of the act circumstances are included in Tables 2A through 2G.

4. Act Severity Time

The act severity time is the sum of the base time and act circumstance time(s). It is the assessment (in terms of potential months of confinement) of the severity of a criminal act, based on specific behaviors in the act. Thus, the major contributors to the act severity time are the act circumstance times. The role of the felony class is to determine which set of act circumstances are to be used in calculating the act severity time.

C. Integrating Act Severity Times with Court Sentence Structures - Total Act Time

The total act time is the number of months of confinement for all criminal acts considered in setting the minimum term. The total act time is determined by considering the act severity time(s) and the sentence structure imposed by the courts.

The following rules determine the total act time:

1. Single Criminal Acts

The total act time for single act cases is the act severity time of the single criminal act.

2. Multiple Criminal Acts - Concurrent Sentences

If there is more than one criminal act and the sentences associated with the criminal acts are concurrent, the total act time is the act severity time of the most serious act--the act with the highest number of months.

3. Multiple Criminal Acts - Consecutive Sentences

If there is more than one criminal act and the sentences associated with the criminal acts are consecutive, the total act time is the sum of the individual act severity times.

4. Parole Revocation With New Commitment

If the offender is admitted as a parole violator with a new commitment, rules 1, 2, or 3 will apply.

d. Admission Felony Class

The admission felony class is the felony class of the most serious act--the act resulting in the highest act severity time.

II. Defining and Measuring Severity of Prior Record

A. Definition of Prior Record Entries Considered in Guidelines

Two types of prior criminal behavior are considered in the guidelines: adult felony convictions and parole revocations not accompanied by a new felony conviction. Each type must predate and not be associated with the present entry to prison.

1. Prior adult felony convictions considered as prior record entries are:

- a. Those convictions committed by a person age 18 or older at the time of convictions -or- those convictions committed by a person treated as an adult by the criminal justice system

-and which are-

- b. Washington State convictions for felonies -or- convictions in other jurisdictions which would constitute felony offenses under applicable Washington State Statute or their equivalent in common law.

In situations where it is difficult to determine if the conviction is a felony conviction, the sentence imposed must have resulted in incarceration in a state or federal correctional institution or probation for felony convictions. Each count is considered a separate conviction.

Convictions in other countries will be included in this category.

2. Prior parole revocations considered in the guidelines are:

- a. Those revocations of Washington State parole which are not the result of, nor accompanied by any new conviction

-and which are-

- b. Violations for which guilt has been established under due process by the Board.

B. Measuring Severity of Prior Record Entries

1. Classification of Prior Record Entries

a. Definition of Prior Record Classes

Nine felony classes are used in the assessment of prior record severity. The prior record classes coincide with the felony classes for criminal acts with one exception: prior felony convictions or felony parole revocations not included in the eight felony classes (see Table 1) default to the prior record class Other. The nine prior record classes in decreasing order of severity are:

- |                |                    |
|----------------|--------------------|
| Most Serious:  | Murder             |
|                | Manslaughter       |
|                | Sexual Molestation |
|                | Robbery            |
|                | Assault            |
|                | Property           |
|                | Drugs              |
|                | Escape             |
| Least Serious: | Other              |

b. Rules for Classification

- i) Prior felony convictions are assigned to one of the prior record classes above (see Table 1 for common offense titles in each class).
- ii) Prior parole revocations which are not the result of, nor accompanied by any new convictions are counted and all classified the same.

c. Procedure for eliminating prior record entries

- i) Prior murder convictions are never eliminated from guideline consideration.

- ii) If the offender has spent ten continuous years in the community without felony convictions or incarceration in a state or federal correctional institution, all manslaughter, sex offense, assault and robbery prior record entries which predate the ten year period are eliminated from guideline consideration.
- iii) If the offender has spent five continuous years in the community without felony convictions or incarceration in a state or federal correctional institution, all property, drug and other felony prior record entries which predate the five year period are eliminated from guideline consideration.

Table 3 contains the number of years in the community between convictions or incarcerations necessary to eliminate a prior conviction or parole revocation from guideline consideration.

As an example, assume an offender convicted on June 10, 1969 for burglary was released from incarceration July 15, 1971. The offender was convicted in June 1972 for auto theft and was released in January 1974. In May 1979, the offender was convicted of theft and committed to Board authority. Since the offender remained in the community for more than five years with no felony convictions or incarcerations in state or federal institutions, the prior burglary and auto theft are not considered in the prior record guidelines.

## 2. Prior Record Time--The Measure of Prior Record Severity

As with the criminal act severity, the severity of an offender's prior record is expressed by an increased term of confinement. The Board is explicitly stating that repeat offenders will be given more time in accordance with the severity of their prior record.

The prior record time is a function of the admission felony class and the frequencies and classes of prior record entries. For each prior record entry, a fixed number of months is added to the prior record time. The number of months added for each entry, based on the admission felony class, is given in Table 4, page 42.

For example, assume an offender has three prior record entries--two robbery convictions and a parole revocation. The offender is being admitted for an assault conviction. From Table 4 each robbery conviction for an assault admission adds 12 months to the prior record time. The parole revocation for an assault admission adds 6 months to the prior record time. The prior record time for the offender is the sum of the times for each entry, in this case 30 months.

The magnitude of the prior record time is limited only when both the admission felony class and all prior record classes are property or drug offenses. In that case, if the prior record time exceeds the act severity time it shall be lowered to equal the act severity time.

III. Minimum Term Setting Guidelines

A. Guideline Term

The guideline term is the sum of the total act time and the prior record time.

B. Guideline Range

- 1. To allow flexibility for individual case differences, a range is associated with each guideline term. This guideline range defines the explicit policy of the Washington State Board of Prison Terms and Paroles for the fixing of minimum terms.
- 2. The guideline range represents approximately a 12 1/2 % variation above or below the guideline term, rounded to increments of three months. Actual minimum terms set inside the range are said to be within the guidelines. Table 5 defines the corresponding above/below guideline term variation for guideline terms up to 30 years.

For example, the guideline variation for a guideline term of 42 months is 6 months. Thus the corresponding guideline range is 36 to 48 months.

C. Outside the Guideline Range

Guidelines are an aid to consistent decision making, rather than deterministic rules for fixing minimum terms. Therefore, it is expected that Board panels will go outside the guideline range whenever they encounter atypical circumstances in a case. For these atypical cases, written reasons will be given to declare why the case is an exception to the general rule.

IV. Review of Minimum Term Setting Guidelines

A. Offender Review

Each offender reviews the information used to determine the total act time and the prior record time. The offender can comment on the information prior to it being forwarded to the Board for scoring.



**B. Challenge to Guideline Information**

If the offender challenges the accuracy of guideline information, makes claims to missing information, or indicates that the guideline information is otherwise incomplete or false, the Board will disclose the source of the guideline information and request that the offender provide verified information supporting the offender's contention. The offender is given 30 days to provide the Board with verified data before the minimum term is set. All new information provided by the offender will be considered and adjustments to the guideline scoring will be made where appropriate. The Board will then proceed with the minimum term setting process. Information sent to the Board after the minimum term is set will still be considered and guideline adjustments will be made where appropriate.

TABLE 2A  
FELONY CLASS: MURDER II

+12 BASE TIME

VICTIM - Person who is dead as a result of offenders actions.

+48 1. RELATED TO ANOTHER FELONIOUS ACT/OPPORTUNITY FOR FORETHOUGHT

A. Felony Related - act occurred as result of offender committing or intending to commit, any felony:

1. Robbery
2. Rape
3. Arson
4. Burglary
5. Kidnapping
6. Any other class A, B, or C felonies.

-or-

B. Forethought - offender had time to consider actions before committing act. Evidence of forethought may be:

1. Leaving and returning to scene
2. Seeking out/waiting for victim
3. Discussing intent
4. Plotting/laying plans for execution of act.

(i.e., offender's actions were a deliberate course of action, not just a spontaneous reaction to a situation)

+36 2. VICTIM WAS VULNERABLE--NOT A RESULT OF AGE

A handicap or disadvantage made the victim especially vulnerable. Such disadvantage is indicated by any of the following:

1. Victim was mentally retarded or physically handicapped
2. Victim was pregnant
3. Victim was weak or frail in comparison with offender (more than just a difference in sex between offender and victim)
4. Offender capitalized on the immediate defenselessness of a victim who was unconscious, drugged, unclothed, forcibly restrained or otherwise hampered or inhibited from defending self
5. Offender deliberately acted to render the victim defenseless prior to assault.

Note: None of the above circumstances can be considered if they result solely from victim weakness due to age.

+36 3. VICTIM WAS VULNERABLE BY AGE

Age made the victim especially vulnerable to the offender. The victim was:

1. Under the age of 13 -or-
2. Over the age of 49.

+18 4. OFFENDER ACTED WITH NO PROVOCATION FROM VICTIM

Victim did not provoke offender into assaultive behavior. At the time of the act, victim had:

1. Not enraged/incited offender
2. Not stimulated offender
3. Not precipitated act through any words or actions.

(i.e., victim did not taunt, gibe, ridicule or motivate offender to violence)

5. CAUSE OF INJURY/DEATH

(Only one of the following circumstances applies)

## +18 PHYSICAL FORCE

Use of feet, fists, hands or other body parts exclusive of any implement external to offender's body to injure or kill victim.

## +18 WEAPON

Offenders use of any implement external to offender's body, without the use of "physical force" (as defined above) to kill victim.

## +48 PHYSICAL FORCE AND WEAPON

Offenders use of both, as described above, to kill victim.

+24 6. SEXUAL OVERTURES OR ABUSE BY OFFENDER

Without victim's consent or voluntary compliance, or if by virtue of victim's age consent could not be given, any of the following behaviors occurred:

1. Attempted or actual exposure of the offender's genitals or breasts to victim
2. Attempted or actual exposure of victim's genitals or breasts by offender
3. Touching of the victim's genitals or breasts
4. Touching by victim of offender's genitals or breasts
5. Vaginal intercourse
6. Anal/oral sex.

+12 7. VICTIM FORCED TO ANOTHER LOCATION

Victim was:

1. Moved to a place where victim is not likely to be found at that time.

Note: For purposes of this aggravating circumstance, involuntary detainment alone does not constitute being "forced to another location".

## TABLE 2B

## FELONY CLASS: MANSLAUGHTER

(Manslaughter, Motor Vehiclular Homicide)

+27 BASE TIME

VICTIM - Person who is:

- A. Killed
- B. Directly or indirectly threatened or injured in the offense -or-
- C. Recklessly endangered by actions involved in the offense --  
could have been injured or killed in the offense.

+ 6 1. RELATED TO ANOTHER CRIMINAL ACT

The act occurred during the commission of another criminal act.  
The other criminal act may include a felony, gross misdemeanor, or  
misdemeanor, except DWI.

+12 2. MORE THAN ONE VICTIM KILLED OR INJURED

More than one victim is considered involved if, in the commission  
of the offense:

- 1. More than one person was directly threatened, injured, or killed  
-or-
- 2. More than one person was recklessly endangered -or-
- 3. More than one person could have been injured or killed.

+ 6 3. VICTIM DID NOT RECKLESSLY AND/OR KNOWINGLY ENDANGER SELF

Circumstances of act must indicate that:

- 1. Victim could not have been cognizant of dangers involved in  
offender's actions  
-and-
- 2. Did not willingly participate in activities resulting in  
injury to self.

4. CAUSE OF INJURY/DEATH

(More than one of the following circumstances may apply)

## +42 PHYSICAL FORCE

Use of feet, fists, hands or other body parts exclusive of any  
implement external to offender's body to injure or kill victim.

+39 WEAPON

Use of any implement external to offender's body without the use of "physical force" (as defined above) to injure or kill victim.

Note: If both physical force and weapon use are present consider both aggravating circumstances in determining the act severity.

5. INCIDENTS OF NEGLIGENCE

(Motor Vehicle Negligent Homicide only, more than one of the following may apply)

+ 6 DWI PRIOR TO CONVICTION

Offender has at least one conviction for driving while intoxicated prior to the negligent homicide conviction.

+ 6 DWI FOLLOWING CONVICTION

Offender has at least one conviction for driving while intoxicated following the negligent homicide conviction.

+ 6 TRAFFIC RECORD

Offender has been convicted of one or more of the following offenses prior to admission to prison but no earlier than 18 months prior to the negligent homicide conviction.

These convictions include but are not limited to Negligent Driving, Reckless Driving, Attempting to Elude Pursuing Police Vehicle, Habitual Traffic Offender, Driving Without Valid Drivers License (i.e., license suspended, license revoked, or no license).

## TABLE 2C

FELONY CLASS: SEXUAL MOLESTATION  
(SEX OFFENSES)+12 BASE TIME

Victim - Person who is:

- A. Directly/indirectly threatened, injured or abused in the offense -or-
- B. Recklessly endangered by actions involved in the offense -- could have been injured or killed in the offense.

-12 1. VICTIM PROVOKED ASSAULT (MITIGATING)

Victim provoked offender into committing act. At the time of the act, victim had:

1. Enraged/incited offender -or-
2. Precipitated the act through any words or actions.

(i.e., victim did taunt, gibe, or ridicule offender to commit act.)

2. DEGREE OF FORETHOUGHT

(At most one of the following circumstances may apply)

## +12 OPPORTUNITY FOR FORETHOUGHT

1. Offender had time to consider actions before committing act -or-
2. Offender's actions were not a spontaneous reaction to a situation -or-
3. A sufficient period of time and opportunity existed for the offender to abandon course of action -or-
4. Offender left and then returned to scene -or-
5. Offender had mentioned intent prior to act.

## +24 DELIBERATE

In addition to having the opportunity for forethought before committing the act, the offender took steps in advance to commit the act. Evidence of such may be:

1. Plotting/laying plans for execution of act -or-
2. Partner collaboration to plan and execute act -or-
3. Gaining access to victim through fraud, breaking and entering, kidnapping or other illegal means -or-
4. Behavior occurred over an extended period of time -or-
5. Repeated prior incidents.

## +48 PREDATORY - HEINOUS

1. A predatory situation in which the offender actively rendered victim helpless before completing the act by tying victim up, or rendering victim unconscious by drugs or violence in order to further assault or molest victim -or-
2. Offender carried out act in heinous manner by prolonging victims agony or humiliation or physically/mentally torturing victim.

3. VICTIM WAS PHYSICALLY/MENTALLY HANDICAPPED

+12 A handicap (not the result of age) made the victim especially vulnerable to the offender. The victim was:

1. Mentally retarded -or-
2. Mentally ill -or-
3. Physically handicapped -or-
4. Pregnant -or-
5. Seriously ill.

4. VICTIM VULNERABLE BY AGE

(At most one of the following circumstances may apply)

Age made the victim especially vulnerable to the offender. The victim was:

- +12 13-15 OR 50-59 YEARS OLD  
 +18 10-12 OR 60-69 YEARS OLD  
 +24 6-9 OR 70-79 YEARS OLD  
 +30 1-5 OR 80 YEARS OR OLDER

5. METHOD OF ACCOMPLISHING THE ACT

(Score all method(s) relied upon to accomplish the act)

- + 9 PHYSICAL FORCE/PSYCHOLOGICAL MANIPULATION/INTIMIDATION/COERCION  
 Offender's use or threat of use of feet, fists, hands or other body parts exclusive of any implement external to offender's body -or- offender used psychological manipulation, intimidation, or coercion to accomplish the act.
- +15 WEAPON OTHER THAN KNIFE OR FIREARM  
 Any weapon other than a knife or firearm used by offender to threaten or injure. Includes toy firearms, air pistols, pellet guns, etc.
- +18 KNIFE  
 Offenders use of any weapon/implement consisting of a sharp blade fastened to a handle, or capable of inflicting cut or stab wounds



**+24 FIREARM**

Offenders use of a firearm: any weapon from which a shot may be discharged by an explosion of gun powder. Commonly includes rifles, pistols, shotguns, etc.

**6. INJURY TO VICTIM**

(At most one circumstance may apply)

**+ 6 MINOR INJURY**

In the act, the principal victim received a physical injury requiring medical attention.

**+18 IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY OR DEATH**

In the act, behavior was exhibited indicating an ability to inflict major/permanent injury or death. EXAMPLE: displayed firearm or other weapon displayed in close enough proximity to inflict injury.

**+24 RECEIVED MAJOR/PERMANENT INJURY**

One of the following types of injury were inflicted:

1. Life threatening injury -or-
2. Injury threatening permanent loss/alteration of bodily functions
3. Psychological damage resulting (or threatening to result) in permanent loss of ability to function in normal capacity -or-
4. Permanent injury (psychological damage) will be scored when the victim is 12 years of age or under where sexual behavior has occurred -or-
5. Loss of limb or injury causing recognizable handicaps or permanent job disability -or-
6. Permanent noticeable (facial) disfigurement -or-
7. Any injury that is reasonably expected to continue throughout the victim's life.

**7. MORE THAN ONE VICTIM THREATENED/INJURED**

(At most one of the following circumstances may apply)

**+ 3 MORE THAN ONE VICTIM THREATENED:**

In the act, additional victim was verbally or physically threatened or abused.

**+ 6 MORE THAN ONE VICTIM RECEIVED MINOR INJURY:**

In the act, additional victim received a minor injury.

**+18 MORE THAN ONE VICTIM PLACED IN IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY:**

In the act, an additional victim was placed in imminent danger of receiving a major/permanent injury or death.

**+24 MORE THAN ONE PERSON RECEIVED MAJOR/PERMANENT INJURY:**

In the act, an additional victim received a major/permanent injury.

+12 8. VICTIM FORCED TO ANOTHER LOCATION

Victim was moved to a place where victim was not likely to be found at that time.

9. NON-CONSENSUAL SEXUAL ABUSE BY OFFENDER

{Only the most serious sexual abuse occurring in the act applies}

Non-consensual sexual abuse is the touching or exposure of the genitals or breasts against the victim's wishes or against a victim incapable of consent by reason of age, infirmity or mental incapability.

Attempted sexual abuse involves an intent to commit some sexual abuse as evidenced by:

1. Verbal demands -or-
2. Attempted or actual removal of clothing -or- touching victim's genitals or breasts.

-and-

Substantial steps taken to carry out the sexual intent as evidenced by:

1. Use or threat of use of physical force or weapon -or-
2. Use of any mental coercion -or-
3. Forcing victim to another location -or-
4. Creating in the victim a well founded fear of injury.

## + 6 INDECENT EXPOSURE BY OFFENDER:

The offender exposed self to victim.

## + 9 ATTEMPTED SEXUAL FONDLING/EXPOSURE:

The offender attempted to fondle, touch, or expose the victim's genitals or breasts.

## +12 SEXUAL FONDLING/EXPOSURE:

Offender fondled, touched or exposed the victim's genitals or breasts.

## +18 ATTEMPTED VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:

Offender attempted vaginal penetration, contact between mouth and genitals or contact with anus.

## +24 VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:

Offender's actions involved actual vaginal penetration, or contact between mouth and genitals or contact with anus.

10. ADDITIONAL INCIDENTS OF NON-CONSENSUAL SEXUAL ABUSE  
OCCURRING DURING COMMISSION OF CURRENT OFFENSE

- + 6 ADDITIONAL INCIDENT OF INDECENT EXPOSURE BY OFFENDER
- + 9 ADDITIONAL INCIDENT OF ATTEMPTED SEXUAL FONDLING/EXPOSURE
- +12 ADDITIONAL INCIDENT OF SEXUAL FONDLING/EXPOSURE OF VICTIM BY OFFENDER.
- +18 ADDITIONAL INCIDENT OF ATTEMPTED VAGINAL INTERCOURSE, ANAL SEX OR ORAL SEX
- +24 ADDITIONAL INCIDENT OF VAGINAL INTERCOURSE, ANAL SEX, OR ORAL SEX

TABLE 2D  
FELONY CLASS: ROBBERY  
(ROBBERY, EXTORTION)

+12 BASE TIME

VICTIM - Person who is:

- A. Directly/indirectly threatened or injured in the offense -or-
- B. Recklessly endangered by actions involved in the offense -- could have been injured or killed in the offense.

1. DEGREE OF FORETHOUGHT

(At most one of the following circumstances may apply)

+12 PLANNED

The act which was planned or involved some forathought as distinguished from a spontaneous reaction to an opportune situation. Evidence of planning may be:

- 1. Leaving and returning to scene -or-
- 2. Loitering at scene prior to act -or-
- 3. Prior discussion of intent -or-
- 4. Possession of a firearm, real or simulated, in commission of act.

+24 SOPHISTICATED

Planning, beyond the level discussed in previous item, was evident in the act. Evidence of sophistication may be:

- 1. Use of masks and disguises -or-
- 2. Victim incapacitation -or-
- 3. Getaway vehicle with driver waiting in vehicle while robbery is committed -or-
- 4. Use of look-outs -or-
- 5. Use of multiple firearms.

+48 PROFESSIONAL

Circumstances indicate a robbery which goes beyond the level of sophistication discussed in previous item. Evidence may be:

- 1. Disabling alarm system -or-
- 2. Timed partner coordination in execution of steps necessary to attempt the type of robbery -or-
- 3. Circumstances indicating detailed preparation was necessary to attempt the type of robbery -or-
- 4. Use of blueprints/maps in planning -or-
- 5. Use of tear gas, explosives, etc.

2. VICTIM WAS PHYSICALLY/MENTALLY HANDICAPPED

+12 A handicap (not the result of age) made the victim especially vulnerable to the offender. The victim was:

- 1. Mentally retarded -or-
- 2. Mentally ill -or-
- 3. Physically handicapped -or-
- 4. Pregnant -or-
- 5. Seriously ill.

3. VICTIM VULNERABLE BY AGE

(At most one of the following circumstances may apply)

Age made the victim especially vulnerable to the offender. The victim was:

- +12 13-15 OR 50-59 YEARS OLD
- +18 10-12 OR 60-69 YEARS OLD
- +24 6-9 OR 70-79 YEARS OLD
- +30 1-5 OR 80 YEARS OR OLDER

4. METHOD OF ACCOMPLISHING THE ACT

(Score all method(s) relied upon to accomplish the act)

- + 9 PHYSICAL FORCE/PSYCHOLOGICAL MANIPULATION/INTIMIDATION/COERCION  
Offender's use or threat of use of feet, fists, hands, or other body parts exclusive of any implement external to offender's body -or- offender used psychological manipulation, intimidation, or coercion to accomplish the act.
- +15 WEAPON OTHER THAN KNIFE OR FIREARM:  
Any weapon other than a knife or firearm used by offender to threaten or injure. Includes toy firearms, air pistols, pellet guns, etc.
- +18 KNIFE:  
Offenders use of any weapon/implement consisting of a sharp blade fastened to a handle, or capable of inflicting cut or stab wounds.
- +24 FIREARM:  
Offenders use of a firearm: Any weapon from which a shot may be discharged by an explosion of gun powder. Commonly includes rifles, pistols, shotguns, etc.

5. INJURY TO VICTIM

(At most one circumstance may apply)

- + 6 MINOR INJURY:  
In the act, the principal victim received a physical injury requiring medical attention.
- +18 IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY OR DEATH:  
In the act, behavior was exhibited indicating an ability to inflict major/permanent injury or death. EXAMPLE: displayed firearm or other weapon displayed in close enough proximity to inflict injury.
- +24 RECEIVED MAJOR/PERMANENT INJURY:  
The following types of injury were inflicted:
  1. Life threatening injury -or-
  2. Injury threatening permanent loss/alteration of bodily functions
  3. Psychological damage resulting (or threatening to result) in permanent loss of ability to function in a normal capacity -or-
  4. Loss of limb or injury causing recognizable handicaps or permanent job disability -or-

- 5. Permanent noticeable (facial) disfigurement -or-
- 6. Any injury that is reasonably expected to continue throughout the victim's life.

6. MORE THAN ONE VICTIM THREATENED/INJURED

(At most one of the following circumstances may apply)

- + 3 MORE THAN ONE VICTIM THREATENED:  
In the act, an additional victim was verbally or physically threatened or abused.
- + 6 MORE THAN ONE VICTIM RECEIVED MINOR INJURY:  
In the act, an additional victim received a minor injury.
- +18 MORE THAN ONE VICTIM PLACED IN IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY:  
In the act, an additional victim was placed in imminent danger of receiving a major/permanent injury or death.
- +24 MORE THAN ONE PERSON RECEIVED MAJOR/PERMANENT INJURY:  
In the act, an additional person received a major/permanent injury.

7. VICTIM FORCED TO ANOTHER LOCATION

- +12 Victim was moved to a place where victim would not likely be found at that time.

NOTE: For purposes of this aggravating circumstance, involuntary detainment alone does not constitute being "forced to another location."

8. NON-CONSENSUAL SEXUAL ABUSE BY OFFENDER

(Only the most serious sexual abuse occurring in the act applies)

Non-consensual sexual abuse is the touching or exposure of the genitals or breasts against the victim's wishes or against a victim incapable of consent by reason of age, infirmity or mental incapability.

Attempted sexual abuse involves an intent to commit some sexual abuse as evidenced by:

- 1. Verbal demands -or-
- 2. Attempted or actual removal of clothing -or- touching victim's genitals or breasts.

-and-

Substantial steps taken to carry out the sexual intent as evidenced by:

- 1. Use or threat of use of physical force or weapon -or-
- 2. Use of any mental coercion -or-
- 3. Forcing victim to another location -or-
- 4. Creating in the victim a well founded fear of injury.

- + 6 INDECENT EXPOSURE BY OFFENDER:  
The offender exposed self to victim.
- + 9 ATTEMPTED SEXUAL FONDLING/EXPOSURE:  
The offender attempted to fondle, touch, or expose the victim's  
genitals or breasts.
- +12 SEXUAL FONDLING/EXPOSURE  
Offender fondled, touched or exposed the victim's genitals or  
breasts.
- +18 ATTEMPTED VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:  
Offender attempted vaginal penetration, contact between mouth and  
genitals or contact with anus.
- +24 VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:  
Offender's actions involved actual vaginal penetration, or contact  
between mouth and genitals or contact with anus.

9. ADDITIONAL INCIDENTS OF NON-CONSENSUAL SEXUAL ABUSE  
OCCURRING DURING COMMISSION OF CURRENT OFFENSE

- + 6 ADDITIONAL INCIDENT OF INDECENT EXPOSURE BY OFFENDER
- + 9 ADDITIONAL INCIDENT OF ATTEMPTED SEXUAL FONDLING/EXPOSURE
- +12 ADDITIONAL INCIDENT OF SEXUAL FONDLING/EXPOSURE OF VICTIM BY  
OFFENDER.
- +18 ADDITIONAL INCIDENT OF ATTEMPTED VAGINAL INTERCOURSE, ANAL SEX  
OR ORAL SEX
- +24 ADDITIONAL INCIDENT OF VAGINAL INTERCOURSE, ANAL SEX, OR  
ORAL SEX

TABLE 2E  
 FELONY CLASS: ASSAULT  
 (ASSAULT, KIDNAPPING, FELON IN POSSESSION OF FIREARM)

- +12 BASE TIME  
 VICTIM - Person who is:  
 A. Directly/indirectly threatened, injured or abused in the offense  
 -or-  
 B. Recklessly endangered by actions involved in the offense --  
 could have been injured or killed in the offense.
- 12 1. VICTIM PROVOKED ASSAULT (MITIGATING)  
 Victim provoked offender into committing act. At the time of the act, victim had:  
 1. Enraged/incited offender -or-  
 2. Precipitated the act through any words or actions.  
 (i.e., victim did taunt, gibe or ridicule offender to commit act.)
2. DEGREE OF FORETHOUGHT  
 (At most one of the following circumstances may apply)
- +12 OPPORTUNITY FOR FORETHOUGHT  
 1. Offender had time to consider actions before committing act -or-  
 2. Offender's actions were not a spontaneous reaction to a situation -or-  
 3. A sufficient period of time and opportunity existed for the offender to abandon course of action -or-  
 4. Offender left and then returned to scene -or-  
 5. Offender had mentioned intent prior to act.
- +24 DELIBERATE  
 In addition to having the opportunity for forethought before committing the act, the offender took steps in advance to commit the act. Evidence of such may be:  
 1. Plotting/layng plans for execution of act -or-  
 2. Partner collaboration to plan and execute act -or-  
 3. Gaining access to victim through fraud, breaking and entering, kidnapping or other illegal means -or-  
 4. Behavior occured over an extended period of time or repeated prior incidents.
- +48 PREDATORY - HEINOUS  
 1. A predatory situation in which the offender actively rendered victim helpless before completing the act by tying victim up, or rendering victim unconscious by drugs or violence in order to further assault or molest victim -or-  
 2. Offender carried out act in heinous manner by prolonging victim's agony or humiliation or physically/mentally torturing victim.
3. VICTIM WAS PHYSICALLY/MENTALLY HANDICAPPED  
 +12 A handicap (not the result of age) made the victim especially vulnerable. The victim was:  
 1. Mentally retarded -or-  
 2. Mentally ill -or-  
 3. Physically handicapped -or-  
 4. Pregnant -or-  
 5. Seriously ill.



4. VICTIM VULNERABLE BY AGE.

(At most one of the following circumstances may apply)

Age made the victim especially vulnerable to the offender. The victim was:

- +12 13-15 OR 50-59 YEARS OLD
- +18 10-12 OR 60-69 YEARS OLD
- +24 6-9 OR 70-79 YEARS OLD
- +30 1-5 OR 80 YEARS OR OLDER

5. METHOD OF ACCOMPLISHING THE ACT

(Score all method(s) relied upon to accomplish the act)

- + 9 PHYSICAL FORCE/PSYCHOLOGICAL MANIPULATION/INTIMIDATION/COERCION  
Offender's use or threat of use of feet, fists, hands, or other body parts exclusive of any implement external to offender's body -or- offender used psychological manipulation, intimidation, or coercion accomplish the act.
- +15 WEAPON OTHER THAN KNIFE OR FIREARM:  
Any weapon other than a knife or firearm used by offender to threaten or injure. Includes toy firearms, air pistols, pellet guns, etc.
- +18 KNIFE:  
Offenders use of any weapon/implement consisting of a sharp blade fastened to a handle or capable of inflicting cut or stab wounds.
- +24 FIREARM:  
Offenders use of a firearm: any weapon from which a shot may be discharged by an exposition of gun powder. Commonly includes rifles, pistols, shotguns, etc.

6. INJURY TO VICTIM

(At most one circumstance may apply)

- + 6 MINOR INJURY:  
In the act, the principal victim received a physical injury requiring medical attention.
- +18 IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY OR DEATH:  
In the act, behavior was exhibited indicating an ability to inflict major/permanent injury or death. EXAMPLE: displayed firearm or other weapon in close enough proximity to inflict injury.
- +24 RECEIVED MAJOR/PERMANENT INJURY  
One of the following types of injury were inflicted:
  1. Life threatening injury -or-
  2. Injury threatening permanent loss/alteration of bodily functions -or-
  3. Psychological damage resulting (or threatening to result) in permanent loss of ability to function in normal capacity -or-
  4. Permanent injury (psychological damage) will be scored when the victim is 12 years of age or under where sexual behavior has occurred -or-

- 5. Loss of limb or injury causing recognizable handicaps or permanent job disability -or-
- 6. Permanent noticeable (facial) disfigurement -or-
- 7. Any injury that is reasonably expected to continue throughout the victim's life.

7. MORE THAN ONE VICTIM THREATENED/INJURED

(At most one of the following circumstances may apply)

- + 3 MORE THAN ONE VICTIM THREATENED:  
In the act, an additional victim was verbally or physically threatened or abused.
- + 6 MORE THAN ONE VICTIM RECEIVED MINOR INJURY:  
In the act, an additional victim received a minor injury.
- +18 MORE THAN ONE VICTIM PLACED IN IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY:  
In the act, an additional victim was placed in imminent danger of receiving a major/permanent injury or death.
- +24 MORE THAN ONE PERSON RECEIVED MAJOR/PERMANENT INJURY:  
In the act, an additional person received a major/permanent injury.

8. VICTIM FORCED TO ANOTHER LOCATION

- +12 Victim was moved to a place where victim would not likely be found at that time.

NOTE: For purposes of this aggravating circumstance, involuntary detainment alone does not constitute being "forced to another location".

9. NON-CONSENSUAL SEXUAL ABUSE BY OFFENDER

{Only the most serious sexual abuse occurring in the act applies}

Non-consensual sexual abuse is the touching or exposure of the genitals or breasts against the victim's wishes or against a victim incapable of consent by reason of age, infirmity or mental incapability.

Attempted sexual abuse involves an intent to commit some sexual abuse as evidenced by:

- 1. Verbal demands -or-
- 2. Attempted or actual removal of clothing -or- touching victim's genitals or breasts.

-and-

Substantial steps taken to carry out the sexual intent as evidenced by:

- 1. Use or threat of use of physical force or weapon -or-
- 2. Use or any mental coercion -or-
- 3. Forcing victim to another location -or-
- 4. Creating in the victim a well founded fear of injury.

- + 6 INDECENT EXPOSURE BY THE OFFENDER:  
The offender exposed self to victim.
- + 9 ATTEMPTED SEXUAL FONDLING/EXPOSURE:  
The offender attempted to fondle, touch, or expose the victim's  
genitals or breasts.
- +12 SEXUAL FONDLING/EXPOSURE:  
Offender fondled, touched or exposed the victim's genitals or  
breasts.
- +18 ATTEMPTED VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:  
Offender attempted vaginal penetration, contact between mouth and  
genitals or contact with anus.
- +24 VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:  
Offender's actions involved actual vaginal penetration, or contact  
between mouth and genitals or contact with anus.

10. ADDITIONAL INCIDENTS OF NON-CONSENSUAL SEXUAL ABUSE  
OCCURRING DURING COMMISSION OF CURRENT OFFENSE

- + 6 ADDITIONAL INCIDENT OF INDECENT EXPOSURE BY THE OFFENDER
- + 9 ADDITIONAL INCIDENT OF ATTEMPTED SEXUAL FONDLING/EXPOSURE
- +12 ADDITIONAL INCIDENT OF SEXUAL FONDLING/EXPOSURE OF VICTIM BY  
OFFENDER
- +18 ADDITIONAL INCIDENT OF ATTEMPTED VAGINAL INTERCOURSE, ANAL SEX, OR  
ORAL SEX
- +24 ADDITIONAL INCIDENT OF VAGINAL INTERCOURSE, ANAL SEX, OR ORAL SEX

TABLE 2F  
 FELONY CLASS: PROPERTY - PART 1  
 (BURGLARY, CHECK/CREDIT CARD ABUSE, THEFT, FRAUD,  
 AUTO THEFT, POSSESSION OF STOLEN PROPERTY)

+ 3 BASE TIME

1. TYPE OF PROPERTY ACT

(More than one circumstance may apply)

The intent of the criminal act against property was:

+ 9 BURGLARY:

Knowingly entering or remaining unlawfully in a building with the intent to commit a crime against person or property.

+ 6 EMBEZZLEMENT/FRAUD: (INCLUDES UNLAWFUL ISSUANCE OF BANK CHECKS)

1. Fraudulent appropriation to one's own use or benefit of money entrusted to one's care -or-
2. Intentional perversion of truth or false representation of facts to obtain other's belongings.

+ 6 FORGERY:

1. Unauthorized signing of a name other than one's own name to any document -or-
2. Intent to defraud through any false making or material altering of any writing which, if genuine, might be of legal efficacy.

+ 3 AUTO THEFT:

1. Theft of a motor vehicle -or-
2. Riding in a motor vehicle known by offender to be stolen.

+ 6 2. VICTIM WAS VULNERABLE

The person(s) suffering damage or loss of personal property due to the offense was (were):

1. Someone on a fixed or limited income such as Social Security, retirement fund, unemployment compensation, disability payments, public assistance, etc. -or-
2. Someone with a physical or mental weakness due to age, mental retardation, physical handicap or infirmity.

3. DEGREE OF PLANNING

(At most one of the following circumstance applies)

+ 6 PLANNED:

Forethought, as distinguished from a spontaneous reaction to an opportune situation, was evident in the act. Evidence may include:

1. In Burglary:
  - A. Leaving and returning to scene -or-
  - B. Loitering at scene prior to act -or-
  - C. Prior discussion of intent -or-
  - D. Illegal entry by more than simple force.

2. In Auto Theft:
  - A. Obtaining keys prior to theft -or-
  - B. Using concealment to remove vehicle -or-
  - C. Using deceit to remove vehicle.
3. In Check/Credit Card Abuse:
  - A. Planned always applies, unless clear indication that act was spur of the moment.
4. In Possession of Stolen Property:
  - A. Planned always applies.
5. In Theft:
  - A. Partner coordination -or-
  - B. Prior discussion of theft -or-
  - C. A scheme of concealment -or-
  - D. Casing establishment, leaving and returning to scene, loitering at scene.

## +12 SOPHISTICATED:

A level of planning indicating a more criminally oriented or sophisticated mode of operation was evident in the act. Evidence may include:

1. In Burglary:
  - A. Use or possession of burglary tools -or-
  - B. Illegal entry through roof or above ground floor -or-
  - C. Burgling warehouses, jewelry stores, banks, furriers, or other large commercial establishments known to contain goods of high value, or large sums of money, -or-
  - D. Use of look-outs.
2. In Auto Theft:
  - A. Having keys copied -or-
  - B. Hot wiring -or-
  - C. Using tools.
3. In Non-Sufficient Funds (NSF):
  - A. Account(s) set up for fraudulent purposes -or-
  - B. Account(s) set up under fictitious name -or-
  - C. Account(s) set up with minimal funds and immediately overdrawn -or-
  - C. Unauthorized use of check protector.

In Forgery:

  - A. Use of stolen or false identification in addition to the forged instrument -or-
  - B. Unauthorized use of check protector -or-
  - C. Forgery on multiple accounts where all accounts belong to a single individual.
4. In Possession of Stolen Property:
  - A. Stolen goods possessed were taken from several different sources or persons -or-
  - B. Amount and type of goods are a clear indication of retail selling -or-

- C. Receiving stolen goods and paying for goods with marijuana/hashish.
5. In Theft:
- A. Knowledge of layout of premises and/or its business procedures necessary to execute theft -or-
  - B. Fraudulent appropriation to one's own use or benefit of money entrusted to one's care -or-
  - C. Intentional perversion of truth or false representation of facts in order to obtain another's belongings.

## +24 PROFESSIONAL:

The highest level of planning is indicated by a professional orientation in the mode of operation. Evidence may include:

1. In Burglary:
- A. Use of stolen vehicles or deceptively labeled vehicles to haul goods away -or-
  - B. Disabling alarm systems prior to entry -or-
  - C. Cracking safes -or-
  - D. Use of blue prints/maps -or-
  - E. Timed partner coordination in execution of steps necessary to commit burglary -or-
  - F. Leader or equal partner in a burglary ring.
2. In Auto Theft:
- A. Use of punch locks -or-
  - B. Use of tow trucks -or-
  - C. Theft of several vehicles -or-
  - D. Leader or equal partner in an auto theft ring.
3. In Check/Credit Card Abuse:
- For NSF Checks:
- A. Transferring of funds among accounts to create false impression of solvency (kiting) -or-
  - B. A leader or equal partner in a check/credit card ring.
- For Forgery Cases:
- A. Forgery on accounts belonging to two or more individuals -or-
  - B. Leader or equal partner in a forgery ring.
4. In Possession of Stolen Property:
- A. Fencing or wholesaling in stolen goods -or-
  - B. Receiving stolen goods and paying for goods with hard drugs.
5. In Theft:
- A. An extremely complicated scheme necessary to accomplish theft -or-
  - B. A leader or equal partner in a theft ring.

4. OBJECTIVE OF ACT AGAINST PROPERTY

(Exactly one of the following circumstances applies)

These circumstances identify the objective or intent of the act, regardless of whether the goods or services are actually obtained.

## + 0 TO OBTAIN GOODS FOR PERSONAL CONSUMPTION:

1. To obtain small amounts of goods for immediate personal use - alcohol, food, tobacco, essential clothing and miscellaneous items -or-
2. To obtain property or services valued at less than \$250 -or-
3. To obtain a motor vehicle for joyriding.

## + 3 TO OBTAIN RETAIL LEVEL GOODS:

1. To obtain goods saleable to an individual purchaser such as television, stereo, minor electrical appliance, check/credit card, auto parts, drugs, tools, etc. -or-
2. To obtain property or services valued at \$250-\$749.

## + 9 TO OBTAIN MIDDLE LEVEL GOODS

1. To obtain goods saleable to a retailer, such as large appliances, furniture, office equipment, weapons, etc. -or-
2. To obtain property or services valued at \$750-\$1499 -or-
3. To obtain a motor vehicle to travel outside the state or country.

## +15 TO OBTAIN WHOLESALE LEVEL GOODS

1. To obtain goods in wholesale quantities, such as warehouse goods, goods from large commercial establishments, jewelry stores, etc. -or-
2. To obtain property or services valued at \$1500 or more -or-
3. To obtain motor vehicle to strip for parts or sell.

+ 6 5. RESIDENTIAL THEFT

The goods were taken from inside a dwelling which was illegally entered. Dwellings include:

1. Motel rooms -or-
2. Hotel rooms -or-
3. Any private homes or apartments.

+ 6 6. VANDALISM

Any willful, malicious, purposeless destruction, defacement or vandalism of property.

NOTE: Destruction resulting from forced entry or ransacking for purpose of searching for goods or money is not vandalism.

7. HIGH SPEED CHASE

## + 6 HIGH SPEED CHASE - NO DAMAGE

A chase occurred in which vehicle was driven by offender in excess of speed limit to avoid apprehension.

+ 6 3. DAMAGE TO VEHICLE

A vehicle other than the offender's own was damaged:

1. In the criminal act -or-
2. As a result of the criminal act -or-
3. As a result of the offender's flight from the act or from pursuit by authorities.



FELONY CLASS: PROPERTY - PART II  
 USE THIS SECTION WHEN A VICTIM IS THREATENED OR INJURED  
 IN THE PROPERTY CRIME

+12 9. VICTIM CONFRONTED WITH THREAT/ASSAULT

This circumstance is present in the criminal act if a victim is actually confronted in the criminal act and physically assaulted or threatened with bodily harm or placed in danger of physical harm.

+12 10. VICTIM WAS PHYSICALLY/MENTALLY HANDICAPPED

A handicap (not the result of age) made the victim especially vulnerable. The victim was:

1. Mentally retarded -or-
2. Mentally ill -or-
3. Physically handicapped -or-
4. Pregnant -or-
5. Seriously ill.

11. VICTIM VULNERABLE BY AGE

(At most one of the following circumstances may apply)

Age made the victim especially vulnerable to the offender. The victim was:

- +12 13-15 OR 50-59 YEARS OLD
- +18 10-12 OR 60-69 YEARS OLD
- +24 6-9 OR 70-79 YEARS OLD
- +30 1-5 OR 80 YEARS OR OLDER

12. METHOD OF ACCOMPLISHING THE ACT

(Score all method(s) relied upon to accomplish the act)

+ 9 PHYSICAL FORCE/PSYCHOLOGICAL MANIPULATION/INTIMIDATION/COERCION

Offender's use or threat of use of feet, fists, hands or other body parts exclusive of any implement external to offender's body -or- offender used psychological manipulation, intimidation or coercion to accomplish the act.

+15 WEAPON OTHER THAN KNIFE OR FIREARM:

Any weapon other than a knife or firearm used by offender to threaten or injure. Includes toy firearms, air pistols, pellet guns, etc.

+18 KNIFE:

Offenders use of any weapon/implement consisting of a sharp blade fastened to a handle, or capable of inflicting cut or stab wounds.

+24 FIREARM:

Offenders use of a firearm: Any weapon from which a shot may be discharged by an explosion of gun powder. Commonly includes rifles, pistols, shotguns, etc.

13. INJURY TO VICTIM

(At most one circumstance may apply)

- + 6 MINOR INJURY:  
In the act, the principal victim received a physical injury requiring medical attention.
- +18 IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY OR DEATH:  
In the act, behavior was exhibited indicating an ability to inflict major/permanent injury or death. EXAMPLE: displayed firearm or other weapon displayed in close enough proximity to inflict injury.
- +24 RECEIVED MAJOR/PERMANENT INJURY:  
One of the following types of injury were inflicted:
  1. Life threatening injury -or-
  2. Injury threatening permanent loss/alteration of bodily functions -or-
  3. Psychological damage resulting (or threatening to result) in permanent loss of ability to function in normal capacity -or-
  4. Loss of limb or injury causing recognizable handicaps or permanent job disability -or-
  5. Permanent noticeable (facial) disfigurement -or-
  6. Any injury that is reasonably expected to continue throughout the victim's life.

14. MORE THAN ONE VICTIM THREATENED/INJURED

(At most one of the following circumstances may apply)

- + 3 MORE THAN ONE VICTIM THREATENED:  
In the act, an additional victim was verbally or physically threatened or abused.
- + 6 MORE THAN ONE VICTIM RECEIVED MINOR INJURY  
In the act, an additional victim received a minor injury.
- +18 MORE THAN ONE VICTIM PLACED IN IMMINENT DANGER OF RECEIVING A MAJOR/PERMANENT INJURY  
In the act, an additional victim was placed in imminent danger of receiving a major/permanent injury or death.
- +24 MORE THAN ONE PERSON RECEIVED MAJOR/PERMANENT INJURY  
In the act, an additional victim received a major/permanent injury.

15. VICTIM FORCED TO ANOTHER LOCATION

- +12 Victim was moved to a place where victim is not likely to be found at that time.

NOTE: For purposes of this aggravating circumstance, involuntary detainment alone does not constitute being "forced to another location".

16. NON-CONSENSUAL ABUSE BY OFFENDER

(Only the most serious sexual abuse occurring in the act applies)

Non-consensual sexual abuse is the touching or exposure of the genitals or breasts against the victim's wishes or against a victim incapable of consent by reason of age, infirmity or mental incapability.

Attempted sexual abuse involves an intent to commit some sexual abuse as evidenced by:

1. Verbal demands -or-
2. Attempted or actual removal of clothing -or- touching victim's genitals or breasts.

-and-

Substantial steps taken to carry out the sexual intent as evidenced by:

1. Use or threat of use of physical force or weapon -or-
2. Use or any mental coercion -or-
3. Forcing victim to another location -or-
4. Creating in the victim a well founded fear of injury.

## + 6 INDECENT EXPOSURE BY THE OFFENDER:

The offender exposed self to victim.

## + 9 ATTEMPTED SEXUAL FONDLING/EXPOSURE:

The offender attempted to fondle, touch, or expose the victim's genitals or breasts.

## +12 SEXUAL FONDLING/EXPOSURE:

Offender fondled, touched or exposed the victim's genitals or breasts.

## +18 ATTEMPTED VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX:

Offender attempted vaginal penetration, contact between mouth and genitals or contact with anus.

## +24 VAGINAL INTERCOURSE, ORAL SEX OR ANAL SEX

Offender's action involved actual vaginal penetration, or contact between mouth and genitals or contact with anus.

17. ADDITIONAL INCIDENTS OF NON-CONSENSUAL SEXUAL ABUSE OCCURRING DURING COMMISSION OF CURRENT OFFENSE

## + 6 ADDITIONAL INCIDENT OF INDECENT EXPOSURE BY THE OFFENDER

## + 9 ADDITIONAL INCIDENT OF ATTEMPTED SEXUAL FONDLING/EXPOSURE

## +12 ADDITIONAL INCIDENT OF SEXUAL FONDLING/EXPOSURE OF VICTIM BY OFFENDER

- +18 ADDITIONAL INCIDENT OF ATTEMPTED VAGINAL INTERCOURSE, ANAL SEX  
OR ORAL SEX
- +24 ADDITIONAL INCIDENT OF VAGINAL INTERCOURSE, ANAL SEX OR ORAL SEX

TABLE 2G  
 FELONY CLASS: DRUGS  
 (ALL DRUG OFFENSES)

Acts in felony class drugs are subject to treatment under only one of the following subclasses.

FELONY SUBCLASS: DRUG POSSESSION

Offender possessed or attempted to possess drugs in a quantity which could reasonably be used by the offender -and- there is no evidence the drugs were for sale.

+ 6 BASE TIME

+ 6 1. CONTROLLED SUBSTANCE

This circumstance applies if any of the drugs possessed are controlled substances. This excludes marijuana, cannabis sativa, hashish, and THC and prescription drugs which are not controlled substances.

+ 6 2. CHEMICAL DEPENDENCY (DRUGS/ALCOHOL)

Offender is unable to function without frequent intake of alcohol/drugs, or is unable to function at all, as evidenced by documentation.

FELONY SUBCLASS: DRUG SALES

Any actual sale or attempted sale of drugs -or- possession of drugs or attempted to possess drugs in quantities exceeding an amount that could reasonably be used by the offender.

+12 BASE TIME

+12 1. CONTROLLED SUBSTANCE

This circumstance applies if any drugs involved in selling are controlled substances. This excludes marijuana, cannabis sativa, hashish, THC and prescription drugs which are not controlled substances.

2. LEVEL OF SELLING

(At most one of the following circumstances applies)

+12 MIDDLE LEVEL:

Evidence of middle level selling includes:

1. Sale of drugs in bulk form -or-
2. Apprehension of offender with drugs in bulk form -or-
3. Offender's possession of drug sale equipment -or-
4. Possessing/selling/or attempting to obtain drugs with street value of \$5,000 to \$15,000.

+30 MAJOR LEVEL:

Evidence of major level selling/dealing includes:

1. Offender receiving shipments of drugs from out-of-state or out-of-country sources -or-
2. Sale of drugs in bulk form -or-
3. Possessing/selling/or attempting to obtain drugs with street value in excess of \$15,000 -or-
4. Manufacturing/refining drugs.

TABLE 3  
ELIMINATION OF PRIOR RECORD ENTRIES OVER TIME

Type of Prior Record	Number of Years in Community Between Convictions or Parole Revocations Necessary to Eliminate Convictions or Parole Revocations from Guideline Consideration
Murder	Life
Manslaughter	10 Years
Sex Offense	10 Years
Assaults	10 Years
Robbery	10 Years
Property Offenses	5 Years
Drug Offenses	5 Years
Other Offenses	5 Years

TABLE 4  
NUMBER OF MONTHS ADDED FOR EACH PRIOR RECORD ENTRY  
BY ADMISSION FELONY CLASS\*

PRIOR RECORD CLASS	ADMISSION FELONY CLASS							
	MURDER	SEX	ROBBERY	ASSAULT	MANSL.	PROP.	DRUG	OTHER
MURDER	96	48	48	48	48	18	24	18
SEX OFFENSE	24	24	12	12	12	6	6	6
ROBBERY	24	12	24	12	12	6	6	6
ASSAULT	24	12	12	24	12	6	6	6
MANSLAUGHTER	48	12	12	12	36	12	12	12
PROPERTY OFFENSE	6	6	6	6	6	6	6	6
DRUG OFFENSE	6	6	6	6	6	6	6	6
OTHER	6	6	6	6	6	6	6	6

\*NOTE: Each column represents the felony class of the current admission. Each figure in a column is the number of months added for each entry within the prior record classes.

Prior record time shall not exceed act severity time when both the admission felony class and all prior record classes are property or drug offenses.

Other offenses include felony classes Felon in Possession of a Firearm, Escape, and all other types of criminal acts not included in the previous felony classes.

TABLE 5

ABOVE/BELOW GUIDELINE VARIATION  
BY GUIDELINE TERM

GUIDELINE TERM (in months)	ABOVE/BELOW GUIDELINE VARIATION (in months)
12 to 35	3
36 to 59	6
60 to 83	9
84 to 107	12
108 to 131	15
132 to 155	18
156 to 179	21
180 to 203	24
204 to 227	27
228 to 251	30
252 to 275	33
276 to 299	36
300 to 323	39
324 to 347	42
348 to 371	45
372 to 395	48
396 to 419	51
420 to 443	54
444 to 467	57
468 to 491	60
492 to 515	63
516 to 539	66
540 to 563	69
564 to 587	72
588 to 611	75
612 to 635	78
636 to 659	81
660 to 683	84
684 to 707	87
708 to 731	90
732 to 755	93
756 to 779	96
780 to 803	99
804 to 827	102
828 to 851	105
852 to 875	108
876 to 899	111
900 to 923	114
924 to 947	117
948 to 969	120

Guideline Range = Guideline term + or - Guideline Variation



STATE OF WASHINGTON  
BOARD OF PRISON TERMS AND PAROLES

Guidelines are an aid to consistent decision making, rather than determinate rules for fixing minimum terms. Therefore, it is expected that Board panels will go outside the guideline range whenever they encounter atypical circumstances in a case.

For these atypical cases, explicit reasons will be given to declare why the case is an exception to the general rule. A list of circumstances which may result in a decision outside the guidelines is given. This list is not complete, since there undoubtedly are additional reasons for outside guideline decisions.

Prepared by:  
Management Information Section

Effective January 1979  
Amended Effective May 1, 1980

REASONS FOR OUTSIDE GUIDELINE DECISIONS

NAME \_\_\_\_\_

DSHS # \_\_\_\_\_

OFFENDER CHARACTERISTICS:

OFFENSE CIRCUMSTANCES:

AGGRAVATING

AGGRAVATING

1. OFFENDER'S JUVENILE RECORD INDICATES A MORE SERIOUS PRIOR INVOLVEMENT IN CRIMINAL ACTIVITIES THAN REFLECTED IN THE ADULT PRIOR RECORD.
2. OFFENDER'S POTENTIAL FOR VIOLENCE IS NOT LIKELY TO BE APPRECIABLY LESSENED BY THE END OF THE GUIDELINE TERM OF CONFINEMENT.
3. OFFENDER'S POTENTIAL FOR COMMITTING NON-VIOLENT CRIMES IS NOT LIKELY TO BE APPRECIABLY LESSENED BY THE END OF THE GUIDELINE TERM OF CONFINEMENT.
4. OFFENDER'S ADULT RECORD OF FELONY CONVICTIONS UNDERSTATES OFFENDER'S DEGREE OF CRIMINAL ORIENTATION (EXTENSIVE HISTORY OF PRIOR MISDEMEANOR CONVICTIONS, VIOLATIONS OF PROBATION, ETC.)
5. JUDGE'S RECOMMENDATIONS IN SENTENCING SUGGEST MINIMUM TERM HIGHER THAN THE GUIDELINE TERM.
6. OFFENDER HAS PARTICIPATED IN A COURT-ORDERED TREATMENT PROGRAM FOR THE COMMITMENT OFFENSES, BUT WAS FOUND UNSAFE TO BE AT LARGE.
7. OFFENDER HAS PARTICIPATED IN A COURT-ORDERED TREATMENT PROGRAM FOR THE COMMITMENT OFFENSES, BUT IMMEDIATELY RE-OFFENDED WITH A CRIME SIMILAR TO THE COMMITMENT OFFENSES.
8. OFFENDER HAS PARTICIPATED IN A COURT-ORDERED TREATMENT PROGRAM FOR THE COMMITMENT OFFENSES, BUT MADE NO GOOD FAITH EFFORT TO COMPLETE PROGRAM.
9. OFFENDER FAILED TO TAKE ADVANTAGE OF REPEATED OPPORTUNITIES TO REHABILITATE SELF.
10. OFFENDER FAILED TO MAKE RESTITUTION DESPITE OPPORTUNITIES TO DO SO.

24. OFFENDER USED OR THREATENED TO USE VIOLENCE IN EXCESS OF THAT NECESSARY TO CARRY OUT THE CRIME (BRUTALITY).
25. OFFENDER'S CRIMINAL BEHAVIOR CLEARLY INDICATED AN INTENT TO INFLICT A MAJOR/PERMANENT INJURY.
26. OFFENDER RESISTED ARREST WITH A WEAPON OR ENDANGERED/INJURED OTHERS BY RESISTING ARREST.
27. OFFENDER RECRUITED OR COERCED OTHERS INTO COMMITTING OFFENSES.
28. OFFENDER'S RELATION TO PARTNERS INDICATES A GREATER DEGREE OF CULPABILITY THAN REFLECTED BY THE GUIDELINES.
29. OFFENDER EXHIBITED ASSAULTIVE OR DISRUPTIVE BEHAVIOR WHILE IN CUSTODY PRIOR TO COMMITMENT TO STATE INSTITUTION.
30. OFFENSE INVOLVES FELONY BEHAVIOR NOT CONSIDERED IN THE GUIDELINES.
31. OFFENDER'S FAILURE TO COOPERATE WITH LAWFULLY CONSTITUTED AUTHORITIES INDICATES A CONTINUED CRIMINAL ORIENTATION.
32. OFFENDER PREYED UPON THE VICTIM FROM A CONCEALED POSITION (AMBUSHED).
33. OFFENDER EXHIBITED BIZARRE OR DEVIANT SEXUAL BEHAVIOR IN EXCESS OF THAT INHERENT IN THE OFFENSE.

MITIGATING

MITIGATING

11. COMMUNITY-BASED TREATMENT PROGRAM HAS BEEN RECOMMENDED FOR THE OFFENDER.
12. STRONG POSITIVE COMMUNITY RESOURCES AND RELATIONSHIPS ARE AVAILABLE TO THE OFFENDER.
13. OFFENDER HAS ABSOLUTELY NO PRIOR CONTACTS WITH ANY LAW ENFORCEMENT AUTHORITIES.
14. OFFENDER POSES NO THREAT TO SOCIETY.
15. OFFENDER IS ESPECIALLY YOUNG.
16. OFFENDER IS ESPECIALLY OLD.
17. OFFENDER IS MENTALLY RETARDED, PHYSICALLY WEAK, TERMINALLY OR SERIOUSLY ILL, OR SENILE.
18. OFFENDER HAS EMOTIONAL/PSYCHIATRIC PROBLEMS WHICH RENDER THE OFFENDER UNABLE TO COPE WITH PRISON ENVIRONMENT.
19. OFFENDER NEEDS TREATMENT FOR SEVERE MENTAL/PHYSICAL PROBLEMS WHICH REQUIRE FACILITIES NOT AVAILABLE WITHIN THE INSTITUTION.
20. JUDGE'S RECOMMENDATIONS IN SENTENCING SUGGEST A MINIMUM TERM LOWER THAN THE GUIDELINE TERM.
21. OFFENDER HAS SPENT TIME IN A COURT-ORDERED TREATMENT PROGRAM FOR THE COMMITMENT OFFENSES.
22. OFFENDER HAS MADE SUBSTANTIAL PROGRESS IN REHABILITATING SELF SINCE ORIGINALLY CONVICTED.
23. OFFENDER'S ADULT RECORD OF FELONY CONVICTIONS OVERSTATES THE OFFENDER'S DEGREE OF CRIMINAL ORIENTATION.

34. OFFENDER'S RELATIONSHIP TO PARTNERS INDICATES A LESSER DEGREE OF CULPABILITY THAN REFLECTED BY THE GUIDELINES (E.G., NAIVE FOLLOWER, UNAWARE OF PARTNER'S INTENTIONS OR ACTIONS, ETC.)
35. OFFENDER MADE COMPLETE RESTITUTION FOR OFFENSE.
36. OFFENDER VOLUNTARILY TURNED SELF IN TO LAW ENFORCEMENT AUTHORITIES IMMEDIATELY AFTER THE CRIME.
37. OFFENDER ACTED UNDER EXTREME MENTAL OR PHYSICAL DURESS.
38. OFFENDER COOPERATED WITH AUTHORITIES.
39. THERE IS INFORMATION THAT THE VICTIM IS IN FAVOR OF LENIENCY FOR THIS CASE.
40. THERE IS INFORMATION THAT THE COMMUNITY IS IN FAVOR OF LENIENCY FOR THIS CASE.
41. OFFENDER'S CRIMINAL BEHAVIOR CLEARLY INDICATED AN INTENT TO INFLICT ANY INJURY.
42. OFFENDER HAS SPENT TIME INCARCERATED FOR THIS OFFENSE IN ANOTHER JURISDICTION OR IN COUNTY JAIL.

## SPECIFIC OFFENSE CIRCUMSTANCES

MURDER:

43. MORE THAN ONE VICTIM KILLED OR INJURED.
44. VICTIM IS PUBLIC OFFICIAL MURDERED AS A RESULT OF OFFICE OR IN THE LINE OF DUTY.

MANSLAUGHTER:

45. MORE THAN NEGLIGENCE ON THE OFFENDER'S PART CAUSED THE VICTIM'S DEATH.

SEXUAL MOLESTATION:

46. COMMERCIAL EXPLOITATION OF VICTIM INVOLVED.
47. OFFENDER NON-SEXUALLY ASSAULTED PERSON(S) IN ADDITION TO THE PERSON(S) SEXUALLY MOLESTED.
48. OFFENDER COERCED VICTIM THROUGH THREATS AGAINST A THIRD PARTY (E.G., CHILD OF VICTIM) OR THREATS AGAINST PROPERTY OR RIGHTS OF VICTIM.
49. OFFENDER USED FORCE TO GAIN ACCESS TO THE VICTIM (DOMESTIC INVASION).
50. OFFENDER USED RUSE OR DECEPTION TO GAIN ACCESS TO THE VICTIM.

ROBBERY:

51. OFFENDER USED FORCE TO GAIN ACCESS TO THE VICTIM (DOMESTIC INVASION)
52. OBJECTIVE OF ROBBERY WAS TO OBTAIN GOODS FOR IMMEDIATE PERSONAL CONSUMPTION (E.G., FOOD, ALCOHOL, MISCELLANEOUS ITEMS) ONLY.
53. OBJECTIVE OF ROBBERY WAS TO GAIN DRUGS IN EXCESS OF PERSONAL CONSUMPTION/NEEDS.
54. OBJECTIVE OF ROBBERY WAS TO OBTAIN WEAPONS/EXPLOSIVES.
55. THE ROBBERY INVOLVED EXTORTION.

BURGLARY:

56. BURGLARY INVOLVED SOPHISTICATION IN EXCESS OF PLANNING--PROFESSIONALLY EXECUTED BURGLARY.
57. THERE IS EVIDENCE THAT THE OFFENDER BELIEVED SELF TO HAVE LEGITIMATE CLAIM TO GOODS INVOLVED IN BURGLARY.
58. PREDATORY BURGLARY--OFFENDER KNOWINGLY BURGLARIZED A VULNERABLE VICTIM (E.G., A VICTIM VULNERABLE BY REASON OF AGE, INFIRMITY, OR ECONOMIC STRAIGHTS).
59. OFFENDER BELIEVED SELF TO HAVE "COLOR OF RIGHT" TO ENTER PREMISES.

99. ADDITIONAL REASONS:

ASSAULT:

60. ASSAULT IS A RESISTANCE OF ARREST.
61. VICTIM IS A PUBLIC OFFICIAL ASSAULTED IN THE LINE OF DUTY OR AS A RESULT OF PUBLIC OFFICE (EXCLUDING RESISTING ARREST).
62. THEFT OF PROPERTY/EXTORTION ALSO INVOLVED IN THE ASSAULT.
63. OFFENDER ACTED WITH NO PROVOCATION FROM THE VICTIM.
64. VICTIM PROVOKED OFFENDER INTO ASSAULT.
65. OFFENDER GAINED ACCESS TO VICTIM THROUGH FORCE, ILLEGAL ENTRY, OR RUSE.
66. ASSAULT INVOLVED CHILD ABUSE.

THEFT:

67. THEFT INVOLVED DRUGS IN EXCESS OF IMMEDIATE PERSONAL CONSUMPTION/USE.
68. THEFT INVOLVED WEAPONS, EXPLOSIVES, ETC.
69. THEFT OF GOODS OR MATERIALS RESULTED IN A PUBLIC HAZARD.

AUTO THEFT:

70. WEAPONS WERE FOUND IN THE STOLEN VEHICLE.
71. DRUGS WERE FOUND IN THE STOLEN VEHICLE.
72. STOLEN PROPERTY WAS FOUND IN THE STOLEN VEHICLE.
73. OFFENDER IS PART OF AN AUTO THEFT RING.

CHECK/CREDIT CARD ABUSE:

74. PREDATORY THEFT--OFFENDER KNOWINGLY EXPLOITED A VULNERABLE VICTIM (VICTIM WAS VULNERABLE BY REASON OF AGE, INFIRMITY, ECONOMIC STRAIGHTS, ETC.).

DRUGS:

75. OFFENDER WAS SELLING DRUGS TO MINORS.
76. OFFENDER WAS INFLUENCING OTHERS TO USE DRUGS.
77. OFFENDER POSSESSED A WEAPON AT TIME OF ARREST OR DURING DRUG TRANSACTION.
78. OFFENDER WAS DEALING IN DRUGS IN RETURN FOR STOLEN PROPERTY/WEAPONS.
79. OFFENDER WAS ACCEPTING EARNINGS OF A PROSTITUTE IN PAYMENT FOR DRUGS.

FELON IN POSSESSION OF FIREARM:

80. OFFENDER POSSESSED MORE THAN ONE WEAPON - OFFENDER WAS DEALING IN WEAPONS.

STATE OF WASHINGTON  
BOARD OF PRISON TERMS AND PAROLES

GUIDELINES FOR RECONSIDERATION OF  
LENGTH OF CONFINEMENT

Effective July 1, 1979

Amended:

May 1, 1980

February 1, 1981

Prepared by:  
Management Information Section

GUIDELINES FOR RECONSIDERATION OF LENGTH OF CONFINEMENT

In order to promote consistent exercise of discretion and effect fair and equitable decision-making, without jeopardizing public safety or removing individual case consideration, the Board has established guidelines for the reconsideration of length of confinement. In this section, the term "guidelines" refers to the guidelines for the reconsideration of length of confinement.

1. The guidelines modify length of confinement based upon probability statements concerning parole performance for various groups of offenders.
2. The guidelines shall apply to all offenders receiving minimum terms under the provisions of Guidelines for Fixing of Minimum Terms. Decisions concerning offenders admitted under circumstances not specifically stated in the guidelines shall be handled on a case-by-case basis.
3. Decisions outside the guidelines may be made by panels of the Board, provided that written reasons for these decisions are given. Written reasons need not be given if the decision falls within the guidelines.
4. When the guidelines indicate a length of confinement which is less than the mandatory minimum term, the mandatory minimum term will take precedence.
5. The Board shall review the guidelines six months after adoption and at least annually thereafter, and may revise or modify the guidelines based upon appropriate new information.
6. The Board shall disclose to the offender all adverse information used to determine the guideline for reconsideration of length of confinement.

## GUIDELINES FOR RECONSIDERATION OF LENGTH OF CONFINEMENT

## Washington State Board of Prison Terms and Paroles

I. DEFINING PAROLE PERFORMANCE

Parole performance, which is defined as an offender's status in the criminal justice system after 18 months of parole supervision, is divided into three categories as follows:

- A. No Violations - During the 18 month follow-up period, the offender was not guilty of violating parole conditions.
- B. Misdemeanor-level/Technical Violations - During the 18 month follow-up period, the offender was found guilty of misdemeanor-level or technical violation(s) of parole conditions only.
- C. Felony Violations - During the 18 month follow-up period, the offender was found guilty of felony-level violation(s) or felony offense(s).

II. DEFINING PROBABILITY STATEMENTS CONCERNING PAROLE PERFORMANCE

A probability statement is an estimate of the likelihood of the occurrence of an event. A probability statement concerning parole performance is, therefore, an estimate of the likelihood of an offender having a specific parole performance.

These probability statements are functions of the offender's group Public Safety Score (PS Score) and the associated proportions of the three types of parole performance. The proportions are derived for offenders within each offender group having identical PS Scores.

A. Offender Groups

Under these guidelines, offenders are classified into nine offender groups based upon minimum term felony class, sex of the offender, and type of admission (see Table 1).

B. Public Safety Scores (PS Scores)

For each offender group, statistical analyses have demonstrated that various attributes of offenders are related to parole performance. In these guidelines, the presence of an attribute is a positive trait related to no violations. The Public Safety Score (PS Score) is the total number of attributes possessed by an offender. Within each offender group, offenders with high scores have higher probabilities of no violations than those with low scores. Exhibits 1A through 1F present the attributes for the offender groups.

C. Parole Performance Proportions

For a given PS Score within an offender group, the probability statements for each parole performance are based upon the proportions of offenders actually exhibiting that performance.

When a current offender is said to have a certain probability of a specific parole performance, it is to be understood that this probability is numerically equal to the proportion of all like offenders who have actually exhibited that performance (i.e., the behavior of offender groups in the analysis sample is used to estimate the probable behavior of current offender groups).

Tables 2A through 2I present the PS Scores and the associated probabilities of parole performances for each offender group.

III. GUIDELINE RULES AND PROCEDURES

The primary concern of the Board is public safety. The Board is, however, cognizant of the high cost of prolonged incarceration to the public and its potentially negative impact on offenders. Therefore, the Board has elected to reconsider the length of confinement for certain offenders, while minimizing the threat to public safety, by using information predictive of their likelihood of re-offending after release. Thus, the greater the likelihood of no parole violation, the greater the potential for reduction in length of confinement. Conversely, as the likelihood of felony violation increases, the potential for reduction decreases. Furthermore, the Board has elected to consider larger reductions in length of confinement for property offenders than for offenders convicted of more serious offenses (e.g., Murder 2, Assault, Sexual Molestation, etc.).

The guideline rules and the procedures for calculating reductions in length of confinement are presented in Section A.

A. Rules For Calculation of Guideline Reduction of Length of Confinement (In Months)

- 1. Potential Guideline Reduction. Equation 1 presents the formula for calculation of the offender's potential guideline reduction in length of confinement (i.e., the largest reduction in length of confinement for which an offender is eligible under these guidelines).

Equation 1

$$\text{Potential Guideline Reduction} = \left[ \begin{array}{c} \text{Percent} \\ \text{Reduction} \\ \text{(Tables 2A-I)} \end{array} \right] \times \left[ \begin{array}{c} \text{Two-thirds} \\ \text{of Minimum} \\ \text{Term} \end{array} \right]$$

- 2. Guideline Adjustment. Equation 2 presents the formula for calculating the guideline adjustment to a minimum term.

Equation 2

$$\text{Guideline Adjustment} = \left[ \begin{array}{c} \text{Potential} \\ \text{Guideline} \\ \text{Reduction} \end{array} \right] + \left[ \begin{array}{c} \text{"Good Time"} \\ \text{Credits} \\ \text{Granted} \end{array} \right]$$

- 3. Guideline Length of Confinement. Equation 3 presents the formula for calculating an offender's length of confinement under these guidelines.

Equation 3

$$\text{Guideline Length of Confinement} = \left[ \begin{array}{c} \text{Minimum} \\ \text{Term} \end{array} \right] - \left[ \begin{array}{c} \text{Guideline} \\ \text{Adjustment} \end{array} \right]$$

- 4. Earliest Possible Release Date (EPRD). Equation 4 presents the formula for calculating an offender's EPRD.

Equation 4

$$\text{EPRD} = \left[ \begin{array}{c} \text{Time} \\ \text{Start} \end{array} \right] + \left[ \begin{array}{c} \text{Guideline} \\ \text{Length of} \\ \text{Confinement} \end{array} \right]$$



B. Application of Rules for Calculation of Reduction of Length of Confinement

The following two examples illustrate the application of the preceding equations:

Example 1: Offender A receives a minimum term of 36 months for an Assault II conviction. Due to his large number of infractions, he is granted only six months "good time" credits (out of a maximum of 12 months).

Offender A has a PS Score of 16.5 which is associated with a 84% chance of no violation and an 8% chance of felony violation which calls for a 24% reduction (see Table 2A). Applying the prior equations, offender A's projected term of confinement is summarized below:

- a. Minimum Term = 36 months
- b. "Good Time" Credits Granted = 6 months
- c. Person Offender Reduction = 24% (Table 2A)
- d. Potential Guideline Reduction = 6 months (Equation 1)
- e. Guideline Adjustment = 12 months (Equation 2)
- f. Guideline Length of Confinement = 24 months (Equation 3)

Example 2: Offender B receives a minimum term of 36 months for an Assault II conviction. He is granted all of the "good time" credits permitted by statute (1/3 of the minimum term--12 months).

Offender B has a PS Score of 16.5 which is associated with a 84% chance of no violation and an 8% chance of felony violation which calls for a 24% reduction (see Table 2A). Applying the prior equations, Offender B's projected term of confinement is summarized below:

- a. Minimum Term = 36 months
- b. "Good Time Credits Granted = 12 months
- c. Person Offender Reduction = 24% (Table 2A)
- d. Potential Guideline Reduction = 6 months (Equation 1)
- e. Guideline Adjustment = 18 months (Equation 2)
- f. Guideline Length of Confinement = 18 months (Equation 3)

C. Review of Guideline Adjustment

1. Review Procedure

One month prior to the Earliest Possible Release Date (EPRD) an authorized panel of the Board will administratively review an offender's case and determine whether or not to grant the guideline adjustments.

The following documents are required by the Parole Board at that time:

- a. Progress Report
- b. Preparole Investigation
- c. Certification of "Good Time" Credits
- d. Public Safety Score - Part II

2. Guideline Decisions

At the review, the guideline decision to be considered by the Board is to grant or not grant the offender the guideline adjustment.

a. Within Guideline Decisions

If the adjustment granted by the Board results in a length of confinement that is within 30 days of the guideline length of confinement, the decision is within the guidelines.

b. Outside Guideline Decisions

If the adjustment granted by the Board results in a length of confinement that varies by more than 30 days of the guideline length of confinement, the decision is outside of the guidelines.

It is expected that Board panels will go outside the guidelines whenever they encounter atypical circumstances. Explicit written reasons for the decision will be given.

c. Limitations

There will be an automatic forfeiture of the guideline adjustment if the offender has been found guilty of an infraction at a disciplinary hearing or if the offender has been convicted of another felony committed during this incarceration period.

TABLE 1  
CONDITIONS FOR GROUP MEMBERSHIP

Washington State Register, Issue 85-04  
WSR 85-04-001

OFFENDER GROUP	SEX OF OFFENDER	TYPE OF ADMISSION	MINIMUM TERM FELONY CLASS*	OFFENSE LEADING TO ADMISSION
1. Homicide/Assault/Sex	Male	Court Commitment	Murder II Manslaughter Sexual Molestation Assault	Murder II Manslaughter I, II All Sex Offenses Assault I, II Felon in Possession of Fire-arm
2. Robbery	Male	Court Commitment	Robbery	Robbery I, II
3. Property	Male	Court Commitment	Property	Burglary I, II, Theft I, II, Possession of Stolen Property I, II, Forgery, Uttering a Forged Instrument, Unlawful Issuance of Bank Checks, Credit Card Forgery, Auto Theft
[571]				
4. Drugs	Male	Court Commitment	Drugs	Sale of Controlled Substances for Profit; Sale of Heroin for Profit; Sale, Delivery or Possession of Drug With Intent to Sell
5. Parole Violator	Male	Parole Violators revoked with no new commitment offense	All Classes	N/A
6. Women - Person Offense	Female	Court Commitment	Classes 1 and 2	All Offenses in Class.
7. Women - Property Offenses	Female	Court Commitment	Class 3	All Offenses in Class.
8. Women - Drug Offenses	Female	Court Commitment	Class 4	All Offenses in Class.
9. Women - Parole Violators	Female	Parole Violator	All Classes	N/A

\*Note: See Guideline for Fixing of Minimum Terms for explanation of Minimum Term Felony Class. If an offender has been convicted for more than one offense at this admission, offender is classified according to the offense with the highest act severity time (see Guideline for Fixing of Minimum Terms for explanation of highest act time).

OFFENDER GROUP 1: HOMICIDE/ASSAULT/SEX OFFENSES (Male)\*

INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSIONS ITEMS ONLY

ITEM

A1 JUVENILE RECORD (Admissions Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever been committed to a state or federal juvenile institution?"

Code

- 0.0 Offender was committed to a juvenile institution
- 1.0 Offender was never committed to a juvenile institution OR no indication in record of ever being committed to a juvenile institution.

A2 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "What is the extent of the offender's illegal drug/controlled substance usage?" That is, identify the one most dangerous substance the offender has ever illegally used. If, for example, the offender has illegally used opiates and marijuana, enter the code for opiates (the substances are ranked in order of decreasing severity).

Code

- 0.0 Opiates (Opium, morphine, codeine, heroin, demural, dilaudid, methodone, metopon, laudane, laudanum, pantopon, perigoric)
- 2.0 Drugs/Substances Other than opiates, marijuana or hashish
- 4.0 Marijuana or Hashish OR evidence of illegal drug use, but type of drugs cannot be identified.
- 6.0 No illegal drug use OR no indication in record of illegal drug use.

\*Minimum Term Felony Classes: Murder II, Manslaughter, Sexual Molestation, and Assault.

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OFFENDER GROUP 1: HOMICIDE/ASSAULT/SEX OFFENSES (MALE)

ITEMA3 EMPLOYMENT RECORD DURING TWO YEARS PRIOR TO ADMISSION (Admission Summary, Pre-Sentence Report)

Indicate the offender's employment record during the two years prior to this admission. This includes work release, but excludes those under prison commitments while on work release.

Code

- 0.0 Verified information that offender has never had a job OR there is no verifiable information indicating offender had ever had a job.
- 2.0 Verified information that offender had been employed before the two year period prior to this admission, but has not had a job during the two years prior to admission OR there is verifiable information indicating that the offender has previously been employed but no verifiable information indicating any employment during the two years prior to admission.
- 4.0 Offender had verifiable employment during the two year period prior to admission -and- the offender was unemployed for at least one continuous period of six months or more.
- 6.0 Offender had verifiable employment during two years prior to admission -and- the offender was never continuously unemployed for six months or more during this period.

A4 ASSESSMENT OF PERSONAL SUPPORT - LIVING ARRANGEMENT(Admission summary, Pre-Sentence Report)

Prior to this admission the offender was living in the community:

Code

- 0.0 Alone OR No Verifiable Indication of Prior Living Arrangement in Record
- 0.5 With Siblings or Friends
- 1.0 With Parents or Relatives Other Than Parents or Siblings
- 1.5 With Spouse and/or Children

OFFENDER GROUP I: HOMICIDE/ASSAULT/SEX OFFENSES (MALE)

ITEM

A5 TOTAL FELONY CONVICTIONS (Pre-Sentence Report, FBI Rap Sheet)

Indicate the total number of adult felony convictions received by the offender (include both Washington State and other jurisdiction felony conviction(s).

Adult felony convictions are convictions for crimes:

Committed by a person age 18 or older at the time of the convictions -or- Committed by a person under age 18 but treated as an adult by the criminal justice system.

-AND-

Resulting in one or more years of probation (suspended or deferred sentence) -or- Resulted in a sentence to an adult correctional institution.

Include all felony convictions prior to this admission and all convictions leading to the current commitment regardless of sentence structure.

Code

- 0.0 Five or more felony convictions
- 0.5 Four felony convictions
- 1.0 Three felony convictions
- 1.5 Two felony convictions
- 2.0 One felony conviction

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OFFENDER GROUP 1: HOMICIDE/ASSAULT/SEX (MALE)

CURRENT INCARCERATION ITEMS ONLYITEMI1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

The question to be answered here is: "Has the offender received any infraction reports during the current period of incarceration? If so, indicate the most serious type of infraction."

Code

0.0 One or more of the following "serious" infractions:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

0.5 One or more "general infractions (any infraction not included in above listing).

1.0 No infractions.

OFFENDER GROUP 1: HOMICIDE/ASSAULT/SEX (MALE)

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I2 EMPLOYMENT/EDUCATION PROGRAM AT RELEASE/WORK-TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports, Pre-Release Investigation Reports)

Enter the code which best describes the offender's verified employment/education program release and participation in a work/training release program.

Code

- 0.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 0.5 Employment/education program upon release has not been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 1.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).
- 1.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 2.0 Employment/education program upon release has been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 2.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).



TABLE 2A

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

HOMICIDE/ASSAULT/SEX OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	47.6%	31.1%	21.3%	--
0.5	46.4	30.4	23.2	--
1.0	45.2	29.7	25.1	--
1.5	44.0	29.0	27.0	--
2.0	42.8	28.3	28.9	--
2.5	41.6	27.6	30.8	--
3.0	40.4	26.9	32.7	--
3.5	39.2	26.2	34.6	--
4.0	38.0	25.5	36.5	--
4.5	36.8	24.8	38.4	--
5.0	35.6	24.1	40.3	--
5.5	34.4	23.4	42.2	--
6.0	33.2	22.7	44.1	--
6.5	32.0	22.0	46.0	--
7.0	30.8	21.3	47.9	--
7.5	29.5	20.6	49.8	--
8.0	28.4	19.9	51.7	3%
8.5	27.2	19.2	53.6	4
9.0	26.0	18.5	55.5	5
9.5	24.8	17.8	57.4	6
10.0	23.6	17.1	59.3	8
10.5	22.4	16.4	61.2	9
11.0	21.2	15.7	63.1	10
11.5	20.0	15.0	65.0	11
12.0	18.8	14.3	66.9	13
12.5	17.6	13.6	68.8	14
13.0	16.4	12.9	70.7	15
13.5	15.2	12.2	72.6	16
14.0	14.0	11.5	74.5	18
14.5	12.8	10.8	76.4	19
15.0	11.6	10.1	78.3	20
15.5	10.4	9.4	80.2	21
16.0	9.2	8.7	82.1	23
16.5	8.0	8.0	84.0	24
17.0	6.8	7.3	85.9	25
17.5	5.6	6.6	87.8	26
18.0	4.4	5.9	89.7	27
18.5	3.2	5.2	91.6	29
19.0	2.0	4.5	93.5	30
19.5	0.8	3.8	95.4	31
20.0	0.0	3.1	97.3	32

OFFENDER GROUP 2: ROBBERY OFFENSES (MALE)\*INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETSADMISSION ITEMS ONLYITEMA1 JUVENILE RECORD (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever been committed to a state or federal juvenile institution?"

Code

- 0.0 Offender was committed to a juvenile institution
- 2.0 Offender was never committed to a juvenile institution OR no indication in record of ever being committed to a juvenile institution.

A2 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "What is the extent of the offender's illegal drug/controlled substance usage?" That is, identify the one most dangerous substance the offender has ever illegally used. If, for example, the offender has illegally used opiates and marijuana, enter the code for opiates (the substances are ranked in order of decreasing severity).

Code

- 0.0 Opiates (Opium, morphine, codeine, heroin, herogyn, demural, dilaudid, methadone, metopon, laudane, laudanum, pantopon, perigroric)
- 1.0 Drugs/Substances Other than opiates, marijuana or hashish
- 2.0 Marijuana or Hashish OR evidence of illegal drug use, but type of drugs cannot be identified
- 3.0 No illegal drug use OR no indication in record of illegal drug use.

\*Minimum Term Felony Class: Robbery.

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## OFFENDER GROUP 2: ROBBERY OFFENSES (MALE)

ITEMA3 WEAPON IN OFFENSE (Pre-Sentence Report)

The question to be answered here is: "Were there any weapons involved (use, threat or possession) in the offender's criminal act(s) or felony violation?" Note: It does not matter whether the offender OR his partners possessed or used the weapon(s)!

Code

- 0.0 Weapon(s) involved in offense
- 3.0 No weapons involved in offense

A4 ASSESSMENT OF PERSONAL SUPPORT - LIVING ARRANGEMENT (Admission Summary, Pre-Sentence Report)

Prior to this admission the offender was living in the community:

Code

- 0.0 Alone OR No Verifiable indication of prior living arrangement in record
- 0.5 With siblings or friends
- 1.0 With parents or relatives other than parents or siblings
- 1.5 With spouse and/or children

A5 TOTAL FELONY CONVICTIONS (Pre-Sentence Report, FBI Rap Sheet)

Indicate the total number of adult felony convictions received by the offender (include both Washington State and other jurisdiction felony conviction(s)).

Adult felony convictions are convictions for crimes:

Committed by a person age 18 or older at the time of the convictions -or- Committed by a person under age 18 but treated as an adult by the criminal justice system.

-AND-

Resulting in one or more years of probation (suspended or deferred sentence) -or- Resulted in a sentence to an adult correctional institution.

Include all felony convictions prior to this admission and all convictions leading to the current commitment regardless of sentence structure.

Code

- 0.0 Five or more felony convictions
- 0.5 Four felony convictions
- 1.0 Three felony convictions
- 1.5 Two felony convictions
- 2.0 One felony convictions

OFFENDER GROUP2: ROBBERY OFFENSES (MALE)

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ITEM

- I1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

The question to be answered here is: "Has the offender at any time during this incarceration been placed in segregation as a result of disciplinary infractions?"

Code

- 0.0 Place in disciplinary segregation  
1.5 No infractions OR not placed in disciplinary segregation.

- I2 EMPLOYMENT/EDUCATION PROGRAM AT RELEASE/WORK-TRAINING RELEASE PROGRAM PARTICIPATION (Progress Report, Pre-Release Investigation Reports)

Enter the code which best describes the offender's verified employment/education program at release and participation in a work/training release program.

Code

- 0.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).  
0.5 Employment/education program upon release has not been verified by the investigating parole officer AND offender did not participate in a work/training release program.  
1.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/traing release program and successfully terminated from the program (e.g., paroled, program completed).  
1.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/traing release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).  
2.0 Employment/education program upon release has been verified by the investigating parole officer AND offender did not participate in a work/traing release program.  
2.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/trainging release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 28

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

ROBBERY OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	40.9%	22.6%	36.5%	--
0.5	39.6	22.1	38.3	--
1.0	38.3	21.6	40.1	--
1.5	37.0	21.1	41.9	--
2.0	35.7	20.6	43.7	--
2.5	34.4	20.1	45.5	--
3.0	33.1	19.6	47.3	--
3.5	31.8	19.1	49.1	--
4.0	30.5	18.6	50.9	2%
4.5	29.2	18.1	52.7	3
5.0	27.9	17.6	54.5	4
5.5	26.6	17.1	56.3	5
6.0	25.3	16.6	58.1	7
6.5	24.0	16.1	59.9	8
7.0	22.7	15.6	61.7	9
7.5	21.4	15.1	63.5	10
8.0	20.1	14.6	65.3	11
8.5	18.8	14.1	67.1	13
9.0	17.5	13.6	68.9	14
9.5	16.2	13.1	70.7	15
10.0	14.9	12.6	72.5	16
10.5	13.6	12.1	74.3	16
11.0	12.3	11.6	76.1	19
11.5	11.0	11.1	77.9	20
12.0	9.7	10.6	79.7	21
12.5	8.4	10.1	81.5	23
13.0	7.1	9.6	83.3	24
13.5	5.8	9.1	85.1	25
14.0	4.5	8.6	86.9	25
14.5	3.2	8.1	88.7	23
15.0	1.9	7.6	90.5	22
15.5	0.6	7.1	92.3	20

EXHIBIT 1C

OFFENDER GROUP 3: PROPERTY OFFENSES (MALE)\*

INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSION ITEMS ONLY

ITEM

A1 JUVENILE RECORD (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever been committed to a state or federal juvenile institution?"

Code

- 0.0 Offender was committed to a juvenile institution
- 1.5 Offender was never committed to a juvenile institution OR no indication in record of ever being committed to a juvenile institution.

A2 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "What is the extent of the offender's illegal drug/controlled substance usage?" That is, identify the one most dangerous substance the offender has ever illegally used. If, for example, the offender has illegally used opiates and marijuana, enter the code for opiates (the substances are ranked in order of decreasing severity).

Code

- 0.0 Opiates (Opium, morphine, codeine, heroin, herogyn, demural, dilaudid, methadone, metopon, laudane, laudanum, pantopon, perigorin)
- 1.0 Drugs/Substances Other than opiates, marijuana or hashish
- 2.0 Marijuana or Hashish OR evidence of illegal drug use, but type of drugs cannot be identified
- 3.0 No illegal drug use OR no indication in record of illegal drug use.

\*Minimum Term Felony Class: Property.

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## OFFENDER GROUP 3: PROPERTY OFFENSES (MALE)

ITEMA3 EMPLOYMENT RECORD DURING TWO YEARS PRIOR TO ADMISSION (Admission Summary, Pre-Sentence Report)

Indicate the offender's employment record during the two years prior to this admission. This includes work release, but excludes those under prison commitments while on work release.

CODE

- 0.0 Verified information that offender has never had a job OR there is no verifiable information indicating offender had ever had a job.
- 1.5 Verified information that offender had been employed before the two year period prior to this admission, but has not had a job during the two years prior to admission OR there is verifiable information indicating that the offender has previously been employed but no verifiable information indicating any employment during the two years prior to admission.
- 3.0 Offender had verifiable employment during the two year period prior to admission -and- the offender was unemployed for at at least one continuous period of six months or more.
- 4.5 Offender had verifiable employment during two years prior to admission -and- the offender was never continuously unemployed for six months or more during this period.

A4 ASSESSMENT OF PERSONAL SUPPORT - LIVING ARRANGEMENT (Admission Summary, Pre-Sentence Report)

Prior to this admission the offender was living in the community:

Code

- 0.0 Alone OR No Verifiable Indication of Prior Living Arrangement in Record
- 0.5 With Siblings or Friends
- 1.0 With Parents or Relatives Other Than Parents or Siblings
- 1.5 With Spouse and/or Children

OFFENDER GROUP 3: PROPERTY OFFENSES (MALE)

ITEM

A5 TOTAL FELONY CONVICTIONS (Pre-Sentence Report, FBI Rap Sheet)

Indicate the total number of adult felony convictions received by the offender (include both Washington State and other jurisdiction felony conviction(s)).

Adult felony convictions are convictions for crimes:

Committed by a person age 18 or older at the time of the convictions -or- Committed by a person under age 18 but treated as an adult by the criminal justice system.

-AND-

Resulting in one or more years of probation (suspended or deferred sentence) -or- Resulted in a sentence to an adult correctional institution.

Include all felony convictions prior to this admission and all convictions leading to the current commitment, regardless of sentence structure.

Code

- 0.0 Five or more felony convictions
- 0.5 Four felony convictions
- 1.0 Three felony convictions
- 1.5 Two felony convictions
- 2.0 One felony conviction



OFFENDER GROUP 3: PROPERTY OFFENSES (MALE)

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CURRENT INCARCERATION ITEMS ONLY

ITEM

I1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

The question to be answered here is: "Has the offender received any infraction reports during the current period of incarceration? If so, indicate the most serious type of infraction."

Code

0.0 One or more of the following "serious" infractions:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

1.0 One or more "general infractions (any infraction not included in above listing).

2.0 No infractions.

## OFFENDER GROUP 3: PROPERTY OFFENSES (MALE)

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I2 EMPLOYMENT/EDUCATION PROGRAM AT RELEASE/WORK-TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports, Pre-Release Investigation Reports)

Enter the code which best describes the offender's verified employment/education program release and participation in a work/training release program.

Code

- 0.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 0.5 Employment/education program upon release has not been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 1.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).
- 1.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 2.0 Employment/education program upon release has been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 2.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 2C

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

PROPERTY OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	63.0%	20.7%	16.3%	--
0.5	61.3	20.5	18.2	--
1.0	59.6	20.3	20.1	--
1.5	57.9	20.1	22.0	--
2.0	56.2	19.9	23.9	--
2.5	54.5	19.7	25.8	--
3.0	52.8	19.5	27.7	--
3.5	51.1	19.3	29.6	--
4.0	49.4	19.1	31.5	--
4.5	47.7	18.9	33.4	--
5.0	46.0	18.7	35.3	--
5.5	44.3	18.5	37.2	--
6.0	42.6	18.3	39.1	--
6.5	40.9	18.1	41.0	--
7.0	39.2	17.9	42.9	--
7.5	37.5	17.7	44.8	--
8.0	35.8	17.5	46.7	--
8.5	34.1	17.3	48.6	--
9.0	32.4	17.1	50.5	14%
9.5	30.7	16.9	52.4	15
10.0	29.0	16.7	54.3	18
10.5	27.3	16.5	56.2	19
11.0	25.6	16.3	58.1	21
11.5	23.9	16.1	60.0	22
12.0	22.2	15.9	61.9	24
12.5	20.5	15.7	63.8	25
13.0	18.8	15.5	65.7	27
13.5	17.1	15.3	67.6	28
14.0	15.4	15.1	69.5	30
14.5	13.7	14.9	71.4	31
15.0	12.0	14.7	73.3	32
15.5	10.3	14.5	75.2	34
16.0	8.6	14.3	77.1	36
16.5	6.9	14.1	79.0	37
17.0	5.2	13.9	80.9	39

OFFENDER GROUP 4: DRUG OFFENSES (MALE)INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETSADMISSION ITEMS ONLYITEMA1 JUVENILE RECORD (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever been committed to a state or federal juvenile institution?"

Code

- 0.0 Offender was committed to a juvenile institution
- 2.0 Offender was never committed to a juvenile institution OR no indication in record of ever being committed to a juvenile institution.

A2 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "What is the extent of the offender's illegal drug/controlled substance usage?" That is, identify the one most dangerous substance the offender has ever illegally used. If, for example, the offender has illegally used opiates and marijuana, enter the code for opiates (the substances are ranked in order of decreasing severity).

Code

- 0.0 Opiates (Opium, morphine, codeine, heroin, herogyn, demural, dilaudid, methadone, metopon, laudane, laudanum, pantopon, perigoric)
- 1.0 Drugs/Substances Other than opiates, marijuana or hashish
- 2.0 Marijuana or Hashish OR evidence of illegal drug use, but type of drugs cannot be identified
- 3.0 No illegal drug use OR no indication in record of illegal drug use.

\*Minimum Term Felony Class: Drugs.

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## OFFENDER GROUP 4: DRUG OFFENSES (MALE)

ITEMA3 EMPLOYMENT RECORD DURING TWO YEARS PRIOR TO ADMISSION (Admission Summary, Pre-Sentence Report)

Indicate the offender's employment record during the two years prior to this admission. This includes work release, but excludes those under prison commitments while on work release.

CODE

- 0.0 Verified information that offender has never had a job OR there is no verifiable information indicating offender had ever had a job.
- 0.5 Verified information that offender had been employed before the two year period prior to this admission, but has not had a job during the two years prior to admission OR there is verifiable information indicating that the offender has previously been employed but no verifiable information indicating any employment during the two years prior to admission.
- 1.0 Offender had verifiable employment during the two year period prior to admission -and- the offender was unemployed for at at least one continuous period of six months or more.
- 1.5 Offender had verifiable employment during two years prior to admission -and- the offender was never continuously unemployed for six months or more during this period.

OFFENDER GROUP 4: DRUG OFFENSES (MALE)

ITEM

A4 TOTAL FELONY CONVICTIONS (Pre-Sentence Report, FBI Rap Sheet)

Indicate the total number of adult felony convictions received by the offender (include both Washington State and other jurisdiction felony conviction(s).

Adult felony convictions are convictions for crimes:

Committed by a person age 18 or older at the time of the convictions -or- Committed by a person under age 18 but treated as an adult by the criminal justice system.

-AND-

Resulting in one or more years of probation (suspended or deferred sentence) -or- Resulted in a sentence to an adult correctional institution.

Include all felony convictions prior to this admission and all convictions leading to the current commitment, regardless of sentence structure.

Code

- 0.0 Five or more felony convictions
- 0.5 Four felony convictions
- 1.0 Three felony convictions
- 1.5 Two felony convictions
- 2.0 One felony conviction

## OFFENDER GROUP 4: DRUG OFFENSES (MALE)

CURRENT INCARCERATION ITEMS ONLYITEMI1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

The question to be answered here is: "Has the offender received any infraction reports during the current period of incarceration? If so, indicate the most serious type of infraction."

Code

0.0 One or more of the following "serious" infractions:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

0.5 One or more "general infractions (any infraction not included in above listing).

1.0 No infractions.

## OFFENDER GROUP 4: DRUG OFFENSES (MALE)

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I2 EMPLOYMENT/EDUCATION PROGRAM AT RELEASE/WORK-TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports, Pre-Release Investigation Reports)

Enter the code which best describes the offender's verified employment/education program release and participation in a work/training release program.

Code

- 0.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 0.5 Employment/education program upon release has not been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 1.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).
- 1.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 2.0 Employment/education program upon release has been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 2.5 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).



2.

TABLE 2D

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

DRUG OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	42.5%	19.2%	38.3%	--
0.5	40.5	18.7	40.8	--
1.0	38.5	18.2	43.3	--
1.5	36.5	17.7	45.8	--
2.0	34.5	17.2	48.3	--
2.5	32.5	16.7	50.8	1%
3.0	30.5	16.2	53.3	2
3.5	28.5	15.7	55.8	4
4.0	26.5	15.2	58.3	6
4.5	24.5	14.7	60.8	8
5.0	22.5	14.2	63.3	10
5.5	20.5	13.7	65.8	11
6.0	18.5	13.2	68.3	13
6.5	16.5	12.7	70.8	15
7.0	14.5	12.2	73.3	17
7.5	12.5	11.7	75.8	19
8.0	10.5	11.2	78.3	21
8.5	8.5	10.7	80.8	22
9.0	6.5	10.2	83.3	24
9.5	4.5	9.7	85.8	26
10.0	2.5	9.2	88.3	28
10.5	0.5	8.7	90.8	30
11.0	0.0	8.2	93.3	31
11.5	0.0	7.7	95.8	32
12.0	0.0	7.2	98.3	32

## EXHIBIT 1E.

OFFENDER GROUP 5: PAROLE VIOLATORS (MALE)\*INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETSADMISSION ITEMS ONLYITEMA1 JUVENILE RECORD (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever been committed to a state or federal juvenile institution?"

Code

- 0.0 Offender was committed to a juvenile institution
- 1.5 Offender was never committed to a juvenile institution OR no indication in record of ever being committed to a juvenile institution.

A2 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "What is the extent of the offender's illegal drug/controlled substance usage?" That is, identify the one most dangerous substance the offender has ever illegally used. If, for example, the offender has illegally used opiates and marijuana, enter the code for opiates (the substances are ranked in order of decreasing severity).

Code

- 0.0 Opiates (Opium, morphine, codeine, heroin, herogyn, demural, dilaudid, methadone, metopon, laudane, laudanum, pantopon, perigoric)
- 1.0 Drugs/Substances Other than opiates, marijuana or hashish
- 2.0 Marijuana or Hashish OR evidence of illegal drug use, but type of drugs cannot be identified
- 3.0 No illegal drug use OR no indication in record of illegal drug use.

\*All male offenders not admitted under court commitment.

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## OFFENDER GROUP 5: PAROLE VIOLATORS (MALE)

ITEMA3 EMPLOYMENT RECORD DURING TWO YEARS PRIOR TO ADMISSION (Admission Summary, Pre-Sentence Report)

Indicate the offender's employment record during the two years prior to this admission.

Code

- 0.0 Verified information that offender has never had a job OR there is no verifiable information indicating offender had ever had a job.
- 1.0 Verified information that offender had been employed before the two year period prior to this admission, but has not had a job during the two years prior to admission OR there is verifiable information indicating that the offender has previously been employed but no verifiable information indicating any employment during the two years prior to admission.
- 2.0 Offender had verifiable employment during the two year period prior to admission -and- the offender was unemployed for at least one continuous period of six months or more.
- 3.0 Offender had verifiable employment during two years prior to admission -and- the offender was never continuously unemployed for six months or more during this period.

A4 ASSESSMENT OF PERSONAL SUPPORT - LIVING ARRANGEMENT (Admission Summary, Pre-Sentence Report)

Prior to this admission the offender was living in the community:

Code

- 0.0 Alone OR No Verifiable Indication of Prior Living Arrangement in Record
- 0.5 With Siblings or Friends
- 1.0 With Parents or Relatives Other Than Parents or Siblings
- 1.5 With Spouse and/or Children

OFFENDER GROUP 5: PAROLE VIOLATORS (MALE)

ITEM

A5 TOTAL FELONY CONVICTIONS (Pre-Sentence Report, FBI Rap Sheet)

Indicate the total number of adult felony convictions received by the offender (include both Washington State and other jurisdiction felony conviction(s).

Adult felony convictions are convictions for crimes:

Committed by a person age 18 or older at the time of the convictions -or- Committed by a person under age 18 but treated as an adult by the criminal justice system.

-AND-

Resulting in one or more years of probation (suspended or deferred sentence) -or- Resulted in a sentence to an adult correctional institution.

Include all felony convictions prior to this admission and all convictions leading to the current commitment, regardless of sentence structure.

Code

- 0.0 Five or more felony convictions
- 0.5 Four felony convictions
- 1.0 Three felony convictions
- 1.5 Two felony convictions
- 2.0 One felony conviction

CURRENT INCARCERATION ITEMS ONLYITEMI1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

The question to be answered here is: "Has the offender received any infraction reports during the current period of incarceration? If so, indicate the most serious type of infraction."

Code

0.0 One or more of the following "serious" infractions:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

1.0 One or more "general infractions (any infraction not included in above listing).

2.0 No infractions.

## OFFENDER GROUP 5: PAROLE VIOLATORS (MALE)

I.2 EMPLOYMENT/EDUCATION PROGRAM AT RELEASE/WORK-TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports, Pre-Release Investigation Reports)

Enter the code which best describes the offender's verified employment/education program release and participation in a work/training release program.

Code

- 0.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 1.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 2.0 Employment/education program upon release has not been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).
- 3.0 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 4.0 Employment/education program upon release has been verified by the investigating parole officer AND offender did not participate in a work/training release program.
- 5.0 Employment/education program upon release has been verified by the investigating parole officer AND offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 2E

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

MALE PAROLE VIOLATORS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	60.9%	17.6%	21.5%	--
0.5	59.2	17.9	22.9	--
1.0	57.5	13.2	24.3	--
1.5	55.8	18.5	25.7	--
2.0	54.1	18.8	27.1	--
2.5	52.4	19.1	28.5	--
3.0	50.7	19.4	29.9	--
3.5	49.0	19.7	31.3	--
4.0	47.3	20.0	32.7	--
4.5	45.6	20.3	34.1	--
5.0	43.9	20.6	35.4	--
5.5	42.2	21.0	36.8	--
6.0	40.5	21.3	38.2	--
6.5	38.8	21.6	39.6	--
7.0	37.1	21.9	41.0	--
7.5	35.4	22.2	42.4	--
8.0	33.7	22.5	43.8	--
8.5	32.0	22.8	45.2	--
9.0	30.3	23.1	46.6	--
9.5	28.6	23.4	48.0	--
10.0	26.9	23.7	49.4	--
10.5	25.2	24.0	50.8	4%
11.0	23.5	24.3	52.2	6
11.5	21.8	24.6	53.6	7
12.0	20.1	24.9	55.0	8
12.5	18.4	25.2	56.4	9
13.0	16.7	25.5	57.8	11
13.5	15.0	25.8	59.2	12
14.0	13.3	26.1	60.6	13
14.5	11.6	26.4	62.0	15
15.0	9.9	26.7	63.4	16
15.5	8.2	27.0	64.8	17
16.0	6.5	27.3	66.2	19
16.5	4.8	27.6	67.6	20
17.0	3.1	27.9	69.0	21
17.5	1.4	28.2	70.4	22
18.0	0.0	28.5	71.8	23
18.5	0.0	28.8	73.2	24
19.0	0.0	29.1	74.6	25

OFFENDER GROUP 6: WOMEN - PERSON OFFENSES\*

INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSION ITEMS ONLY

ITEM

A1 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever illegally used marijuana or hashish OR any drugs/controlled substances other than marijuana or hashish?

Code

- 0.0 Illegal use of drugs other than marijuana or hashish
- 1.5 No illegal use of drugs other than marijuana or hashish OR illegal drug use indicated, but type of drug not identified OR no record of any illegal drug use.

A2 ASSESSMENT OF PERSONAL SUPPORT - BAIL STATUS (Pre-Sentence Report)

Indicate whether the offender was granted bail, released on personal recognizance or held in jail following most recent arrest and subsequent admission to institution.

Code

- 0.0 Held in Jail Until Trial or Plea
- 3.0 Granted Bail OR Released on Personal Recognizance

A3 ADULT CRIMINAL RECORD (Pre-Sentence Report; FBI Rap Sheet)

Enter the code which best indicates the total number of felony convictions and the total number of times the offender has been committed to Washington State and other jurisdiction adult correctional institution or prison(s) for felony convictions, including this commitment.

Code

- 0.0 Two or more prison commitments
- 1.0 Three or more felony convictions AND one prison commitment
- 2.0 Two felony convictions AND one prison commitment
- 3.0 One felony conviction AND one prison commitment

\*Minimum Term Felony Classes: Murder II, Manslaughter, Sexual Molestation, Assault and Robbery.



CURRENT INCARCERATION ITEMS ONLY

ITEM

I1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

This item summarizes the offender's institutional/work release/furlough conduct during the current incarceration.

Code

0.0 Offender was placed in segregation as a result of disciplinary infractions OR offender has received any of the following "serious" infractions and was placed in segregation as a result of these infractions or suffered the loss of institution privileges:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

2.0 Offender received any of the above "serious" infractions and was not place in segregation and did not lose any institution privileges.

4.0 Offender has not received any infractions during this incarceration period OR offender has not received any "serious" infractions and has not been placed in segregation as a result of infractions.

I2 WORK/TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports)

Enter the code which best describes the offender's participation in a work/training release program during this period of incarceration.

Code

0.0 Offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).

2.0 Offender did not participate in a work/training release program.

4.0 Offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 2F

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

WOMEN - PERSON OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	32.4%	26.7%	40.9%	--
1.5	29.1	24.8	46.1	--
3.0	25.8	22.8	51.4	4%
3.5	24.7	22.2	53.1	5
4.0	23.6	21.5	54.9	6
4.5	22.5	20.9	56.6	7
5.0	21.4	20.2	58.4	9
5.5	20.3	19.6	60.1	10
6.0	19.2	18.9	61.9	11
6.5	18.1	18.3	63.6	12
7.0	17.0	17.6	65.4	13
7.5	15.9	17.0	67.1	14
8.0	14.8	16.3	68.9	15
8.5	13.7	15.7	70.6	16
9.0	12.6	15.0	72.4	18
9.5	11.5	14.4	74.1	19
10.0	10.4	13.7	75.9	20
10.5	9.3	13.1	77.6	21
11.0	8.2	12.4	79.4	22
11.5	7.1	11.8	81.1	23
12.0	6.0	11.1	82.9	24
12.5	4.9	10.5	84.6	25
13.0	3.8	9.8	86.4	27
13.5	2.7	9.2	88.1	28
14.0	1.6	8.5	89.9	29
14.5	0.5	7.9	91.6	30
15.0	0.0	4.9	93.4	31

## EXHIBIT 1G

OFFENDER GROUP 7: WOMEN - PROPERTY OFFENSES\*

## INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSION ITEMS ONLYITEMA1 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever illegally used marijuana or hashish OR any drugs/controlled substances other than marijuana or hashish?"

Code

- 0.0 Illegal use of drugs other than marijuana or hashish  
 1.5 No illegal use of drugs other than marijuana or hashish OR illegal drug use indicated, but type of drug not identified OR no record of any illegal drug use.

A2 ASSESSMENT OF PERSONAL SUPPORT - BAIL STATUS (Pre-Sentence Report)

Indicate whether the offender was granted bail, released on personal recognizance or held in jail following most recent arrest and subsequent admission to institution.

Code

- 0.0 Held in Jail Until Trial or Plea  
 3.0 Granted Bail OR Released on Personal Recognizance

A3 ADULT CRIMINAL RECORD (Pre-Sentence Report; FBI Rap Sheet)

Enter the code which best indicates the total number of felony convictions and the total number of times the offender has been committed to Washington State and other jurisdiction adult correctional institution(s) or prison(s) for felony convictions, including this commitment.

Code

- 0.0 Two or more prison commitments  
 1.0 Three or more felony convictions AND one prison commitment  
 2.0 Two felony convictions AND one prison commitment  
 3.0 One felony conviction AND one prison commitment

\*Minimum Term Felony Class: Property.

CURRENT INCARCERATION ITEMS ONLY

ITEM

I1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

This item summarizes the offender's institutional/work release/furlough conduct during the current incarceration.

Code

0.0 Offender was placed in segregation as a result of disciplinary infractions OR offender has received any of the following "serious" infractions and was placed in segregation as a result of these infractions or suffered the loss of institution privileges:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

2.0 Offender received any of the above "serious" infractions and was not place in segregation and did not lose any institution privileges.

4.0 Offender has not received any infractions during this incarceration period OR offender has not received any "serious" infractions and has not been placed in segregation as a result of infractions.

I2 WORK/TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports)

Enter the code which best describes the offender's participation in a work/training release program during this period of incarceration.

Code

0.0 Offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).

2.0 Offender did not participate in a work/training release program.

4.0 Offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 70

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

WOMEN - PROPERTY OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTIONS
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	32.4%	26.7%	40.9%	--
1.5	29.1	24.8	46.1	--
3.0	25.8	22.8	51.4	17%
3.5	24.7	22.2	53.1	18
4.0	23.6	21.5	54.9	20
4.5	22.5	20.9	56.6	21
5.0	21.4	20.2	58.4	22
5.5	20.3	19.6	60.1	23
6.0	19.2	18.9	61.9	25
6.5	18.1	18.3	63.6	26
7.0	17.0	17.6	65.4	27
7.5	15.9	17.0	67.1	28
8.0	14.8	16.3	68.9	30
8.5	13.7	15.7	70.6	31
9.0	12.6	15.0	72.4	32
9.5	11.5	14.4	74.1	33
10.0	10.4	13.7	75.9	34
10.5	9.3	13.1	77.6	36
11.0	8.2	12.4	79.4	37
11.5	7.1	11.8	81.1	38
12.0	6.0	11.1	82.9	40
12.5	4.9	10.5	84.6	41
13.0	3.8	9.8	86.4	42
13.5	2.7	9.2	88.1	43
14.0	1.6	8.5	89.9	44
14.5	0.5	7.9	91.6	45
15.5	0.0	4.9	95.1	46

## EXHIBIT 1H

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OFFENDER GROUP 8: WOMEN - DRUG OFFENSES\*

## INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSION ITEMS ONLYITEMA1 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever illegally used marijuana or hashish OR any drugs/controlled substances other than marijuana or hashish?"

Code

- 0.0 Illegal use of drugs other than marijuana or hashish
- 1.5 No illegal use of drugs other than marijuana or hashish OR illegal drug use indicated, but type of drug not identified OR no record of any illegal drug use.

A2 ASSESSMENT OF PERSONAL SUPPORT - BAIL STATUS (Pre-Sentence Report)

Indicate whether the offender was granted bail, released on personal recognizance or held in jail following most recent arrest and subsequent admission to institution.

Code

- 0.0 Held in Jail Until Trial or Plea
- 3.0 Granted Bail OR Released on Personal Recognizance

A3 ADULT CRIMINAL RECORD (Pre-Sentence Report; FBI Rap Sheet)

Enter the code which best indicates the total number of felony convictions and the total number of times the offender has been committed to Washington State and other jurisdiction adult correctional institution(s) or prison(s) for felony convictions, including this commitment.

Code

- 0.0 Two or more prison commitments
- 1.0 Three or more felony convictions AND one prison commitment
- 2.0 Two felony convictions AND one prison commitment
- 3.0 One felony conviction AND one prison commitment

\*Minimum Term Felony Class: Drugs.

CURRENT INCARCERATION ITEMS ONLYITEMI1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

This item summarizes the offender's institutional/work release/furlough conduct during the current incarceration.

Code

0.0 Offender was placed in segregation as a result of disciplinary infractions OR offender has received any of the following "serious" infractions and was placed in segregation as a result of these infractions or suffered the loss of institution privileges:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

2.0 Offender received any of the above "serious" infractions and was not place in segregation and did not lose any institution privileges.

4.0 Offender has not received any infractions during this incarceration period OR offender has not received any "serious" infractions and has not been placed in segregation as a result of infractions.

I2 WORK/TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports)

Enter the code which best describes the offender's participation in a work/training release program during this period of incarceration.

Code

- 0.0 Offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 2.0 Offender did not participate in a work/training release program.
- 4.0 Offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 2H

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

WOMEN - DRUG OFFENDERS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	32.4%	26.7%	40.9%	--
1.5	29.1	24.8	46.1	—
3.0	25.8	22.8	51.4	4%
3.5	24.7	22.2	53.1	5
4.0	23.6	21.5	54.9	6
4.5	22.5	20.9	56.6	7
5.0	21.4	20.2	58.4	9
5.5	20.3	19.6	60.1	10
6.0	19.2	18.9	61.9	11
6.5	18.1	18.3	63.6	12
7.0	17.0	17.6	65.4	13
7.5	15.9	17.0	67.1	14
8.0	14.8	16.3	68.9	15
8.5	13.7	15.7	70.6	16
9.0	12.6	15.0	72.4	18
9.5	11.5	14.4	74.1	19
10.0	10.4	13.7	75.9	20
10.5	9.3	13.1	77.6	21
11.0	8.2	12.4	79.4	22
11.5	7.1	11.8	81.1	23
12.0	6.0	11.1	82.9	24
12.5	4.9	10.5	84.6	25
13.0	3.8	9.8	86.4	27
13.5	2.7	9.2	88.1	29
14.0	1.6	8.5	89.9	29
14.5	0.5	7.9	91.6	30
15.5	0.0	4.9	95.7	31



## EXHIBIT 11

7

• OFFENDER GROUP 9: WOMEN - PAROLE VIOLATORS\*

INSTRUCTIONS FOR CODING PUBLIC SAFETY SCORE SHEETS

ADMISSION ITEMS ONLY

ITEM

A1 HISTORY OF DRUG ABUSE (Admission Summary; Pre-Sentence Report)

The question to be answered here is: "Has the offender ever illegally used marijuana or hashish OR any drugs/controlled substances other than marijuana or hashish?"

Code

- 0.0 Illegal use of drugs other than marijuana or hashish  
 1.5 No illegal use of drugs other than marijuana or hashish OR illegal drug use indicated, but type of drug not identified OR no record of any illegal drug use.

A2 ASSESSMENT OF PERSONAL SUPPORT - BAIL STATUS (Pre-Sentence Report)

Indicate whether the offender was granted bail, released on personal recognizance or held in jail following most recent arrest and subsequent admission to institution.

Code

- 0.0 Held in Jail Until Trial or Plea  
 3.0 Granted Bail OR Released on Personal Recognizance

A3 ADULT CRIMINAL RECORD (Pre-Sentence Report; FBI Rap Sheet)

Enter the code which best indicates the total number of felony convictions and the total number of times the offender has been committed to Washington State and other jurisdiction adult correctional institution(s) or prison(s) for felony convictions, including this commitment.

Code

- 0.0 Two or more prison commitments  
 1.0 Three or more felony convictions AND one prison commitment  
 2.0 Two felony convictions AND one prison commitment  
 3.0 One felony conviction AND one prison commitment

\*All female offenders not admitted under court commitment.

CURRENT INCARCERATION ITEMS ONLY

ITEM

- I1 INSTITUTIONAL/WORK RELEASE/FURLOUGH CONDUCT (Progress Reports; Infraction Reports)

This item summarizes the offender's institutional/work release/furlough conduct during the current incarceration.

Code

- 0.0 Offender was placed in segregation as a result of disciplinary infractions OR offender has received any of the following "serious" infractions and was placed in segregation as a result of these infractions or suffered the loss of institution privileges:

<u>Infraction Type</u>	<u>Infraction Code</u>
Assault	501 to 505, 521, 701
Riot	651 to 653
Contraband-Weapons	601, 602
Contraband-Drugs	603, 606, 655
Contraband-General	604, 605, 654
Escape	551
Other	552 to 555, 600, 656, 657, 700

- 2.0 Offender received any of the above "serious" infractions and was not place in segregation and did not lose any institution privileges.
- 4.0 Offender has not received any infractions during this incarceration period OR offender has not received any "serious" infractions and has not been placed in segregation as a result of infractions.

- I2 WORK/TRAINING RELEASE PROGRAM PARTICIPATION (Progress Reports)

Enter the code which best describes the offender's participation in a work/training release program during this period of incarceration.

Code

- 0.0 Offender participated in a work/training release program, but was terminated from the program for cause (e.g., escaped, removed for law or program rule violations).
- 2.0 Offender did not participate in a work/training release program.
- 4.0 Offender participated in a work/training release program and successfully terminated from the program (e.g., paroled, program completed).

TABLE 21

POTENTIAL REDUCTIONS IN LENGTH OF CONFINEMENT BASED UPON  
PROBABILITY ESTIMATES OF PAROLE PERFORMANCE

WOMEN - PAROLE VIOLATORS

PUBLIC SAFETY SCORE	PROBABILITY OF PAROLE PERFORMANCE OF:			PERCENT REDUCTION
	FELONY VIOLATION	MISD/TECH VIOLATION	NO VIOLATION	
0.0	32.4%	26.7%	40.9%	--
1.5	29.1	24.8	46.1	--
3.0	25.8	22.8	51.4	4%
3.5	24.7	22.2	53.1	5
4.0	23.6	21.5	54.9	6
4.5	22.5	20.9	56.6	7
5.0	21.4	20.2	58.4	9
5.5	20.3	19.6	60.1	10
6.0	19.2	18.9	61.9	11
6.5	18.1	18.3	63.6	12
7.0	17.0	17.6	65.4	13
7.5	15.9	17.0	67.1	14
8.0	14.8	16.3	68.9	15
8.5	13.7	15.7	70.6	16
9.0	12.6	15.0	72.4	18
9.5	11.5	14.4	74.1	19
10.0	10.4	13.7	75.9	20
10.5	9.3	13.1	77.6	21
11.0	8.2	12.4	79.4	22
11.5	7.1	11.8	81.1	23
12.0	6.0	11.1	82.9	24
12.5	4.9	10.5	84.6	25
13.0	3.8	9.8	86.4	27
13.5	2.7	9.2	88.1	28
14.0	1.6	8.5	89.9	29
14.5	0.5	7.9	91.6	30
15.5	0.0	4.9	95.1	31

## EXHIBIT 2

DEFINITION OF ATTRIBUTES RELATED TO PAROLE PERFORMANCE

- Admission - Admission to the Washington State adult correctional system by court commitment or revocation of parole.
- Committed to Juvenile Institution - Commitment to a state or Federal juvenile institution by a juvenile or adult court for any reason.
- Drug Abuse - Any illegal use (including experimental) of narcotics or controlled substances.
- Employed - Worked at a legitimate job for wages or salary.
- Felony Conviction - Conviction in state or Federal court for a felony offense.
- "General" Infractions - "Minor" violations (e.g., refusing to work) of institution rules.
- Living Alone - Residing by one's self.
- Marijuana or Hashish - Cannabis or any of its derivatives.
- Opiates - The following substances are classified as opiates:
- |             |               |
|-------------|---------------|
| a. Opium    | g. Methadone  |
| b. Morphine | h. Metapon    |
| c. Codeine  | i. Laudane    |
| d. Heroin   | j. Laudanum   |
| e. Demerol  | k. Pantopon   |
| f. Dilaudid | l. Perigroric |
- Parents - Natural or step-parents.
- Released on Bail or Own Recognizance - Released from custody following latest arrest after posting bond or released by the court on "own recognizance".
- "Serious" Infractions - "Major" violations (e.g., riot; possession of a weapon) of institution rules or felonious behavior.
- Siblings - Natural or step-siblings.
- Spouse - Legal spouse.
- Spouse and Children - Legal spouse and natural, adopted, or step-children.
- Successful Termination (Work/Training Release) - Completed program; job ended by employer; released on parole.

Unsuccessful Termination (Work/Training Release) - Escaped, violation of program rules, or law violation led to termination from program.

Verified Education Program - Education program may include college, vocational, apprenticeship programs, etc. Verification of an education program by parole officer must include acceptance by the program, an admission date, and a source of funding while in the program.

Verified Employment - Employment upon release as verified by investigating parole officer.

Weapons in Offense - Use of firearm, knife, or other instrument. Includes an implied weapon and possession of a weapon.

**WSR 85-04-002**  
**NOTICE OF PUBLIC MEETINGS**  
**BOARD FOR**  
**VOLUNTEER FIREMEN**  
 [Memorandum—January 23, 1985]

The State Board for Volunteer Firemen will hold its next meeting on February 1, 1985, at 10:00 a.m. in the Temple of Justice, Olympia, Washington.

**WSR 85-04-003**  
**ADOPTED RULES**  
**EVERETT COMMUNITY COLLEGE**

[Order 85-1-1, Resolution No. 85-1-1—Filed January 24, 1985]

Be it resolved by the board of trustees of Washington Community College District V, acting at the Everett Community College Campus, La Salle d'Ecole, that it does adopt the annexed rules relating to traffic regulations of Edmonds Community College, repealing chapter 132E-116 WAC.

This action is taken pursuant to Notice No. WSR 84-24-036 filed with the code reviser on November 30, 1984. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 28B.19.050(2).

This rule is promulgated pursuant to RCW 28B.50.140 which directs that Washington Community College District V has authority to implement the provisions of RCW 28B.50.140.

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 January 21, 1985.

By Robert J. Drewel  
 President

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 132E-116-001 PURPOSE FOR ADOPTING RULES.
- WAC 132E-116-004 APPLICABLE TRAFFIC RULES AND REGULATIONS.
- WAC 132E-116-008 PERMITS REQUIRED FOR VEHICLES ON CAMPUS.
- WAC 132E-116-012 VALID PERMIT.
- WAC 132E-116-016 TRANSFER OF PERMITS.
- WAC 132E-116-020 PERMIT REVOCATION.
- WAC 132E-116-024 RIGHT TO REFUSE PERMIT.
- WAC 132E-116-028 ISSUANCE OF PERMITS.
- WAC 132E-116-032 DISPLAY OF PERMITS.
- WAC 132E-116-036 PARKING PERMIT FEES.
- WAC 132E-116-040 REFUND OF FEES.
- WAC 132E-116-044 ADDITIONAL VEHICLES.
- WAC 132E-116-048 FAILURE TO REGISTER.

- WAC 132E-116-052 PARKING PERMIT EXCEPTIONS.
- WAC 132E-116-056 PARKING WITHIN DESIGNATED SPACES.
- WAC 132E-116-060 LOCATING LEGAL PARKING SPACE.
- WAC 132E-116-064 MOTORCYCLE PARKING.
- WAC 132E-116-068 BICYCLE PARKING.
- WAC 132E-116-072 HANDICAPPED PARKING.
- WAC 132E-116-076 DISABLED OR INOPERATIVE VEHICLES.
- WAC 132E-116-080 REGULATORY SIGNS AND DIRECTIONS.
- WAC 132E-116-084 SPEED.
- WAC 132E-116-088 PEDESTRIAN'S RIGHT OF WAY.
- WAC 132E-116-092 REPORT OF ACCIDENT.
- WAC 132E-116-096 SPECIAL TRAFFIC/PARKING REGULATIONS AND RESTRICTIONS.
- WAC 132E-116-100 ISSUANCE OF TRAFFIC CITATIONS.
- WAC 132E-116-104 FINES AND PENALTIES.
- WAC 132E-116-108 APPEAL OF FINES AND PENALTIES.
- WAC 132E-116-112 ENFORCEMENT.
- WAC 132E-116-116 LIABILITY OF COLLEGE.
- WAC 132E-116-120 SEVERABILITY.
- WAC 132E-116-124 ADOPTION.

**WSR 85-04-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**VETERANS AFFAIRS**  
 [Order 84-02—Filed January 24, 1985]

I, John Reynolds, assistant director of the Department of Veterans Affairs, do promulgate and adopt at East 11th and Washington Streets, Olympia, Washington, the annexed rules relating to the Washington veterans home and the Washington soldiers home and colony.

I, John Reynolds, 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 existing rules of conduct for members of the Washington veterans home and the Washington soldiers home and colony have been declared invalid and unenforceable by a Pierce County superior court ruling.

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 Veterans Affairs as authorized in RCW 43.60A.070.

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 24, 1985.

By John Reynolds  
Assistant Director

AMENDATORY SECTION (Amending Order 80-01, filed 7/17/80)

WAC 484-20-010 DEFINITIONS. (1) Administrative appeal - The request for reversal or modification of an administrative decision.

(2) Aid and attendance fund - Aid and attendance funds are:

(a) Those received by members from the veterans administration for the benefit of members for aid and attendance(;;); and

(b) Funds administered in accordance with WAC 484-20-065 through 484-20-075.

~~((2))~~ (3) Allowable income - That income not less than the amount stipulated by RCW 72.36.120 and 72.36.130 which a member may keep for his or her personal use except as delineated in WAC 484-20-065 and 484-20-075.

~~((3))~~ (4) Department - The department of veterans affairs.

~~((4))~~ (5) Duly constituted body, representative of the members - A body elected by the general membership of the home which shall act for the general membership in those cases where the RCWs or these WACs so specify.

~~((5))~~ (6) Director - The director of the department of veterans affairs or his designee.

~~((6))~~ (7) Gross misconduct - Intentional or negligent conduct evidencing substantial disregard (a) for the interests of other home member(s), staff person(s), or visitor(s), or (b) for the offending member's duties and obligations as a member of the home.

(8) Member - An individual admitted to the Washington soldiers' home, the Washington soldiers' home colony or the Washington veterans' home.

~~((7))~~ (9) Superintendent - The superintendent of the Washington soldiers' home and colony and/or the superintendent of the Washington veterans' home.

~~((8))~~ Supplementary rules - Rules published under the authority of the superintendents and pertaining to the personal conduct of members as provided by WAC 484-20-085.

(9)) (10) Supplementary policies and procedures - Policies and procedures published under authority of the superintendents which significantly affect the members.

~~((10))~~ (11) Veterans and soldiers home revolving funds - The repository for income in excess of allowable income which shall include an aid and attendance account.

~~((11))~~ Administrative appeal - The request for reversal or modification of an administrative decision.))

AMENDATORY SECTION (Amending Order 80-01, filed 7/17/80)

WAC 484-20-090 ~~((SUPPLEMENTARY RULES-PROMULGATION:))~~ RULES OF CONDUCT. ~~((The superintendent of each home shall promulgate supplementary rules not inconsistent with the substance and intent of the rules in this chapter provided such supplementary rules have been approved in writing by the director or designee before being put into effect. Further, rules relating to the personal conduct of the members shall have approval of a duly constituted body representative of the members.))~~ Members of the homes are required to comply with the following rules of conduct:

(1) Rules of conduct pertaining to health and safety.

(a) Emergency evacuation. Any time a fire or alarm is sounded, every member must evacuate the building immediately and report to the designated evacuation area. He/she will not be permitted to return to the evacuated building until informed that he/she may do so by an authorized person. Nursing care unit members must follow the instructions of the nursing staff.

(b) Personal cleanliness. Members must maintain their person, belongings, rooms, and jointly-shared toilet areas in such a manner so as not to reasonably offend their neighbors or create fire, health, and/or sanitation problems. Each domiciliary member is responsible for the cleanliness and sanitation of his own person and his own living quarters. When vacated, the room shall be left in a clean condition. Each domiciliary member is responsible for proper disposition of waste and refuse which is accumulated in his room.

(c) Electrical appliances. Only low wattage electrical appliances such as television sets, electric clocks, electric razors, fans of 150 watts or less with acceptable finger guards, radios, audio and/or video recorders, and disc playing machines may be used in members' rooms. Use of any other electric equipment requires the approval of the superintendent.

(d) Repair of rooms. Any alterations or repairs required, including the hanging of pictures, must be done by home staff. Connection of television sets to the home's master antenna system by anyone other than authorized personnel is prohibited. A similar prohibition applies to any tampering with the master antenna system or any of its components. Requests for such repairs and/or installations must be made through a building captain.

(e) Alcohol - drugs. Possession or use of intoxicating beverages (except as authorized below), narcotics, or controlled substances on the grounds of the Washington veterans' homes without a physician's written prescription is prohibited. Drugs which were prescribed by a physician but which are no longer used by the member to whom they were issued, shall be turned in to the home pharmacy. Beer and wine may be served and consumed on the grounds at certain home-sponsored activities within limitations set by the home administration.

(f) Weapons. Members possessing firearms, ammunition, explosive or dangerous weapons must turn them in

to the administration office. Possession of any of these items on the home grounds is prohibited.

(g) Animals. Possession or feeding of animals on home grounds is prohibited unless sanctioned by the superintendent.

(2) General rules of conduct.

(a) Visiting hours. Visiting hours for guests are 8:00 a.m. to 10:00 p.m. These may be extended if other members are not disturbed.

(b) Program listening. Radios, television sets, and tape recording-playing devices may be used in members' rooms, provided that volume levels are kept at a level that does not disturb others. Between the hours of 10:00 p.m. and 7:00 a.m., volume on such equipment must be reduced to match reduced noise levels in the general surroundings so that others will not be disturbed. The use of headphones, while not required, is strongly encouraged for those who wish to use such equipment after 10:00 p.m.

(c) Leave. Members leaving the grounds for any purpose must sign out with the building captain, C.Q., or appropriate nurses' station in such a manner as prescribed by the home administration. Upon returning, the member must sign in again. After returning from pass or furlough, the member must stay in his/her room overnight before permission to go on pass or furlough can be granted, except in the case of emergency. Leaving the grounds without proper authorization, or failure to return from pass or furlough at the prescribed time without obtaining permission for an extension, makes the member absent without official leave. Members being admitted to the home must remain in their rooms overnight before pass or leave privileges may be exercised unless an exception is granted by the administration.

(d) Respect for property. No person may deface or destroy walls, buildings, trees, shrubbery, fences, grounds, or any other property or possessions belonging to the state of Washington or to any other person. Appropriation of the property of another person, corporate entity and the state of Washington without permission is also prohibited.

(e) Vehicle registration. Vehicles must be registered annually with the administration of the home. Members must possess a valid Washington state driver's license and must provide proof of ownership and/or registration. The requirement to register applies to vehicles owned by members, owned by another and registered in the name of the member, and any vehicle regardless of ownership that is regularly in the possession of the member. Vehicles must have current license tags and they must display the home identification sticker. All traffic and parking control signs must be obeyed. Members must comply with the provisions of the Washington state financial responsibility law.

(f) Conduct between members and staff. Members will conduct themselves in an orderly, courteous, and cooperative manner at all times among themselves, with visitors, and with staff members. Obscene and/or threatening language, or any physically assaultive behavior, directed at another person, whether on the

grounds or off the grounds during a home-sponsored activity, will be considered a violation of this rule. Members will obey all valid instructions directed at them by staff acting in an officially authorized capacity. This includes member employees in positions of authority.

(g) Attire of home members. Dress of home members must meet acceptable standards. While in living areas, the following specific guidelines are established:

(i) Between 8:00 a.m. and 10:00 p.m., domiciliary members must be dressed in a manner so as not to reasonably offend the sensitivity of others when outside their rooms;

(ii) Members residing in living areas where both male and female residents are housed must at all times be dressed in a manner so as not to reasonably offend the sensitivity of others when outside their rooms.

AMENDATORY SECTION (Amending Order 80-01, filed 7/17/80)

WAC 484-20-100 VIOLATION—INVESTIGATION. Reports of possible rule violations (~~(of supplementary rules)~~) shall be investigated by the superintendent or designee. The superintendent charging a violation of the rules or other misconduct by a member shall have the burden of establishing the violation by clear, cogent and convincing evidence.

AMENDATORY SECTION (Amending Order 7659, filed 7/28/77)

WAC 484-20-105 PENALTIES. The superintendent may impose penalties for the violation of (~~supplementary rules~~) rules of conduct or for gross misconduct, such penalties may include:

(1) Restricting the member to the home grounds for a maximum of (~~(thirty)) sixty days(, or);~~

When determined appropriate by the superintendent, a reasonable requirement for signing in at designated intervals may be imposed during a period of restriction.

(2) An enforced furlough to a maximum of sixty days(, or);

(3) (~~Discharge from the home~~) A combination of penalties subsections (1) and (2) of this section provided the combined total time does not exceed sixty days;

(4) Transfer to another DVA home or colony;

(5) Discharge from a home pursuant to WAC 484-20-120.

AMENDATORY SECTION (Amending Order 80-01, filed 7/17/80)

WAC 484-20-110 FAIR HEARING. (1) Any member (~~dissatisfied with the determination of violation by the superintendent, or the penalty imposed, if any, as a result of this chapter.~~) upon whom a penalty has been imposed under WAC 484-20-105 may request a fair hearing from the superintendent or the director. A member who desires a fair hearing shall request such hearing within thirty days after receiving notice from the superintendent as to the determination of violation and penalty, if any. Disciplinary sanctions imposed by this chapter shall be deferred until the outcome of any such



appeal except where, in the judgment of the superintendent or other person acting in his absence, the members conduct is a threat to the health and safety of others.

(2) A request for fair hearing may be made either verbally or in writing and may be filed in the office of the superintendent or the director. If made verbally, such a request shall promptly be reduced to writing.

(3) All requests for fair hearings shall:

(a) Specify the date of the penalty which is being appealed from;

(b) Specify as precisely as possible the issue to be adjudicated at the fair hearing;

(c) Set forth the address of the member, his/her representative or attorney; and

(d) Be signed by the member, his/her representative or attorney.

(4) At any time after the filing of the request, the member shall have the right of access to and may examine any files and records of the home regarding the case which contain information which is relevant and material to the grievance. This right of access and examination shall extend to the member's representative or attorney if so authorized in writing by the member. All evidence to be used by the home or colony at the hearing, as well as the case file of the applicant, must be made available upon request at least five days prior to the date of the hearing.

(5) A fair hearing (~~(in accordance with the provisions of chapter 388-08 WAC)~~) shall be held within ~~((thirty))~~ sixty days after receipt of the request ~~((and shall be held))~~ either in the home or colony in which the client resides, or in the county in which he has been receiving services. The fair hearing shall be conducted by ~~((a hearing officer appointed by the director for such purposes))~~ an administrative law judge from the office of administrative hearings who shall issue a proposed decision for consideration by the director.

(6) The department shall notify a member who has requested a fair hearing of the time and place of said hearing at least ten days prior to the time thereof by certified or registered mail or by personal service upon said member, unless agreed otherwise in writing by the member and the department.

(7) In the fair hearing any party shall be entitled to be represented by counsel and shall be entitled to introduce evidence and to cross-examine witnesses.

(8) Rules of evidence:

(a) All relevant and material evidence is admissible at fair hearings which in the opinion of the hearing officer is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence the officer conducting the hearing shall give consideration to, but shall not be bound to follow, rules of evidence governing civil proceedings.

(b) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The hearing officer may, at his/her 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 ground of objection at the time evidence is offered.

(c) The record of the hearing shall contain all evidence, whether oral or documentary, upon which the final decision is based. The final decision shall not take into consideration any evidence or information not introduced as evidence at the hearing and included in the record of the hearing.

(d) Documentary evidence may be received in the form of copies and excerpts or through incorporation by reference.

(9) The department shall not be required to pay fees or mileage to witnesses appearing at fair hearings.

(10) The department or the hearing officer may take, or cause to be taken, depositions and interrogatories for use as evidence in the fair hearing when such action will expedite any fair hearing.

(11) Any party who desires a continuance shall immediately upon receipt of a notice of hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the department or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The department or its hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. The department or its hearing officer may grant a continuance for good cause shown, and may at any time order a continuance upon its own motion. If during the hearing it appears that further testimony or argument should be received in the interest of justice, the hearing officer conducting the hearing may, at his discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument.

(12) A member shall have the right to withdraw his appeal at any time prior to the hearing officer's decision by filing a written notice of withdrawal with the department. If, after being duly notified of a hearing a member or his representative fails to appear, the appeal shall be considered abandoned and dismissed for failure to prosecute.

(13) The fair hearing shall be closed to the public, with only the hearing officer, the member and his representative, the member's witnesses, and the department's representatives and witnesses in attendance, unless the ~~((client))~~ appellant has made a written request to the department that the hearing be open to the public.

(14) In any fair hearing proceedings, the hearing officer may at his discretion direct the parties or their representatives to appear at a specified time and place for a conference to consider a simplification of the issues involved, the possibility of obtaining stipulations, admissions of fact, and relevant documents, and such other matters as may aid in efficient disposition of the proceedings.

(15) In the absence of controverting evidence, the hearing officer may, upon request made during a fair hearing officially notice:

(a) General customs and practices followed in the transaction of business;

(b) Facts generally and widely known to all informed persons as are not subject to reasonable dispute;

(c) The disposition of any proceedings then pending before or previously concluded by the department;

(d) Matters within the technical knowledge of the department as a body of experts, or pertaining to its duties, responsibilities, or jurisdiction.

(16) The department shall, within thirty days after the date of the fair hearing, notify the member in writing of its decision. Such notification shall include a concise statement of the nature of the proceedings, contain appropriate findings of fact and conclusions of law, and specify in reasonable detail the reasons for the decision.

(17) In computing any period of time prescribed or allowed by department rules or by applicable statutes, the date of the act, event or decision after which the designated period of time begins to run is not included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

**AMENDATORY SECTION** (Amending Order 7659, filed 7/28/77)

**WAC 484-20-120 DISCHARGE.** A member may be discharged (~~(from the home)~~) by the superintendent with the concurrence of the director or person acting in his/her absence.

(1) When the member so requests;

(2) When the member has sufficient financial ability to support himself or herself outside the home;

(3) When the member no longer needs the care and services of the home, regardless of financial ability;

(4) For conviction of a felony or gross misdemeanor;

(5) For repeated violation of the general rules of conduct, WAC 484-20-090;

(6) For gross misconduct whether or not such conduct also violates the rules of conduct, WAC 484-20-090;

(7) When a member has been absent without leave for a period in excess of fifteen days;

(8) For intentional failure to fulfill the requirement of any disciplinary sanction;

(9) For failure to correct a condition which violates any rule of conduct pertaining to health and safety of members, staff, or visitors to the home within a reasonable time specified in a written notice to the member from a staff member acting in an official capacity, including member employees in positions of authority which notice specifies that discharge may accompany such failure.

The discharge shall be reduced to writing. If the discharge is disciplinary, it shall state the reasons for the action.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

(1) WAC 484-20-125 DISCHARGE—HONORABLE.

(2) WAC 484-20-130 DISCHARGE—DISCIPLINARY.

(3) WAC 484-20-155 ADMINISTRATIVE APPEAL.

**WSR 85-04-005**  
**PROPOSED RULES**  
**DEPARTMENT OF FISHERIES**  
[Filed January 24, 1985]

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.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on February 5, 1985.

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.

This notice is connected to and continues the matter in Notice No. WSR 85-02-031 filed with the code reviser's office on December 28, 1984.

Dated: January 22, 1985

By: Russell W. Cahill  
for William R. Wilkerson  
Director

**WSR 85-04-006**  
**ADOPTED RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 84-51—Filed January 25, 1985]

I, Donald W. Moos, director of the Washington State Department of Ecology, do promulgate and adopt at Olympia, Washington, the annexed rules relating to state waste discharge permit program, discharges not subject to permits, WAC 173-216-050.

This action is taken pursuant to Notice No. WSR 85-01-086 filed with the code reviser on December 19, 1984. 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 90.48 RCW which directs that the Department of Ecology has authority to implement the provisions of water pollution control.

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, 1985.

By Glen H. Fiedler  
Acting Deputy Director

**AMENDATORY SECTION** (Amending Order DE 83-29, filed 11/18/83)

**WAC 173-216-050 DISCHARGES NOT SUBJECT TO PERMITS.** (1) The following discharges are not subject to permits under this chapter:

(a) Discharges to municipal sewerage systems of domestic wastewater from residential, commercial, or industrial structures.

(b) Any industrial or commercial discharge to a municipal sewerage system for which authority to issue permits has been granted to the municipality under RCW 90.48.165.

(c) Any industrial or commercial discharge to a municipal sewerage system operating under a local pretreatment program approved under section 307 of FWPCA, so long as the person undertaking such discharge complies with the applicable requirements of the pretreatment program. In the event of noncompliance, this exemption no longer applies and the discharger is immediately subject to enforcement action under chapter 90.48 RCW for discharging without a waste discharge permit.

(d) Discharges to municipal sewerage systems of wastes from industrial or commercial sources whose wastewater is similar in character and strength to normal domestic wastewater: PROVIDED, That such discharges do not have the potential to adversely affect performance of the system. Examples of this type of discharge sources may include hotels, restaurants, laundries and food preparation establishments.

(e) Discharges for which an NPDES permit from the department is required pursuant to chapter 173-220 WAC.

(f) Discharges of domestic wastewater from a septic tank with subsurface treatment and disposal and an ultimate design capacity less than or equal to fourteen thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter 248-96 WAC which is administered by the Washington state department of social and health services.

(g) Discharges of domestic wastewater from a mechanical treatment system or lagoon followed by subsurface disposal with an ultimate design capacity less than or equal to three thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter 248-96 WAC which is administered by the Washington state department of social and health services.

(2) A permit is required for any source subject to pretreatment standards promulgated under section 307 of FWPCA, unless exempted under subsections (1)(b) and (1)(c) of this section.

(3) These exemptions shall not relieve any discharger from the requirement to apply all known, available, and reasonable methods to prevent and control waste discharges to the waters of the state, nor the requirement to obtain approval of plans and reports for the construction of wastewater facilities. Nothing herein shall limit the authority of the department to take enforcement action for any unlawful discharge of waste materials or other violations of the Water Pollution Control Act, chapter 90.48 RCW.

### WSR 85-04-007

#### ADOPTED RULES

### STATE BOARD OF EDUCATION

[Order 1-85—Filed January 25, 1985]

Be it resolved by the State Board of Education, acting at the Westwater Inn, Olympia, Washington, that it does adopt the annexed rules relating to Washington state history and government—Grade school and high school requirement, WAC 180-50-120.

This action is taken pursuant to Notice No. WSR 84-24-066 filed with the code reviser on December 5, 1984. 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.04-.120 (6) and (8) 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, 1985.

By Monica Schmidt  
Secretary

#### AMENDATORY SECTION (Amending Order 12-84, filed 10/4/84)

WAC 180-50-120 WASHINGTON STATE HISTORY AND GOVERNMENT—GRADE SCHOOL AND HIGH SCHOOL REQUIREMENT. (1) Grades 1-8. A one semester course—i.e., 90 (50 minute) hours of instruction—or its equivalent in Washington state history ((or)) and government shall be required in the common schools in the grade school (grades 1-8) program.

(2) Grades 9-12. A one semester course—i.e., 90 (50 minute) hours of instruction—or its equivalent in Washington state history ((or)) and government shall be required in the common schools in the high school (grades 9-12) program. Such course shall include a study of the Washington state Constitution. Pursuant to RCW 28A.02.080, 28A.05.050, and 28A.05.060 this course also shall be required for high school graduation unless waived pursuant to WAC 180-51-075.

### WSR 85-04-008

#### ADOPTED RULES

### STATE BOARD OF EDUCATION

[Order 2-85—Filed January 25, 1985]

Be it resolved by the State Board of Education, acting at the Westwater Inn, Olympia, Washington, that it does adopt the annexed rules relating to State assistance in providing school plant facilities—Basic state support, chapter 180-27 WAC.

This action is taken pursuant to Notice No. WSR 84-24-064 filed with the code reviser on December 5, 1984.

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.47-.830 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, 1985.

By Monica Schmidt  
Secretary

#### NEW SECTION

**WAC 180-27-053 STATE MONEYS FOR STUDIES AND SURVEYS.** State moneys for school district studies and surveys conducted pursuant to chapter 180-25 WAC shall be available even though the state board of education deems it necessary to order a priority approval process pursuant to WAC 180-27-054. At the beginning of each biennium, the superintendent of public instruction shall estimate the amount of moneys necessary for allocation to districts for studies and surveys and not make such moneys available for any other purpose. In the event the estimated amount proves to be insufficient, the superintendent shall set aside additional moneys.

#### NEW SECTION

**WAC 180-27-054 IMPLEMENTATION OF PRIORITY APPROVAL PROCESS.** In the event the state board of education determines that projected revenues, as calculated by the ceiling established in WAC 180-27-056(2), are insufficient to meet school construction needs of school districts for the ensuing state fiscal year, the state board of education shall order the implementation of a priority approval process on final approval by the superintendent of public instruction of additional school construction projects pursuant to WAC 180-29-107. Such priority approval process shall remain in effect until the order is rescinded by the state board of education: PROVIDED, That if the state board of education determines that projected revenue is insufficient for the 1985-86 state fiscal year, the priority approval process shall not become effective prior to the end of the 1985 regular session and any immediately following special session of the forty-ninth legislature unless the state board of education prior to such adjournment specifically orders an earlier implementation date.

#### NEW SECTION

**WAC 180-27-056 FUNDING DURING THE PERIOD OF A PRIORITY APPROVAL PROCESS ORDER BY STATE BOARD OF EDUCATION.** During the period of a priority approval process imposed by order of the state board of education school construction projects shall receive final approval pursuant to WAC 180-29-107 as follows:

(1) On or after July 1 following the state board of education order for the implementation of a priority approval process the superintendent of public instruction shall rank all projects for which final approval has been requested pursuant to WAC 180-29-107 as per the priority list in WAC 180-27-058. Only school construction projects with secured local capital funds by December 31 of the previous state fiscal year and eligible for final approval pursuant to WAC 180-29-107 by June 30 of the previous state fiscal year shall be placed on that priority list.

(2) Based on a ceiling of one and one-half times the amount of the estimated revenue available for the state fiscal year plus fund balance for the state fiscal year minus outstanding encumbrances for the state fiscal year or as close thereto as is reasonably practical, the superintendent of public instruction shall give final approval pursuant to WAC 180-29-107 during the state fiscal year to school construction projects on the priority list. For the purpose of this subsection the term "estimated revenue available for the state fiscal year" shall mean the estimated revenue from the common school construction fund for the current state fiscal year and the subsequent state fiscal year, the result of which is divided by two.

(3) In the event the state board of education does not rescind the order for the implementation of a priority approval process by the close of the state fiscal year, school construction projects remaining on the priority list without final approval and, therefore, without secured funding status pursuant to WAC 180-29-107 shall be combined with new school construction projects that have secured local capital funds by December 31 of the state fiscal year and that are eligible, pursuant to WAC 180-29-107, for final approval by the close of the state fiscal year, and a new priority list shall be established on or after July 1 of the next state fiscal year and such remaining and new school construction projects shall be eligible for final approval pursuant to the provisions of subsections (1) and (2) of this section.

#### NEW SECTION

**WAC 180-27-058 STATE ASSISTANCE—PRIORITIES.** The priority system for the funding of school construction projects during a priority approval process imposed by order of the state board of education shall be as follows:

(1) Priority one: New construction and/or modernization projects in districts with unhoused students other than those in priority two. Projects within this priority shall be ranked as follows: The project with the highest percentage of unhoused students in the district by grade level on the date of project approval pursuant to WAC 180-25-040 shall be ranked highest—i.e., projected enrollment times authorized space allocation as calculated pursuant to WAC 180-27-035 divided by capacity of existing buildings as calculated pursuant to WAC 180-27-050(1). In the event two or more districts possess an equal percentage of unhoused students, the district with the greatest number of unhoused students shall be ranked the highest.

(2) Priority two: New construction and/or modernization projects in districts with unhoused students due to the need to replace a building. In the event the district is precluded from educating students in a facility due to bona fide condemnation procedures, such related space requirement shall be treated as unhoused students in priority one. Projects with this priority shall be ranked as follows: The project with the highest percentage of unhoused students in the district by grade level on the date of project approval pursuant to WAC 180-25-040 shall be ranked highest. In the event two or more districts possess an equal percentage of unhoused students, the district with the greatest number of unhoused students shall be ranked the highest.

(3) Priority three: New construction and/or modernization projects related to racial imbalance pursuant to WAC 180-27-115(8) in districts with no unhoused students. Projects within this priority shall be ranked as follows: The project with the greatest number of students affected shall be ranked highest. In the event two or more projects possess an equal number of students affected, the highest ranking shall be given to the project with the earliest date of project approval pursuant to WAC 180-25-040. Funding allocations for priority three shall not exceed forty percent of the available funds remaining after funding the eligible projects in priorities one and two.

(4) Priority four: Vocational-technical institutes and interdistrict cooperative facilities, excluding interdistrict transportation cooperatives. Projects within this priority shall be ranked as follows: The project with the earliest date of project approval pursuant to WAC 180-25-040 shall be ranked highest. In the event two or more projects possess the same project approval date, the project with the earliest date of application received in the office of superintendent of public instruction shall be ranked the highest.

(5) Priority five: New construction and/or modernization projects related to improved school district organization pursuant to WAC 180-27-115(7) in districts with no unhoused students. Projects within this priority shall be ranked as follows: The project with the greatest number of students affected shall be ranked highest. In the event two or more projects possess an equal number of students affected, the highest ranking shall be given to the district with the earliest date of project approval pursuant to WAC 180-25-040.

(6) Priority six: Modernization projects in districts with no unhoused students and not funded under priorities three and five. Projects within this priority shall be ranked as follows: The project with the highest percentage of projected student occupancy shall be ranked the highest—i.e., projected enrollment times authorized space allocation as calculated pursuant to WAC 180-27-035 divided by capacity of existing buildings as calculated pursuant to WAC 180-27-050(1). In the event two or more projects possess an equal percentage, the highest ranking shall be given to the project with the earliest date of project approval pursuant to WAC 180-25-040.

(7) Priority seven: Interdistrict transportation cooperatives. Projects within this priority shall be ranked as

follows: The project with the earliest date of project approval pursuant to WAC 180-25-040 shall be ranked the highest. In the event two or more projects possess the same project approval date, the project with the earliest date of application received in the office of superintendent of public instruction shall be ranked the highest.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-27-055 STATE ASSISTANCE—PRIORITIES.

#### WSR 85-04-009

#### ADOPTED RULES

#### STATE BOARD OF EDUCATION

[Order 3-85—Filed January 25, 1985]

Be it resolved by the State Board of Education, acting at the Westwater Inn, Olympia, Washington, that it does adopt the annexed rules relating to pupils, chapter 180-40 WAC.

This action is taken pursuant to Notice No. WSR 84-24-065 filed with the code reviser on December 5, 1984. 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.04-.132 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, 1985.

By Monica Schmidt  
Secretary

AMENDATORY SECTION (Amending Order 6-77, filed 6/2/77, effective 8/1/77)

WAC 180-40-215 STUDENT RIGHTS. In addition to other rights established by law, each student served by or in behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

(1) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory handicap.

(2) All students possess the constitutional right to freedom of speech and press ~~((and))~~, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion

and to have their schools free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(3) All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.

(4) All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.

(5) No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

### NEW SECTION

WAC 180-40-227 SCHOOL DISTRICT RULES DEFINING STUDENTS RELIGIOUS RIGHTS. It shall be the responsibility and duty of each school district to adopt policies of the district for implementation of students' rights to freedom of religion and to have their schools free from sectarian control or influence while they are participating in any school district conducted or sponsored activity or while they are otherwise subject to school district supervision and control. Such rules shall be adopted by September 1, 1985 and shall be transmitted to the superintendent of public instruction by October 1, 1985.

### **WSR 85-04-010**

#### **ADOPTED RULES**

### **STATE BOARD OF EDUCATION**

[Order 4-85—Filed January 25, 1985]

Be it resolved by the State Board of Education, acting at the Westwater Inn, Olympia, Washington, that it does adopt the annexed rules relating to professional preparation program development and approval, chapter 180-78 WAC.

This action is taken pursuant to Notice Nos. WSR 84-21-140 and 84-24-067 filed with the code reviser on October 24, 1984, and December 5, 1984. 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.04.120 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, 1985.

By Monica Schmidt  
Secretary

### AMENDATORY SECTION (Amending Order 6-81, filed 6/1/81)

WAC 180-78-050 PROGRAM APPROVAL STANDARDS AND CRITERIA. (1) Cooperation.

(a) Standard: Programs of preparation are developed with the cooperation of a program unit.

(b) Criteria:

(i) Documentation provides evidence acceptable to the site visit team and the state board of education that:

(A) The chief administrative officer of each agency was contacted and appointed a representative to the program unit whose authority to act in behalf of the agency is stated in writing; or

(B) A recommendation was forwarded to the superintendent of public instruction for comment and then to the state board of education signed by the chief administrative officers of each agency requesting that an exception be made to this program approval standard; documentation sets forth the reasons for the request; and documentation verifies that the exception was granted by the state board of education.

(ii) Bylaws or operating procedures have been written, adopted and implemented.

(iii) Meetings of the program unit, its subcommittees and/or task forces are held on a regular basis and minutes of activities and actions are maintained.

(iv) A college or university coordinates cooperation, involvement, and activities among agencies in the program unit under a written procedure explaining how each agency gains input.

(v) Governing boards of agencies which participate in the program unit contribute human and material resources to the program as feasible.

(2) Program management.

(a) Standard: Responsibilities are clearly assigned to individuals, groups, and/or committees for program development, implementation, and evaluation.

(b) Criteria:

(i) The college or university shall notify the state board of education and the superintendent of public instruction of the formation of a program unit; the membership; the specialization, subject matter, and/or grade level focus of the proposed programs; and its timeline for program development.

(ii) Responsibilities are assigned for selection; advising and counseling; maintaining records regarding the student's program and progress; supervision and evaluation of candidates; and verifying that certification requirements have been met and the preparation program has been completed.

(iii) Persons who will instruct, evaluate, or supervise candidates are identified; descriptions of their roles, responsibilities, and loads are written; and their activities are consistent with the written role description.

(iv) Documentation contains a written explanation of policy-making, program development, and program management processes and responsibilities.

(v) Review of certification records verifies that the records are accurate.

(vi) The need for any new program, new program emphasis, or certificate endorsement is established and

evidence of need exists including statistics relative to supply and demand; professional development needs of individuals or the education community; new curriculum or instructional directions in the common schools; and changes in enrollments and staffing ratios and patterns.

(vii) A schedule and outline have been completed relative to development and implementation of the program; decision-making points are identified; and individuals, agencies, or committees responsible for such tasks and decisions are specified.

(viii) Data are collected and available relative to the effectiveness of the management system, including identification of problem areas and procedural elements.

(ix) Responsibility for reporting program changes to the superintendent of public instruction and state board of education is assigned.

### (3) Program outcomes.

(a) Standard: At a minimum the program includes academic and experience requirements set forth in chapter 180-79 WAC for the respective role(s) and specifies in writing the knowledges and skills the person will possess and demonstrate when he or she completes the program, including the state board of education minimum generic standards.

#### (b) Criteria:

(i) All minimum generic standards for certification established by the state board of education are addressed in learning experiences and are included among the program outcomes. A relationship exists between field and didactic learning experiences and program outcomes.

(ii) Relevant standards of the national association of state directors of teacher education and certification, the national council for accreditation of teacher education and/or standards of specialized associations and scholarly societies are referred to as guides in identifying program outcomes: PROVIDED, That the superintendent of public instruction or his or her designee shall present to the state board of education for approval any standards of specialized associations and scholarly societies which will be used to supplement the standards set forth herein for assessment of program outcomes.

(iii) Degrees of proficiency required for program outcomes are clearly differentiated between the initial and continuing certificate levels.

(iv) Faculty, students and field supervisors know the program outcomes required of candidates.

(v) Program outcomes are stated in terms which make evaluation by supervisors and instructors possible.

(vi) Knowledge and skills related to continuing education and professional development are included in program outcomes.

(vii) All courses or offerings applicable to certification delivered off-campus meet the "state board of education standards for off-campus courses/offerings in education" adopted by the state board of education.

### (4) Selection and retention.

(a) Standard: Criteria and requirements to be used in selecting candidates for admission to the preparation program are explicit and practices relevant to retention of candidates are specified.

#### (b) Criteria:

(i) Selection criteria and the process used to screen and admit candidates are written.

(ii) Selection criteria are relevant to attainment of program outcomes.

(iii) A clearly written process exists for counseling and advising students about supply and demand; progress and retention in the program; and supervision and evaluation relative to academic, experience and generic standards.

(iv) Selection and retention procedures and criteria do not discriminate on the basis of race, ethnic group, sex, age, handicapping conditions, color or religion.

(v) Specific standards exist relative to retention in the program.

(vi) Written procedures exist for appeal of decisions within the college or university relative to admission or retention in the program.

(vii) Admission requirements to the professional preparation programs shall include a minimum college and/or university grade point average; evidence that the candidate is competent in the basic skills required for oral and written communication and computation; and a minimum composite standard score of eighty on the verbal and quantitative subtests of the Washington Pre-College (WPC) test or an equivalent standard score on the comparable portions of the Scholastic Aptitude Test (SAT) or American College Test (ACT). Equivalent standard scores shall be determined annually by the superintendent of public instruction and affected agencies shall be notified in official bulletins of the agency.

(viii) The program identifies the specific requirements which shall pertain for purposes of renewal of the initial certificate.

### (5) Individualization.

(a) Standard: Programs recognize individual differences in terms of learner rate and style. Alternative learning experiences appropriate to such differences are available.

#### (b) Criteria:

(i) Procedures for assessing individual assets and needs are clearly defined.

(ii) Opportunities for planning alternate preparation experiences are available to students.

(iii) Learning experiences are designed to provide for social-cultural-economic differences among candidates.

(iv) Appropriate individualized learning opportunities are provided to those students identified as possessing special assets and needs as determined through a variety of assessment procedures.

(v) Individual differences in learning style are recognized and as feasible alternative learning opportunities are provided.

(vi) When appropriate and feasible, learning opportunities provide for differences in learning rate by variations in training time.

#### (6) Field experience.

(a) Standard: Field experiences are provided as required in WAC 180-79-115, 180-79-120, and 180-79-125 and are designed to correlate with specified program outcomes.

#### (b) Criteria:

(i) A sequence of field experiences is offered in the preparation program including opportunities for observation, tutoring, micro-teaching and extended practicum, student teaching, and/or internship experiences in educational settings.

(ii) Appropriate clinical and laboratory experiences are available to persons being prepared in specializations requiring practice under supervision in settings in addition to educational settings.

(iii) Written agreements exist between the college or university and the field sites which specify the role of agencies and the responsibilities and contributions each will make to the field program.

(iv) Field experiences provide opportunities for candidates to observe and participate in educational settings having varied organizational structures, ethnic populations, age groups, socio-economic characteristics, and curricular and instructional programs.

(v) Field experiences are designed to address the minimum generic standards established by the state board of education and to integrate theory and practice.

(vi) Criteria for selecting sites and for selecting field personnel are specified.

(vii) Criteria and procedures to be used in assigning students to field settings are identified; provisions are made for changes in assignments in circumstances where problems exist.

(viii) The responsibilities and authority of college supervisors and field personnel are specified in writing in relation to instruction, observation, evaluation, and grading.

(ix) Written materials are provided to field personnel which make explicitly their responsibilities and the program outcomes to be experienced, demonstrated, and evaluated in the field setting.

(x) Field personnel serving as supervisors are oriented to their responsibilities, and training is provided to assist them in implementing and evaluating those elements of the program for which they share responsibility with the college or university supervisors.

(xi) College or university supervisors have scheduled contact and communication with field personnel.

#### (7) Supervision.

(a) Standard: Provision exists in the program for ongoing evaluation and for constructive supervision emphasizing the developmental nature of the preparation process.

#### (b) Criteria:

(i) A schedule exists which ensures that each candidate receives regular assessment and feedback relative to knowledge, skill, and performance.

(ii) Results of assessment and evaluation are used as a basis for developing further didactic, field, and/or clinical experiences.

(iii) Criteria exist and are used for selecting field personnel and college or university personnel who will provide supervision; criteria include knowledge, skill and experience requirements.

(iv) Orientation and training are offered for all supervisory personnel including college and university supervisors.

(v) Records of observations, evaluations, and suggested learning experiences are maintained for each student in the preparation program.

(vi) College personnel providing supervision of field experiences and instructing techniques and methods courses have had experience in an educational setting in grades K-12.

#### (8) Options.

(a) Standard: Program units are encouraged to employ alternative methods for developing programs and implementing professional preparation.

#### (b) Criteria:

(i) Documentation shall identify unique features or approaches used in implementing program principles or meeting program approval standards and provide a rationale for variation in the latter instance.

(ii) Innovative and experimental programs or program components are based on validated research and theory.

(iii) Alternative approaches are appropriate to institutional and program characteristics and program emphases and objectives.

#### (9) Resources.

(a) Standard: Resources are of the quantity and quality necessary for meetings of the program unit and for implementation of the program as approved by the state board of education.

#### (b) Criteria:

(i) Documentation shall specify activities of the program unit and the availability of resources to support those activities. Documentation shall also specify elements of the program which require resources and resources available for specific needs.

(ii) Documentation and data relevant to funding, personnel, facilities, material, and equipment are available for review.

(iii) Member agencies in the program unit have set forth in writing the real and/or in-kind resource contributions they are making to the program unit or program.

(iv) A budget document exists detailing budgetary information pertinent to the program unit and the program.

(v) Faculty members and field personnel who supervise and instruct in the program have the appropriate academic preparation and experience in the fields of study for which they are responsible and which are essential to implementation of the program.

(vi) Learning resources reflect breadth and depth in selection of journals, books, curriculum and materials and are evaluated periodically using model listings and guidelines of professional organizations.

(vii) The program administrator is allowed the necessary time as part of his or her load to fulfill program responsibilities.

#### (10) Research and evaluation.

(a) Standard: The preparation program is based on study and research; ongoing program evaluation; and follow-up assessment of the persons prepared.

#### (b) Criteria:

(i) Specific individuals are assigned responsibility for program evaluation, research, and follow-up.



- (ii) A systematic procedure is established for program evaluation and for follow-up studies of graduates.
- (iii) A systematic process exists for gaining from instructors, supervisors, students, and field personnel evaluative information and data about the program and its outcomes.
- (iv) Placement records are maintained and annual summaries are prepared.
- (v) Data are analyzed and studied for the purposes of determining program needs.
- (vi) Data generated from research or follow-up studies are used in program revision and redesign.

**WSR 85-04-011**  
**NOTICE OF PUBLIC MEETINGS**  
**WESTERN WASHINGTON UNIVERSITY**  
 [Memorandum—January 23, 1985]

SCHEDULE OF MEETINGS FOR 1985  
 BOARD OF TRUSTEES  
 WESTERN WASHINGTON UNIVERSITY

Date	City	Time	Location
*January 3, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
February 7, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
March 7, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
April 4, 1985	Out of town	1:30 p.m.	Not determined
May 2, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
June 6, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
August 1, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
September 5, 1985	Out of town	1:30 p.m.	Not determined
October 3, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
November 7, 1985	Bellingham	1:30 p.m.	Old Main 340, WWU
December 5, 1985	Out of town	1:30 p.m.	Not determined

\*The January 3, 1985, meeting was canceled.

**WSR 85-04-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
 [Order 85-06—Filed January 28, 1985]

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 75.08.070 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 25, 1985.

By Russell W. Cahill  
 for William R. Wilkerson  
 Director

NEW SECTION

*WAC 220-32-02200M LAWFUL GEAR—SEASONS—STURGEON. Notwithstanding the provisions of WAC 220-32-022, WAC 220-32-030, WAC 220-32-031, 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 28 to 6:00 p.m. February 1
- 12:00 noon February 4 to 6:00 p.m. February 8, 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.*

(5) *It is lawful to sell chinook salmon taken incidentally to sturgeon fishing during the periods in subsection (1) of this section.*

**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 85-04-013**  
**ATTORNEY GENERAL OPINION**  
**Cite as: AGO 1985 No. 3**  
 [January 25, 1985]

OFFICES AND OFFICERS—STATE—DEPARTMENT OF ECOLOGY—DEPARTMENT OF SOCIAL AND HEALTH SERVICES—STATE MONITORING AND REGULATION OF RADIOACTIVE EMISSIONS FROM FEDERAL NUCLEAR FACILITY

The State of Washington does not have the requisite authority, under federal law, to regulate radioactive emissions from a federal nuclear facility—except for air emissions, which may be monitored by the State Department of Ecology under the federal Clean Air Act amendments of 1977.

Requested by:

Honorable Dick Nelson  
State Representative, 32nd District  
340 House Office Building  
Olympia, Washington 98504

#### WSR 85-04-014

#### NOTICE OF PUBLIC MEETINGS HOSPITAL COMMISSION [Memorandum—January 25, 1985]

The State Hospital Commission will meet in Seattle at the Airport Hilton on Thursday, February 14, 1985, at 9:30 a.m. The hospitals scheduled for informal hearing have previously filed with the commission their annual budget and rate requests and their requests for amendments to their previously approved budget and rates. Staff findings and recommendations will be transmitted to the scheduled hospitals and to members of the Hospital Commission in accordance with WAC 261-20-135. Such information is on file in the commission's office and is available for inspection.

Meetings of the State Hospital Commission are also scheduled for February 28, 1985, and March 14, 1985, at the Vance Airport Inn.

#### WSR 85-04-015

#### ADOPTED RULES DEPARTMENT OF CORRECTIONS [Order 85-02—Filed January 28, 1985]

I, Amos E. Reed, secretary of the Department of Corrections, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Furlough of a person confined in a state correctional institution—Secretary's authority to grant or deny, amending WAC 137-60-020.

This action is taken pursuant to Notice No. WSR 85-01-058 filed with the code reviser on December 17, 1984. 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 72.66.080 and is intended to administratively implement chapter 72.66 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 28, 1985.

By Amos E. Reed  
Secretary

#### AMENDATORY SECTION (Amending Order 82-04, filed 3/4/82)

WAC 137-60-020 FURLOUGH OF PERSON CONFINED IN STATE CORRECTIONAL INSTITUTION—SECRETARY'S AUTHORITY TO GRANT OR DENY. (1) The institution superintendent(~~(, work/training release supervisor,)~~) or chief, classification and treatment, may grant or deny a furlough as authorized by chapter 72.66 RCW and subject to the rules in this chapter to an inmate of a state correctional institution, not including inmates of work release facilities.

(2) The supervisor of a work release facility may grant or deny a furlough as authorized by chapter 72.66 RCW and subject to the rules of this chapter to an inmate of a work release facility; provided, however, with respect to such inmates, the granting of a first furlough shall be subject to the prior approval of the community corrections regional administrator if:

(a) There is a dispute between the work release facility supervisor and field staff regarding the granting of the furlough; or

(b) The inmate has two or more convictions for crimes against persons; or

(c) The inmate is confined under a sentence for murder in the first or second degree, manslaughter, negligent homicide, rape in the first or second degree, kidnapping, burglary in the first degree, robbery in the first degree, assault in the first degree, or arson in the first degree.

#### WSR 85-04-016

#### ADOPTED RULES DEPARTMENT OF REVENUE [Order 85-1—Filed January 29, 1985]

I, A. N. Shinpoch, director of the Department of Revenue, do promulgate and adopt at Olympia, Washington, the annexed rules relating to:

Amd WAC 458-20-189 Sales to and by the state of Washington, counties, cities, school districts and other municipal subdivisions.

Amd WAC 458-20-228 Returns, remittances, penalties, extensions, inventory tax credit applications, stay of collection.

This action is taken pursuant to Notice No. WSR 85-01-070 filed with the code reviser on December 19, 1984. 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 Revenue as authorized in RCW 82.32.300.

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 29, 1985.

By DeLoss H. Brown  
Acting Assistant Director

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

WAC 458-20-189 SALES TO AND BY THE STATE OF WASHINGTON, COUNTIES, CITIES, SCHOOL DISTRICTS AND OTHER MUNICIPAL SUBDIVISIONS.

#### BUSINESS AND OCCUPATION TAX

No deduction is allowed a seller in computing tax under the provisions of the business and occupation tax with respect to sales to the state of Washington, its departments and institutions or to counties, cities, school districts or other municipal subdivisions thereof.

~~The state of Washington, its departments and institutions ((and all counties, cities and other municipal subdivisions engaging in governmental functions and receiving income therefrom in the form of license fees, inspection fees, permits, or taxes)), as distinct from its corporate agencies or instrumentalities, are not subject to the provisions of the business and occupation tax ((upon such revenues)). ((However, subdivisions are taxable with respect to income however designated derived from any activity whether proprietary or governmental wherein a specific charge is made to its residents or others based upon and measured by some service actually rendered by the subdivision, such as a charge made for water or electrical energy (both taxable under the public utility tax and not under the business and occupation tax) or a charge made for sewer service, garbage collection or for admission to any place.)) Counties, cities and other municipal subdivisions are not subject to the business and occupation tax upon amounts derived from license and permit fees, inspection fees, fees for copies of public records, reports and studies, processing fees involving fingerprinting and environmental impact statements, and taxes, fines or penalties, and interest thereon.~~

Counties, cities and other municipal subdivisions are taxable with respect to amounts derived, however designated, from any "utility or enterprise activity" for which a specific charge is made.

#### UTILITY ACTIVITIES

"Utility activities" include water and electrical energy distribution and public transportation services (taxable under the public utility tax; see WAC 458-20-179); and

sewer service, solid waste treatment and garbage collection (taxable under the service and other activities classification of the business and occupation tax).

#### ENTERPRISE ACTIVITY

An "enterprise activity," for the purposes of this rule, is an activity financed and operated in a manner similar to private business enterprises. The term includes activities which are generally in competition with private business enterprises and are over fifty percent funded by user fees. The term does not include activities which are exclusively governmental.

Amounts derived from enterprise activities consisting of or from admission fees to special events, user fees (lockers, checkrooms), moorage fees (less than thirty days), cemetery and crematory fees, the granting of media broadcasting rights, and the granting of a license to use real property are taxable under the service and other activities classification of the business and occupation tax.

Amounts derived from enterprise activities consisting of or from fees for participation in amusement or recreation (pay for play), user fees for off-street parking and garages, and charges for sale and rental of tangible personal property are taxable under the retailing classification of the business and occupation tax.

Under RCW 82.04.419, amounts derived from an activity which is not a "utility or enterprise activity" are tax exempt. Such tax exempt amounts include admission fees other than to special events, fees for on-street metered parking and parking permits, instruction fees, health program fees, athletic team registration fees, and interagency and intergovernmental charges for services rendered.

All counties, cities and other municipal subdivisions engaging in utility or enterprise activities and all corporate agencies or instrumentalities of the state of Washington engaging in ((proprietary functions or services for which a specific charge is made as above-mentioned)) business activities are subject to tax ((under the business and occupation tax)) as follows:

(1) Extracting or manufacturing – taxable upon the value of products manufactured or extracted.

(2) Retailing or wholesaling – taxable upon gross proceeds of sales.

(3) Persons taxable under either the retailing or wholesaling classifications are not taxable under either extracting or manufacturing in respect to sales of articles extracted or manufactured by them in this state.

(4) Service and other business activities – taxable under the service and other business activities classification upon the gross income derived from services rendered by them((, including the gross income received from admission charges, garbage collection, and sewer service)).

~~((However, municipal sewerage utilities and other public corporations imposing and collecting fees or charges for such services may deduct from the measure of the tax, amounts paid to another municipal corporation or governmental agency for performance of such services.))~~

(5) Public utility activities – taxable upon the gross income of the business (see WAC 458-20-179).

Counties and cities are not subject to the business and occupation tax on the cost of labor and service in the mining, sorting, crushing, screening, washing, hauling and stockpiling of sand, gravel and rock taken from a pit or quarry owned by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.)

For operation of hospitals by the state or its political subdivisions see WAC 458-20-168 and 458-20-188.

The business and occupation tax does not apply to the value of materials printed solely for their own use by school districts, educational service districts, counties, cities, towns, libraries, or library districts.

#### RETAIL SALES TAX

The retail sales tax applies to all retail sales made to the state of Washington, its departments and institutions and to counties, cities, school districts and all other municipal subdivisions of the state (~~irrespective of whether the property purchased is for use in carrying on a governmental or proprietary function~~). The retail sales tax does not apply to sales to city or county housing authorities which were created under the provisions of the Washington housing authorities law, chapter 35.82 RCW. An exemption is also allowed municipal corporations, the state and all political subdivisions thereof for that portion of the selling price of contracts for watershed protection or flood control which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Law 566, as amended. The retail sales tax does not apply to sales of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any public utility enterprise except a tugboat business (RCW 82.08.0256).

Where tangible personal property or taxable services are purchased by the state of Washington, its departments or institutions for the purpose of resale to any other department or institution of the state of Washington, or for the purpose of consuming the property purchased in manufacturing or producing for use or for resale to any other department or institution of the state of Washington a new article of which such property is an ingredient or component part, the transaction is deemed a purchase at retail and the retail sales tax must be paid by the state of Washington to its vendors. So-called sales between a department or institution of the state of Washington and any other such department or institution constitute interdepartmental charges (see WAC 458-20-201) and the retail sales tax is not applicable.

The state of Washington, its departments and institutions and all counties, cities, and other municipal subdivisions are required to collect the retail sales tax on all retail sales of tangible personal property or services classified as retail sales, including sales of equipment or other capital assets. The retail sales tax is not applicable to the cost of labor and services in the mining, sorting,

crushing, screening, washing, hauling and stockpiling of sand, gravel and rock taken from a pit or quarry owned by or leased to the county or city when these materials are sold at cost to another county or city for use on public roads. (See also WAC 458-20-171.) (~~The sales tax does not apply to sales to one political subdivision directly or indirectly arising out of annexation of territory of one political subdivision by another.~~)

The sales tax does not apply to sales to the state or a local governmental unit thereof of ferry vessels, component parts thereof, nor labor and services in respect to construction or improvement of such vessels.

#### USE TAX

The state of Washington, its departments and institutions and all counties, cities, school districts, and other municipal subdivisions are required to report the use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.

Counties and cities are not subject to use tax upon the cost of labor and services in the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock taken from a pit or quarry owned or leased to a county or city when the materials are for use on public roads. (~~The use tax does not apply to property acquired by one political subdivision directly or indirectly through annexation of territory of another political subdivision.~~)

The use tax does not apply to the use of ferry vessels or component parts thereof by the state or local governmental units.

#### PUBLIC UTILITY TAX

No deduction in computing tax liability under the provisions of the public utility tax is allowed to any person or firm by reason of the fact that sales are to the state of Washington or any of its municipal subdivisions.

Counties, cities and other municipal subdivisions of the state operating public utilities or public service businesses are subject to the provisions of the public utility tax.

Neither the public utility tax nor the business tax apply to amounts or value paid or contributed to any county, city, town, political subdivision, or municipal or quasi municipal corporation of the state of Washington representing payments of special assessments or installments thereof and interests and penalties thereon, charges in lieu of assessments, or any other charges, payments or contributions representing a share of the cost of capital facilities constructed or to be constructed or for the retirement of obligations and payment of interest thereon issued for capital purposes. Service charges shall not be included in this exemption even though used wholly or in part for capital purposes (see WAC 458-20-179).

Where there is doubt as to the tax consequences applicable to any activity or transaction, the question should be submitted to the department of revenue for determination.

AMENDATORY SECTION (Amending Order ET 83-4, filed 8/1/83)

WAC 458-20-228 RETURNS, REMITTANCES, PENALTIES, EXTENSIONS, INVENTORY TAX CREDIT APPLICATIONS, STAY OF COLLECTION. The taxes imposed under chapter 82.20 RCW (Tax on Conveyances) and under chapter 82.24 RCW (Tax on Cigarettes) are collected through sales of revenue stamps.

As to taxes imposed under chapter 82.04 RCW (Business and Occupation Tax), chapter 82.08 RCW (Retail Sales Tax), chapter 82.12 RCW (Use Tax), chapter 82.14 RCW (Local Sales and Use Taxes) chapter 82.16 RCW (Public Utility Tax), and chapter 82.26 RCW (Tobacco Products Tax), returns and remittances are to be filed with the department of revenue by the taxpayer. Returns are filed monthly, quarterly or annually. Reporting periods are assigned by the department of revenue on the basis of the amount of tax liability. Returns shall be made upon forms prepared by the department, which forms are forwarded by mail to all registered taxpayers approximately ten days prior to the due date of the tax.

Remittances in payment of tax may be made by uncertified bank check, but if any such check or remittance, other than legal tender, ~~((be))~~ is not honored by the bank on which drawn, the taxpayer shall remain liable for the payment of the tax and for all legal penalties thereon. The department may refuse to accept any check which, in its opinion, would not be honored by the bank on which such check is drawn. The remittance covered by any check which is so refused will be deemed not to have been made and the taxpayer will remain liable for the tax due and for the applicable penalties.

For monthly reporting taxpayers, the tax returns are due as shown in the following schedule:

BUSINESS ACTIVITY DURING:	TAX RETURN IS DUE:
October 1981 through March 1982	25th of the following month
April 1982 through March 1983	20th of the following month
April 1983 through March 1985	15th of the following month
April 1985 and thereafter	25th of the following month

If the tax return is not filed by the due date shown above, a 5% penalty will apply; a 10% penalty will apply if the return is not filed within 30 days of the due date; and a 20% penalty will apply if the return is still delinquent 60 days from the due date.

As to taxpayers reporting quarterly or annually, the tax return is due on or before the last day of the month following the period covered by the tax return. If payment of any tax due is not received by the department by the last day of the month in which the tax becomes due, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received within thirty days of the last day of the month in which the due date falls, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within sixty days of the last day of the month in which the due date falls, there shall be assessed a total penalty of twenty percent of the amount of the tax.

The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon, and if not accepted, the taxpayer shall be deemed to have failed or refused to file a return, and shall be subject to the foregoing penalties.

Under the law, none of the penalties referred to above may be less than two dollars. The aggregate of penalties for failure to file a return, late payment of any tax, increase or penalty, or issuance of a warrant may not exceed twenty-five percent of the tax due, or seven dollars, whichever is greater.

The department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

The department will waive or cancel the penalties imposed under RCW 82.32.090 and interest imposed under RCW 82.32.050 upon finding that the failure of a taxpayer to pay any tax by the due date was due to circumstances beyond the control of the taxpayer. The department has no authority to cancel penalties or interest for any other reason.

The following situations will constitute the only circumstances under which a cancellation of penalties will be considered by the department((-):

~~((+))~~ 1. The return was filed on time but inadvertently mailed to another agency.

~~((2))~~ 2. The delinquency was due to erroneous information given the taxpayer by a department officer or employee.

~~((3))~~ 3. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or illness or death of his accountant or in the accountant's immediate family, prior to the filing date.

~~((4))~~ 4. The delinquency was caused by unavoidable absence of the taxpayer, prior to the filing date.

~~((5))~~ 5. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

~~((6))~~ 6. The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office, in writing, for proper forms and these were not furnished in sufficient time to permit the completed return to be paid before its delinquent date.

7. The delinquent tax return was received under the following circumstances:

a. The return was received by the department with full payment of tax due within 30 days after the due date; i.e., within the five percent penalty period prescribed by RCW 82.32.090, and

b. The taxpayer has never been delinquent filing a tax return prior to this occurrence, unless the penalty was excused under one of the preceding six circumstances, and

c. The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, confusion caused by communications with the department, failure to receive return forms timely, and delays or losses related to the postal service.

d. The delinquency will be waived under this circumstance on a one-time basis only.

A request for a waiver or cancellation of penalties must be in letter form and should contain all pertinent facts and be accompanied by such proof as may be available. Petition for cancellation of penalties must be made within the period for filing under RCW 82.32.160 (within 20 days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department). In all such cases the burden of proving the facts is upon the taxpayer.

The following situations will constitute circumstances under which a waiver or cancellation of interest upon assessments pursuant to RCW 82.32.050 will be considered by the department((:)):

((+)) 1. The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department.

((2)) 2. Extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department.

#### STAY OF COLLECTION

RCW 82.32.200 provides ~~((that)),~~ "When any assessment or additional assessment (of taxes) has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion thereof from the due date until paid."

(Note: RCW 82.32.190 authorizes issuance of an order by the department holding in abeyance tax collection during pendency of litigation. Such tax might be that due on excise tax returns or tax due for unaudited periods for which no assessment has been issued. If, however, an assessment has been issued and is unpaid, RCW 82.32.200, not RCW 82.32.190, is the operative statute for stay of collection with respect to such an assessment.)

The department will give consideration to a request that it grant a stay of collection if:

((+)) 1. Written request for the stay is made prior to the due date for payment of the tax assessment, and

((2)) 2. Payment of any unprotested portion of the assessment and other taxes due is timely made, and

((3)) 3. The requested stay is accompanied by an offer of a cash bond, or the offer of a security bond, the conditions of which are guaranteed by a specified authorized surety insurer; in either case the amount of the bond will ordinarily be set in an amount equal to the assessment or portion thereof for which stay is requested together with interest thereon at the rate of one percent per month, but in appropriate cases the department may require a bond in an increased amount not to exceed twice the amount for which stay is requested.

The department will grant a stay of collection only when it is satisfied and determines that it is in the best interests of the state to do so. Factors which it will consider in making this determination include: the existence of ~~((+))~~ 1. a constitutional issue to be litigated by the taxpayer the resolution of which is uncertain; ~~((2))~~ 2. a matter of first impression for which the department has little precedent in administrative practice; and ~~((3))~~ 3. an issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

Claims of financial hardship or threat of litigation are not grounds which would justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request therefor or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

#### EXTENSIONS

The department, for good cause, may extend the due date for filing any return. Any permanent extension, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

#### INVENTORY TAX CREDIT

A credit against business and occupation tax for property tax on business inventories paid before delinquency (i.e., paid on or before the time specified in RCW 84.56.020) is authorized by RCW 82.04.442. However, the credit may be allowed notwithstanding that the property tax was not paid by the due date for such payment upon a finding by the department of revenue that the delinquency was due to extenuating circumstances. Extenuating circumstances are those which are beyond the control of the taxpayer ~~((and are the same generally as would justify the waiver of interest or penalties)),~~ namely:

((+)) 1. The payment was mailed timely, but was inadvertently addressed incorrectly.

((2)) 2. The delinquency was caused by death or serious illness of the taxpayer or his immediate family, or death or serious illness of his accountant or his immediate family.

((3)) 3. The delinquency was caused by unavoidable absence of the taxpayer.

((4)) 4. The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

This notice is connected to and continues the matter in Notice No. WSR 84-24-060 filed with the code reviser's office on December 5, 1984.

Dated: January 30, 1985

By: John A. Spitz  
Director

**WSR 85-04-017**  
**NOTICE OF PUBLIC MEETINGS**  
**FORT STEILACOOM**  
**COMMUNITY COLLEGE**  
[Memorandum—January 24, 1985]

Student senate meetings for the winter quarter 1985 are listed below. This is a revision of the list sent on October 12, 1984.

<u>Dates—Winter Quarter</u>	<u>Location</u>	<u>Time</u>
January 30	Fort Steilacoom	3:00 p.m.
February 6 (study session)	Community College	
February 13	Portable 12—Boardroom	
February 20 (study session)	9401 Farwest Drive S.W.	
February 27	Tacoma, Washington 98498	
March 6 (study session)		
March 13		

**WSR 85-04-018**  
**PROPOSED RULES**  
**HIGHER EDUCATION**  
**PERSONNEL BOARD**  
[Filed January 30, 1985]

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 Examination results—Notification—Institutional review, amending WAC 251-18-140, by clarifying the requirements for notification of applicants and adds a review by the personnel officer to an applicant's right of review and appeal per new WAC 251-18-145. An alternate proposal adds language to provide that an error in rating will invalidate an appointment made from an eligible list unless such invalidation will cause irreparable harm to the individual appointed;

that the agency will at 9:00 a.m., Friday, February 15, 1985, in the Bookstore Conference Room, Everett Community College, Everett, 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.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before February 15, 1985.

**WSR 85-04-019**  
**ADOPTED RULES**  
**HIGHER EDUCATION**  
**PERSONNEL BOARD**  
[Order 123—Filed January 30, 1985]

Be it resolved by the Higher Education Personnel Board, acting at the Olympic College, Bremerton, Washington, that it does adopt the annexed rules relating to:

Amd	WAC 251-04-020	Definitions ("layoff seniority").
New	WAC 251-10-025	Layoff seniority—General provisions.
New	WAC 251-10-112	Medical examination—Current employee.
Amd	WAC 251-18-190	Eligible lists—Duration.
Amd	WAC 251-18-200	Eligible lists—Removal of name—Notification.

This action is taken pursuant to Notice Nos. WSR 84-24-059 and 84-24-060 filed with the code reviser on December 5, 1984. 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 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 January 18, 1985.

By John A. Spitz  
Director

**AMENDATORY SECTION** (Amending Order 121, filed 10/31/84, effective 12/1/84)

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.

"ANNUAL PERFORMANCE EVALUATION" – The official annual performance rating of an employee recorded on a form approved by the board.

"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.

"EXAMINATIONS" – Any measures or assessments used in the process of identifying names for certification to



vacancies in accordance with RCW 28B.16.100(2) and WAC 251-18-240.

"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.

"FINAL EXAMINATION SCORE" – An applicant's final passing score on an examination, plus any veterans preference or other applicable credits added in accordance with WAC 251-18-130, 251-18-180 (6) and/or (8)(b).

"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 or lack of work:

- (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 service the veteran's active military service to a maximum of five years' credit)) total amount of service an employee earns as a result of unbroken classified employment and statutory allowance.~~

"LAYOFF UNIT" – 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.

"MANAGEMENT EMPLOYEE" – An employee whose position: (1) Is at system-wide salary range 49 or above, and (2) includes supervision of subordinates, and (3) includes responsibilities normally associated with management such as planning, organizing, directing, and controlling a program or function.

"NONMANAGEMENT EMPLOYEES" – All classified employees except those defined as "management 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.

"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, related board or state agency.

"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. 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.

"RATING FACTOR" – An element, duty, responsibility, skill, ability, or other specific aspect of performance which is rated as part of the annual performance evaluation.

"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 or related board, 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(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.

#### NEW SECTION

WAC 251-10-025 LAYOFF SENIORITY—GENERAL PROVISIONS. (1) Layoff seniority is used to determine which employee(s) will be affected by a layoff.

(2) Layoff seniority is the number of calendar days an employee has been continuously employed in the classified service.

(3) Layoff seniority is based on the earliest date of continuous classified service. For the purposes of layoff seniority, classified service of less than full time shall be considered full-time service.

(4) Authorized leave of absence 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 or as stated in subsection (5) of this section.

(5) Leave of absence without pay scheduled for cyclic year positions does not constitute a break in service and shall be included when calculating layoff seniority for employees in cyclic year positions.

(6) Permanent employees who are veterans or their unmarried widows/widowers as identified in WAC 251-10-045 shall have added to their unbroken service the veteran's active military service to a maximum of five years' credit.

#### NEW SECTION

WAC 251-10-112 MEDICAL EXAMINATION—CURRENT EMPLOYEE. A medical examination and/or doctor's certificate may be required where a question arises concerning the fitness of a current employee to perform the duties of his/her position. Cost of the medical examination and/or doctor's certificate should be borne by the employer; provided that such costs shall not be borne by the employer under the circumstances described in WAC 251-22-111(2).

AMENDATORY SECTION (Amending Order 115, filed 5/2/84)

WAC 251-18-190 ELIGIBLE LISTS—DURATION. (1) The duration of eligibility on a list begins the date the name is placed on the list and ends as follows:

(a) After two years on an institution-wide layoff list;  
 (b) After one year on an organizational unit or institution-wide promotional list, special employment program layoff list, interinstitutional employee list, intersystem employee list, or state-wide layoff list;

(c) After six months on an open competitive or non-competitive list.

(2) Prior to the original expiration date of a name on an institution-wide layoff list, an organizational unit promotional list, an institution-wide promotional list, ~~((or))~~ a special employment program layoff list, an interinstitutional employee list, or an intersystem employee list, the eligible shall be notified of the expiration and given the opportunity to extend eligibility for one additional year by written request to the personnel officer.

(3) The personnel officer may extend an entire eligible list for the following periods:

(a) Six months for open competitive and noncompetitive lists;

(b) One year for all other lists.

(4) The personnel officer shall cancel the entire eligible list when the class or examination has been changed to the degree that the list would be invalid. All affected eligibles shall be notified of the cancellation.

#### AMENDATORY SECTION (Amending Order 115, filed 5/2/84)

WAC 251-18-200 ELIGIBLE LISTS—REMOVAL OF NAME—NOTIFICATION. (1) The personnel officer may remove a name from an eligible list for good and sufficient reason.

(2) Notification of the removal of a name according to subsection (1) of this section is not required where the person has:

(a) Requested removal from the list in writing;

(b) Failed to respond to a written inquiry within ten calendar days or to a telegraphed inquiry within three calendar days relative to availability for appointment;

(c) Failed to notify the personnel office of a change of address;

(d) Been removed from a state-wide layoff list, an interinstitutional employee list, an intersystem employee list, an open-competitive or noncompetitive list due to expiration of eligibility; or

(e) Been removed from an eligible list due to expiration of an extension of eligibility in accordance with WAC 251-18-190(2).

(3) In all other cases, the affected person shall be notified of the specific reasons for removal from the eligible list and advised of the right to request a review by the personnel officer per subsection (4) of this section.

(4) A person whose name has been removed from an eligible list for reasons other than those listed in subsection (2) of this section may request in writing within ten calendar days of notification that the personnel officer restore the name to the list for the duration of eligibility.

(5) Within ten calendar days after receiving a request per subsection (4) of this section, the personnel officer will provide the person with written notification of the decision to:

(a) Restore the name to the eligible list; or

(b) Refuse to restore the name to the eligible list. In this case, the person shall also be advised of the right of appeal per WAC 251-18-145 (1)(d).

#### WSR 85-04-020

#### ADOPTED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2196—Filed January 30, 1985]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to low income home energy assistance allowance, amending WAC 388-29-290.

This action is taken pursuant to Notice No. WSR 85-01-029 filed with the code reviser on December 12, 1984. 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 43.20A.550.

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, 1985.

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

#### AMENDATORY SECTION (Amending Order 2058, filed 1/4/84)

WAC 388-29-290 LOW-INCOME HOME ENERGY ASSISTANCE ALLOWANCE. The department, acting as an agent of the Washington state ~~((planning and community affairs agency))~~ department of community development within the limits of the ~~((DSHS-PCAA))~~ DSHS-DCD agreement, will implement a portion of the low-income home energy assistance program. The following delineates the rules applicable to that portion of the program:

(1) Definitions:

(a) The low-income home energy assistance allowance is a one-time payment to a household to help meet the rising costs of home energy ((supplies)).

(b) Subsidized housing means a rental unit wherein the recipient's shelter and utility costs are partly or wholly paid by a government agency, whether local, state, or federal.

~~((2))~~ (c) An energy ((payment)) assistance ((unit)) household is defined as one or more food stamp households and/or AFDC, SSI, refugee assistance, or GA recipients meeting the definition of household in the Low-Income Home Energy Assistance Act.

(d) Energy assistance overpayment means an energy assistance payment made by the department for the low income home energy assistance program and received by

an energy assistance household exceeding the amount the household was eligible to receive.

(2) Applications:

(a) The department shall send an energy assistance application to all potentially eligible energy assistance households except those residing in the pilot counties.

(b) Energy assistance households residing in the pilot counties shall be sent a referral to the local energy assistance program.

(c) Pilot counties are Spokane, Clark, Clallam, Jefferson, Walla Walla, Columbia, and Garfield.

(d) Applications will not be accepted by the department after December 5, 1984.

(3) ~~((Energy payment assistance units))~~ The department shall make a direct energy assistance payment to those energy assistance households who:

(a) Were on the November 1, ~~((1983))~~ 1984, DSHS warrant roll~~((:));~~ and

(b) ~~((Having))~~ Correctly completed and returned an energy assistance application~~((:));~~ and

(c) ~~((Having))~~ Have incomes at or below one hundred twenty-five percent of the federally established poverty level~~((:));~~ and

(d) ~~((Residing))~~ Reside in shelters ~~((which meet))~~ meeting the eligibility criteria in the Low-Income Home Energy Assistance Act~~((:));~~ and

(e) Do not ~~((residing))~~ reside at the same address as another applicant according to DSHS automated client files~~((:));~~ and

(f) Do not ~~((living))~~ live in a subsidized rental unit ~~((will be eligible for energy assistance allowances));~~ and

(g) Are not specifically excluded in subsection (4) of this section.

(4)(a) A recipient residing in foster care, a subsidized rental housing unit, a group home for developmentally disabled, nursing home, supplied shelter, congregate care facility, or an institution for the mentally retarded ~~((with))~~ shall not be eligible for an energy payment from the department.

(b) A recipient who is a member of an Indian tribe with its own energy assistance funds ~~((with))~~ shall not be eligible for an energy payment from the department.

(c) A recipient residing in a pilot county as indicated by the November 1984 warrant roll shall not be eligible for an energy payment from the department.

(5) The energy assistance allowance standards shall be as established by the Washington state ~~((planning and community affairs agency))~~ department of community development.

(6) An applicant or recipient aggrieved by a decision of the department and based upon the rules in this section may request an administrative review by the Washington state ~~((planning and community affairs agency))~~ department of community development. Requests for administrative review shall be made no later than sixty days after the ~~((receipt))~~ post-mark date of the notice of denial or payment of benefit.

~~((7))~~ ~~((No energy assistance allowance applications will be accepted after November 25, 1983:))~~

~~((8))~~ Affidavits and requests to replace lost or stolen checks from federal fiscal year ~~((1984))~~ 1985 will not be accepted after September 30, ~~((1984))~~ 1985.

~~((9))~~ (8) Upon cancellation of outstanding warrants or upon verification of forgery as required, DSHS shall immediately initiate replacement of checks reported as lost or stolen.

~~((10))~~ Energy payments shall be exempt as income and resources for all public assistance programs and food stamps) (9) Overpayments

(a) Energy assistance overpayments may be recovered from:

(i) The energy assistance household which was overpaid;

(ii) Any individual member of the overpaid energy assistance household whether or not currently a recipient.

(b) An individual acting as a payee only and deriving no financial benefit from the payment of energy assistance shall not be liable for the overpayment. In such instance, the overpayment is established in the name of the person receiving the financial benefit of the payment of energy assistance.

(c) The method of collection shall be as established by the department's office of financial recovery.

**WSR 85-04-021**

**ADOPTED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

**(Public Assistance)**

[Order 2197—Filed January 30, 1985]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to physicians' services, amending WAC 388-86-095.

This action is taken pursuant to Notice No. WSR 85-01-026 filed with the code reviser on December 12, 1984. 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 January 30, 1985.

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

AMENDATORY SECTION (Amending Order 2060, filed 1/4/84)

WAC 388-86-095 PHYSICIANS' SERVICES. The department shall purchase the services of physicians participating in the program on a fee-for-service or contract basis subject to the exceptions and restrictions listed as follows.

(1) Physicians' services are provided through contract agreements for certain voluntary child care agencies and maternity homes.

(2) Cost of a physical examination is authorized only for recipients related to federal programs under the following circumstances:

(a) For admission to skilled nursing facility if within forty-eight hours of admission or change of status from a private-pay to a medicaid-eligible patient.

(b) Given as a screening under the EPSDT program; see WAC 388-86-027.

(c) For physical examination not covered by medicaid, see the following:

(i) AFDC incapacity, see chapter 388-24 WAC.

(ii) Determination of whether an individual's health will or will not permit his return to his home, see chapter 388-28 WAC.

(iii) Request by the claimant or examiner in a fair hearing procedure, see chapter 388-08 WAC.

(iv) Foster home placement, see chapter 388-70 WAC.

(v) Adoptive home placement, see chapter 388-70 WAC.

(vi) Employability for WIN program, see chapter 388-24 WAC.

(vii) Incapacity for GAU program, see chapter 388-37 WAC.

(3) When covered services of a consultant or specialist are necessary, approval need not be obtained from the medical consultant. Payment shall be made in accordance with local medical bureau practices.

(a) A fee for consultation shall not be paid when the specialist subsequently performs surgery or renders treatment for which flat fees or fees-for-service accrue.

(b) On initial or subsequent visits for the purpose of establishing a diagnosis and when services of a specialist or consultant are required, payment shall be limited to not more than two such services. Any additional specialist or consultant requests shall be justified by the attending physician and approved by the medical consultant.

(4) Limitations on payment for physicians' services:

(a) Payment for physicians' calls for nonemergent conditions in a skilled nursing facility or an intermediate care facility, is limited to two calls per month. Requests for payment for additional visits must be justified at the time the billing is submitted by the physician.

(b) Payment for hospital calls is limited to one call per day. This is applicable to other than flat fee care.

(c) Individual outpatient psychotherapy provided by a psychiatrist shall be limited to one hour per month or equivalent combinations. Up to a maximum of two hours psychotherapy may be authorized when justified during the first month of treatment. Subdivisions of (4)(a) and (b) of this section, also apply unless other rules take precedence. See WAC 388-86-067(1) for service provided by a contracting mental health center.

(5) All surgical procedures require approval by the medical consultant.

(6) Minor surgery and diagnostic procedures performed in a physician's office do not require prior approval.

(7) A recipient of public assistance is not required to obtain medical care in the county of his residence.

(8) For limitations on out-of-state physicians' services see WAC 388-86-115.

(9) Cataract surgery will be considered medically necessary when the following conditions exist:

(a) When vision is 20/200 in the worse eye.

(b) When vision is worse than 20/70, distant vision, and J-5 with +3.50, near vision, in better eye.

(c) When extenuating circumstances, such as employment requirements, need to drive, are present, the vision is worse than 20/40, distant vision, in the better eye.

(d) Other unusual circumstances when approved by medical consultant.

(10) Contact lenses would be considered medically necessary for certain medical conditions of the eyes, i.e., keratoconus, recurrent corneal erosions, other medical conditions where visual acuity either cannot be corrected with spectacles or there is a true therapeutic effect, i.e., transparent bandage effect, and when suffering from high refractive errors, over +6 or over -6 diopters.

#### WSR 85-04-022

#### ADOPTED RULES

#### DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Public Assistance)

[Order 2198—Filed January 30, 1985]

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 388-87-005 Payment—Eligible providers defined.  
Amd WAC 388-87-007 Medical provider agreement.

This action is taken pursuant to Notice No. WSR 85-01-027 filed with the code reviser on December 12, 1984. 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 January 30, 1985.

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

AMENDATORY SECTION (Amending Order 2011, filed 8/19/83)

WAC 388-87-005 PAYMENT—ELIGIBLE PROVIDERS DEFINED. (1) Eligible providers are:

(a) Persons currently licensed by the state of Washington to practice medicine, osteopathy, dentistry, optometry, podiatry, nursing, chiropractic, or physical therapy,

(b) A hospital currently licensed by the department,  
 (c) A nursing home currently licensed and classified by the department as a skilled nursing or intermediate care facility,

(d) A licensed pharmacy,

(e) A home health services agency certified by the department,

(f) An independent (outside) laboratory certified to participate under Title XVIII or determined currently to meet the requirements for such participation,

(g) A company or individual (not excluded in subsection (3) of this section) supplying items such as ambulance service, oxygen, eyeglasses, other appliances, or approved services,

(h) A provider of screening services that has signed an agreement with the department to provide such services to eligible individuals in the EPSDT program,

(i) A certified center for the detoxification of acute alcoholic conditions,

(j) A certified outpatient clinical community mental health center, an approved inpatient psychiatric facility, drug treatment center, or Indian health service clinic,

(k) A Medicare certified rural health clinic,

(l) Approved prepaid health maintenance, prepaid health plans and/or health insuring organizations,

(m) An out-of-state provider of services listed in subsection (1) (a) through (f) of this section, with comparable qualifications in state of residence or location of practice.

(2) Under the mandatory and discretionary provision of RCW 74.09.530, the services of the following practitioners will not be furnished to applicants or recipients:

Sanipractors

Naturopaths

Homopathsists

Herbalists

Masseurs or manipulators

Christian Science practitioners or theological healers

Any other licensed or unlicensed practitioners not otherwise specifically provided for in these rules.

(3) Conditions of eligibility:

(a) When a provider has a restricted professional license or previously has been terminated, excluded, or suspended from the Medicare/Medicaid programs, eligibility will be authorized only if the department has determined that the violations that led to the sanction or license restriction are not likely to be repeated. In making this determination, the department will consider, among other factors, whether the provider has been convicted of offenses related to the delivery of medical care which were not considered during the development of the previous sanction by Medicare, Medicaid, or state or local licensing authorities.

(b) The department may not reinstate in the medical assistance program, a provider that has been suspended from Medicare or suspended at the direction of the department of health and human services until DHHS notifies the department that the provider may be reinstated.

(c) Nothing in this subsection shall preclude the department from denying authorization if, in the opinion of the medical director, division of medical assistance, the provider constitutes a danger to the health and safety of recipients.

AMENDATORY SECTION (Amending Order 2007, filed 8/23/83)

WAC 388-87-007 MEDICAL PROVIDER AGREEMENT. The medical care program is offered through the use of certified providers of medical services. To be certified, a provider must be licensed to provide said services, must meet the conditions of eligibility defined in WAC 388-87-005, and must submit a form to the department stating his/her intention to participate in the program according to the terms of this section. This form and participation by the provider according to the terms of this section shall constitute the agreement between the department and the provider. Certified providers shall be issued a provider number by the department which is authorization to participate in the medical care program. Providers who participate in the program by providing services to recipients of medical assistance and billing the department for such services are bound by the rules and standards set forth in this section and as issued by the department.

(1) Providers shall keep all records necessary to disclose the extent of services the provider furnishes to recipients of medical assistance.

(2) Providers shall furnish the department with any information it may request regarding payments claimed by the provider for furnishing services to recipients of medical assistance.

(3) The provider shall bill according to instructions issued by the department and accept payment for services according to the schedule of maximum allowances, the drug formulary and other applicable maximum payment levels or schedules. Such payment shall constitute complete remuneration for such services.

(4) The provider shall refund to the recipient any payment received directly from the recipient for services for which the department is responsible for payment. The departments responsibility for services provided in a retroactive period, as defined in WAC 388-80-005, is limited to cases in which the cost of the services has not been otherwise paid. However, it is appropriate, but not required, that a provider refund to a recipient any payment received in a retroactive period, if he/she later becomes eligible for medicaid on a retroactive basis. Such refund would be for services for which the department would otherwise be responsible for payment. After refunding to the recipient, the provider may bill the department. Upon receipt of a medical coupon that identifies the patient as eligible on a retroactive basis, the provider may not bill the recipient for any unpaid charges for covered services remaining from the retroactive period.

(5) Each billing invoice submitted to the department by a provider shall contain the following language and verification: "I hereby certify under penalty of perjury, that the material furnished and service rendered is a correct charge against the state of Washington; the

claim is just and due; that no part of the same has been paid and I am authorized to sign for the payee; and that all goods furnished and/or services rendered have been provided without discrimination on the grounds of race, creed, color, national origin or the presence of any sensory, mental or physical handicap."

(6) Providers shall render all services without discrimination on the grounds of race, color, sex, religion, national origin, creed, marital status, or the presence of any sensory, mental or physical handicap.

(7) The department may suspend or withdraw the provider's number and authorization to participate in the medical care program upon thirty days written notice to the provider. The thirty-day notice shall not be required if a provider is convicted of a criminal offense related to participation in the Medicare/Medicaid program, if his/her license is suspended or revoked, if federal funding is revoked, or if in the opinion of the medical director, division of medical assistance the quality of care provided is such that the health and safety of recipients is endangered.

(8) Providers shall render all services according to the applicable sections of the Revised Code of Washington, the Washington Administrative Code, federal regulations and program instructions issued by the department.

(9) Nothing in this section shall preclude the department and any provider or provider group or association from jointly negotiating or entering into another form of written agreement for provision of medical care services to eligible recipients.

(10) The provider must meet the disclosure of ownership requirements of WAC 388-87-008.

**WSR 85-04-023**  
ADOPTED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(General Provisions)

[Order 2199—Filed January 30, 1985]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Vital records—Fees, new WAC 440-44-095.

This action is taken pursuant to Notice No. WSR 85-01-030 filed with the code reviser on December 12, 1984. 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 26.33.330 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, 1985.

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

NEW SECTION

WAC 440-44-095 VITAL RECORDS FEES. The fee for opening a sealed adoption file by court order shall be fifteen dollars per file pursuant to RCW 26.33.330.

**WSR 85-04-024**  
ADOPTED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)

[Order 2200—Filed January 30, 1985]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to AFDC and GA—Eligibility—Need, amending chapter 388-28 WAC.

This action is taken pursuant to Notice No. WSR 85-01-078 filed with the code reviser on December 19, 1984. 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 January 30, 1985.

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

AMENDATORY SECTION (Amending Order 2087, filed 3/14/84)

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) Term or burial insurance up to a maximum equity value of one thousand five hundred per family member for the use of the applicant or applicants or recipient or recipients is exempt.



(4) One cemetery plot for each member of the assistance household is exempt personal property. Any additional plots shall be considered as a resource with other resources up to the ceiling maximum of one thousand dollars.

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

~~((4))~~ (6) 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.

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

WAC 388-28-475 USE OF INCOME AND INCOME POTENTIALS. (1) Meaning of income (see definition in WAC 388-20-030). Income includes all types of real or personal property, support from parent, stepparent, ~~((assumptive))~~ presumptive spouse, stocks and bonds, wages, interest in an estate, income from farming, all benefits and entitlements from private and public agencies, such as OASDI, veterans' agencies, U.C., gifts and prizes in the form of cash or marketable securities, etc. Its value is used to compute financial need in accordance with the policies herein.

(2) Ownership and use of income and income potentials. The policies in WAC 388-28-300 through 388-28-395 regarding ownership and use of resources also govern the ownership and use of income and income potentials.

(3) Resources and income. WAC 388-28-400 through 388-28-455 contain policies and procedures for considering and using nonexempt resource values to determine financial need. WAC 388-28-475 through 388-28-600 covers policies and procedures used in computing income to determine financial need. The total nonexempt resource values and nonexempt net income values are compared with the appropriate payment level plus authorized additional requirements to determine financial need and, if it exists, the amount of the grant for which the applicant is eligible.

AMENDATORY SECTION (Amending Order 2031, filed 10/6/83)

WAC 388-28-480 USE OF INCOME AND INCOME POTENTIALS—TYPES OF INCOME—EFFECT ON NEED. (1) An applicant or recipient whose nonexempt net income for the month exceeds the monthly payment level plus authorized additional requirements is not eligible to receive assistance whether the income is received weekly, biweekly, or monthly, except as specified in WAC 388-24-250 through 388-24-265.

(2) Treatment of income.

(a) The grant amount for the month the application is approved shall be determined by subtracting all net income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements. The remainder shall

be prorated for the number of days after grant authorization. This prorated figure is the grant amount for the first month of eligibility.

(b) The grant amount for the month following the month of initial eligibility shall be determined by subtracting all net income, received or reasonably expected to be received during the calendar month, from the payment level plus authorized additional requirements. The remainder is the grant amount for the second month of eligibility.

(c) The grant amount for the third month of assistance and subsequent months shall be based upon income and circumstances in the budget/report month. WAC 388-28-483(2) and (3), 388-33-135 and 388-33-140(1)(b) and (c) are exceptions to this rule.

(3) Irregular income up to five dollars per month received by a general assistance applicant or recipient may be disregarded towards meeting need by the local office if the probability exists that such future income will not be appreciable.

(4) Earned income credit (EIC) payments shall be considered earned income during the month received ~~((; whether received as advance payments or as an income tax refund, in accordance with PL 96-222.~~

~~((a) Such payments shall be considered as an addition to gross income for AFDC and refugee assistance whether actually received or not, providing that the recipient is eligible for such payment.~~

~~((b) If the family makes every effort to apply for and receive the advance EIC but cannot receive the advance EIC for some documented reason, e.g., the employer refuses to process it, the advance EIC shall not be deemed as income.~~

~~((c) Advance EIC is taken into consideration in the computation of need but is not deemed as income in the one hundred fifty percent test of gross income)).~~

(5) Loans are not considered income, as defined in RCW 74.04.005(12), subject to the following restrictions:

(a) Any contractually agreed loan acquired by an applicant or recipient ~~((which commits))~~ committing all funds for a specific purpose other than current maintenance, and so expended, shall not be taken into account as income. The property used as collateral for the loan shall not be included in determining property reserves. The equity accumulated in the specified property shall be considered toward the resource ceiling.

(b) Any other loan, regardless of the loan's ability to meet current needs, shall not be taken into account as income when it is verified the following conditions are met:

(i) The terms of the loan are stated in a written agreement between the lender and the borrower; and

(ii) The agreement clearly specifies the obligation of the borrower to repay the loan. The agreement must include a repayment plan ~~((which provides))~~ providing for installments of specified amounts to begin within ninety days of the receipt of the loan and continue thereafter on a regular basis until the loan is fully repaid.

As part of the verification process, the recipient is required to submit loan contract papers or a written agreement setting forth the terms of the loan regarding

the loan's amount and the repayment plan. The agreement must be signed by the lender and the recipient as parties to the agreement.

(6) Repayments to a recipient of money previously loaned by the recipient to another party shall not be taken into account as income, since the loan represents income or resources already considered in computing need. The facts of the loan must be verified. Consider any interest paid on the loan as newly acquired income.

(7) A gift in-kind, named as follows, supplied on condition that the gift in-kind be used only in a manner or for a purpose specified in writing by the donor shall not be considered as a resource or as income which is available to meet need.

(a) Real or personal property, excluding cash and marketable securities, which is exempted for an applicant and which is within the ceiling values. Example: A home or a new furnace.

(b) Any item in the department's standards for additional requirements which is not a requirement for the recipient of such a gift. Example: Telephone service.

(c) Needed goods or services not currently included as additional requirements in the department's standards. Example: Repair of house or of household equipment.

(8) WAC 388-28-482 and 388-28-484 cover newly acquired income received by a recipient.

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

WAC 388-28-482 EFFECT OF NEWLY ACQUIRED INCOME AND PROPERTY ON CONTINUING NEED. "Newly acquired income" means any previously unreported or undiscovered income which has come into the possession or control, in whole or in part, of a recipient of public assistance, or of a recipient in suspended grant status.

(1) Whenever a recipient shall come into the possession or control of any income, except as modified in subsection (3), (4), and (5) of this section, such income shall be deducted from the payment level plus authorized additional requirements to determine grant amount beginning with the effective date specified in WAC 388-28-483. The amount deducted shall equal the following:

(a) The net amount of the income if in cash or its equivalent.

(b) At least his or her equity in the quick sale value of property other than cash.

(2) When the property is only potentially available for use in meeting the recipient's requirements, WAC 388-28-400(7) applies.

(3) Exceptions. A recipient who comes into the possession and control of property listed in this subsection may retain such property without having the fact of possession or its sale value affect his or her eligibility or need.

(a) A home used as a residence - see WAC 388-28-420.

(b) Useful and needed clothing, household equipment, food, fuel, and other items included in the requirement standards.

(c) An automobile within the ceiling values in WAC 388-28-430(2).

(4) Recipient with income. The rule in subsection (1) of this section is modified for recipient of AFDC or continuing general assistance with income as follows:

(a) Earned income retained by a child according to WAC 388-28-535(3) shall be considered as the personal property of the family and shall be subject to the ceilings in WAC 388-28-430(2).

(b) Income from the Economic Opportunity Act, Title I of the Elementary and Secondary Education Act, and from WIN(~~(, MDTA)~~) and (~~(CETA)~~) JTPA is treated according to WAC 388-28-515 and 388-28-570 through 388-28-578.

(c) The possession of any amount of funds from sources listed in subsection (4)(a) and (b) of this section in a cash reserve or savings account does not affect the eligibility of a general assistance recipient. However, if such exempted income is converted into other types of property, WAC 388-28-410 through 388-28-455 apply.

(d) Income from interest on exempt savings, dividends from exempt stocks, increase in life insurance cash surrender value, livestock births, etc., affect eligibility only to the extent that the amount causes the total value of the resource possessed to exceed the ceiling values of the resource. The excess is considered available.

(e) Payment for funeral expenses for recipient. When a public assistance recipient dies, his or her surviving spouse or children or parent of a minor child receiving public assistance(;) may use any of their exempt or nonexempt resources or income, except the home property, to add to available funeral and burial resources in order to pay for the funeral expenses of the deceased person without affecting their eligibility for public assistance: PROVIDED(;) HOWEVER, That if the total funeral expenses for the deceased recipient exceeds the department's maximum cost or the amount provided by the recipient toward the total cost of the funeral expense, whichever is the lesser, shall be considered available to meet the public assistance need of the surviving recipient in accordance with this section.

(f) Funds received by an applicant or recipient (~~(which represent)~~) representing another person's or family's share of household costs are exempt as income provided that:

(i) Such payments do not represent legally obligated child support except as provided in WAC 388-28-484(7)(b), and

(ii) The provisions of subsection (5) of this section are met.

(5) Use of grant and cash reserve in relation to income.

(a) No question about eligibility is raised if public assistance grants and other income (~~(which has been)~~) considered in computing financial need are used to add to the cash reserve up to the legal personal property limitations - see WAC 388-28-430. The cash reserve may exceed the maximum only to the extent these unexpended moneys are on hand within thirty days after their receipt, and by exempted amounts as specified in this section.

(b) A recipient always has the right to make a current expenditure out of a cash reserve and replace it from a succeeding grant, just as he or she might place his or her

whole grant in a bank account, along with his or her cash reserve, at the beginning of the month and then spend out of the account during the month.

AMENDATORY SECTION (Amending Order 2087, filed 3/14/84)

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)~~) standard 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 nonrecurrent income after applicable disregards exceeds the (~~(need)~~) payment 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. A minimum period of ineligibility shall be one month.

(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)~~) An event occurs which, had the assistance unit been receiving assistance, would result in an increase in the need standard, or

(B) (~~(The income causing the period of ineligibility has or will be expended in connection with the life-threatening circumstance, and)~~) The income received, or any part thereof, has become unavailable to the members of the assistance unit for reasons beyond their control, or

(C) (~~(Until the time of the life-threatening circumstance, the income must have been used to meet essential needs, and)~~) Members of the assistance unit incur, become responsible for, and pay medical expenses.

(D) (~~(Currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstances)~~) Assistance is authorized only after the event in subsection (2)(b)(ii)(A), (B), or (C) of this section has been verified and current eligibility has been established.

(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)~~) making 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 reappplies)~~) reapplying 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)~~) eighty-five 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 except for income identified in WAC 388-28-484(7)(a) and (b) of this section.

(a) (~~(Advance earned income credits are not counted in the one hundred fifty percent test)~~) In determining the total income of the family, the earned income of a child who is a full-time student is excluded for six consecutive months per calendar year.

(b) The first fifty dollars per month of the current monthly support obligation of any child support collected on the family's behalf or received by the family.

(c) 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 a ~~((GAU))~~ GA-U 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))~~ is applied.

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

WAC 388-28-500 USE OF INCOME AND INCOME POTENTIALS—COMPUTING AND ALLOCATING INCOME. (1) Living arrangements, family relationships, and categories of assistance also affect the use of income in computing financial need as provided by the rules in this section.

(2) Except as provided in this subsection, the nonexempt net income of a person in his or her own home shall be attributed to the assistance unit of which he or she is a member.

(a) The total nonexempt net community income of a family having two or more eligible assistance units shall be divided equally between the assistance units unless some other division is preferred. An unequal division of the family income is not permitted if it increases the total amount of assistance (excluding medical care) to which the family would be entitled.

(b) Applicant with a nonapplying independent spouse.

(i) If all income is from community property or from community earnings other than wages, not less than one-half the total income shall be considered available to an AFDC applicant living with a nonapplying spouse.

(ii) Net income from wages or from the separate property of the nonapplying spouse shall be considered available to the applicant only to the extent ~~((it))~~ the net income exceeds the amount of the nonapplying spouse's appropriate one-person payment level.

(iii) Wages or income from separate property of the applicant shall be considered as provided in WAC 388-28-365 and 388-28-370.

(iv) When income includes both community income and income from the separate property or from wages of the nonapplying spouse, at least half of the community income shall be considered available to the applicant, plus any residue of the separate income or wages exceeding the amount of the appropriate one-person payment level of the nonapplying spouse.

(v) Retirement benefits shall be treated like wages.

(vi) Income in-kind shall be treated as community income.

(c) Exempted income shall not be used in computing the need of any assistance unit.

(d) For rules on ~~((assumptive))~~ presumptive spouse, see WAC 388-28-355.

(3) The rules in subsection (2) of this section shall also apply to a person boarding and/or rooming in an adult family home or other nonmedical institution.

(4) When a person in a medical institution is to receive an AFDC or continuing general assistance grant, family income shall be allocated first to the appropriate payment level of legal dependents computed according to standards in chapter 388-29 WAC and then to the maintenance needs of the individual computed according to WAC 388-34-045, 388-34-085, 388-34-110, 388-34-120, or 388-34-378.

(5) When a person in a medical institution is to receive FAMCO, income shall be allocated according to WAC 388-83-045.

(6) The income of an individual applying for medical only shall be allocated according to WAC 388-83-045.

(7) The income of a person with other living arrangements is first applied to the grant requirements of the applicant and his or her dependents. Any remaining income shall be allocated for medical needs.

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

WAC 388-28-515 NET CASH INCOME—DETERMINATION—EMPLOYMENT OR TRAINING EXPENSES—DEDUCTIONS FROM GROSS INCOME. (1) "Gross income" means the total wages, commissions, salary, bonus, in cash or in-kind, currently earned by an individual or income received for the purpose of obtaining remedial education or vocational training.

(a) The thirty dollars monthly incentive payment made by ~~((WSES))~~ DES to any participant in a WIN program of institutional and work experience training is disregarded in AFDC.

(b) The ~~((thirty dollars weekly))~~ incentive payments received by a ~~((CETA))~~ JTPA participant is disregarded in AFDC. For continuing general assistance, such payments are considered available to meet need.

(c) WIN transportation and related expenses (TRE) payments are training incentive payments paid for the first thirty days of employment and are disregarded for AFDC purposes.

~~((d)) A person receiving an MDTA or CETA basic training allowance may not receive an AFDC or continuing general assistance grant concurrently.)~~

(2) In determining net income for general assistance from a training allowance, applicable expenses in ~~((subdivisions))~~ subsections (3)(a) through (5) of this section shall be deducted from the gross training allowance received.

(3) For general assistance, personal and nonpersonal work expenses computed according to ~~((subdivisions))~~ subsections (3)(a) through (5) of this section shall be deducted from earnings according to the method outlined in WAC 388-28-570(8).

Work-related expenses other than child care shall be deducted in accordance with the "percentage method" or the "actual method," whichever is chosen by the client.

(a) If the client chooses the "percentage method," twenty percent of the gross income shall be deducted. ~~((Recipients of WIN transportation and related expenses~~

~~(FRE) payments may choose the "percentage method."))~~

(b) If the client chooses the "actual method," the actual cost of each work-related expense shall be deducted. This method shall be used when the client provides written verification of all work-related expenses claimed.

(c) The client shall have the option to change methods whenever ~~((he/she))~~ he or she reports income to the CSO.

(d) When the client changes methods, the provisions in WAC 388-33-135 and 388-33-140 shall apply.

(4) For general assistance, the following work-related expenses shall be deducted when claimed and verified under the actual method.

(a) Payroll deductions required by law or as a condition of employment in the amounts actually withheld.

(b) The necessary cost for transportation of the recipient to and from the place of employment or training in accordance with the following limitations:

(i) The most economical means of transportation shall be used.

(ii) When public transportation is available near the recipient's regular place of residence and practical for ~~((his/her))~~ his or her use, the allowance shall be the cost for such transportation from the recipient's home to the stop nearest his or her employment or training. The amount allowed is the actual cost of common carrier, based upon commuter's book of tickets, bus tokens at reduced quantity rate, etc., when available.

(iii) The term "public transportation" includes scheduled intracity and intercity busses, trains, boats, etc., but not "for hire" vehicles, such as taxis and rental cars unless no other means of public transportation is available.

(iv) When public transportation is not available or not practical for ~~((his/her))~~ his or her use, a recipient ~~((who shows))~~ showing that ((he/she)) he or she uses a vehicle to travel to and from employment or the training facility shall be allowed the actual cost of such transportation provided ~~((that))~~ the recipient furnishes verification of these costs. Shared rides shall be prorated on an equitable basis, depending on the travel plan.

(A) The actual work-related cost of operating the vehicle shall be the total operating cost of the vehicle times the percentage obtained from dividing the actual monthly mileage to and from work by the total miles driven during the month.

(B) The total operating cost of a vehicle shall be limited to gas, oil, and fluids; necessary service and repairs; replacement of worn items such as tires; registration and licensing fees; and depreciation and interest on automobile loans.

(v) When the client so chooses, eight cents per mile shall be allowed to cover the work-related costs of gas, oil, fluids, and depreciation.

(c) The cost of tolls and parking required for employment shall be deducted as a work-related expense.

(d) Expenses of employment necessary for continued employment, such as tools, materials, union dues, fees to employment agencies incurred via a legally binding contract, cost of special uniforms and laundering, and

transportation to service customers if not furnished by the employer.

(e) The additional cost of clothing provided ~~((that))~~ it is verified ~~((that))~~ such clothing is necessary for continued employment.

(5) For general assistance applicants and recipients enrolled in a remedial education or vocational training course, the actual cost of uniforms and/or special clothing, as priced by the CSO, shall be deducted.

AMENDATORY SECTION (Amending Order 2049, filed 11/16/83)

WAC 388-28-535 NET CASH INCOME—DETERMINATION—DEDUCTIONS FROM GROSS INCOME—INCOME OF CHILD. (1) A child may receive income ~~((which is))~~ paid in his or her behalf to the parent or parents or other needy caretaker relative. Such income includes allotments, retirement, survivors and disability insurance, ~~((or))~~ veterans' benefits, court-ordered support payments, trust fund payments, or other income legally designated for the benefit of an individual child.

(a) The family shall have the option to:

(i) Include the child as a member of the assistance unit with all income considered as available to the assistance unit, or

(ii) Exclude the child from the assistance unit. In this instance, none of the child's income is available to the assistance unit.

(b) If a child's income includes a portion for his or her caretaker relative, that portion shall be available to meet the need of the assistance unit.

(c) The child's requirements shall be the difference between the payment level of the assistance unit including the child and the payment level of the assistance unit excluding the child.

(d) If a child out of school is included in the assistance unit, his or her earnings shall be treated as specified in subsection (3)(f) of this section. Determination of the child's net income is made with the caretaker relative and with the child when indicated.

(2) If the child is not included in the assistance unit, his or her eligibility for medical assistance shall be determined individually.

(3) In determining the amount of a child's earned income available to meet the current need of the assistance unit of which he or she is a member, the following rules apply:

(a) All earned income of a child in an assistance unit shall be disregarded in determining eligibility for six months and disregarded in determining payment amount when he or she is a full-time student or a part-time student who is not a full-time employee. See subsection (4) of this section for treatment of Job Training Partnership Act (JTPA) moneys.

(b) A student is one ~~((who attends))~~ attending a school, college or university, or a course of vocational or technical training designed to fit him or her for gainful employment, and includes a participant in the job corps program under the Economic Opportunity Act. A full-time student must have a school schedule equal to a full-time curriculum. A part-time student must have a

school schedule equal to at least one-half of a full-time curriculum. A student enrolled during the school term just completed and planning to return to school when school reopens shall retain his or her status as a student during the summer vacation.

(c) A child earning income by working in a sheltered workshop or other training facility for handicapped children shall be considered, for purposes of income exemption, as being at least a part-time student (~~who is~~) working less than full time.

(d) To be employed full time, a child must be working thirty-five hours a week or the number of hours considered full time by the industry for which he or she works, whichever is less.

(e) Summer employment of students shall not be considered as full-time employment due to the temporary nature of such employment, even though the hours worked may exceed thirty-five hours a week.

(f) In determining the amount of a nonstudent child's earned income available to meet the current needs of the assistance unit, net income shall be computed according to WAC 388-28-570.

(4) All wages or other income (training allowances, payments for supportive services, etc.) received under the Job Training Partnership Act (JTPA) by a dependent child who is a full-time student, or a part-time student who is not a full-time employee, shall be disregarded both for the one hundred (~~fifty~~) eighty-five percent of need test for six months, if wages, and in computing the family's assistance payment. See WAC 388-28-570(3) and (4)(d) for treatment of JTPA moneys received by a dependent nonstudent child.

AMENDATORY SECTION (Amending Order 2049, filed 11/16/83)

WAC 388-28-570 NET CASH INCOME—EXEMPT EARNED INCOME. (1) For rules on exempting earned income of a full- or part-time student, see WAC 388-28-535. For rules exempting income from training, see WAC 388-28-515. For rules on other income, see WAC 388-28-580.

(2) As used in this section, "earned income" shall mean income in cash or in-kind earned as wages, salary, commissions, or profit from activities in which the individual is engaged as a self-employed person or as an employee. Earned income may be derived from self-employment (such as business enterprise or farming), or derived from wages or salary received as an employee. Earned income also includes earnings over a period of time for which settlement is made at one time, for example, sale of farm crops, livestock, or poultry. Income from rentals is earned income, provided the individual has managerial responsibility for the rental property.

(3) For an AFDC recipient, earned income includes earnings under Title I of the Elementary and Secondary Education Act, all earnings received under the Economic Opportunity Act, wages from WIN on-the-job training, and wages paid under the Job Training Partnership Act (JTPA) to adults and nonstudent dependent children. See WAC 388-28-535(1) for treatment of a child excluded from the grant, and WAC 388-28-535(4) for a dependent full-time student receiving JTPA wages.

(a) For public service employment under the Emergency Assistance Act, the thirty-dollar plus one-third earned income exemption is applicable.

(b) For public service employment under WIN, the thirty-dollar plus one-third earned income exemption does not apply. If net income after work expenses are deducted does not meet need according to department standards, a supplemental grant may be paid.

(4) The definition of "earned income" excludes:

(a) Returns from capital investment with respect to which the individual is not himself or herself actively engaged, as in a business. For example, under most circumstances, dividends and interest are excluded from "earned income." See WAC 388-28-580.

(b) Benefits accruing as compensation or reward for service, or as compensation for lack of employment, for example, pensions and benefits from labor organizations, veterans' benefits, unemployment compensation, RSDI, etc. See WAC 388-28-580.

(c) Income from WIN incentive payments, and training-related expenses derived from WIN institutional or work experience training.

(d) Income received under the Job Training Partnership Act for training allowances, payments for support services, etc. Such income shall be treated according to WAC 388-28-535(4) for dependent children who are full-time students. For adults and nonstudent dependent children, disregard all moneys directly related to expenses incurred from participating in the program. Exempt the remaining amount up to the difference between the need standard and the payment standard. Consider any amount in excess of the need standard as unearned income.

(5)(a) In AFDC and refugee assistance when payment of income earned over a period of more than one month is delayed, the exemption applies only to the period of payment.

(b) In general assistance, the exemption applies to the period during which the exemption was earned rather than the period of payment.

(6) Aid to families with dependent children and refugee assistance.

(a) The following shall be disregarded sequentially from the monthly gross earned income of each individual member of the assistance unit.

(i) (~~Payroll deductions required by law or as a condition of employment, in the amounts actually withheld.~~

(ii) ~~The following amounts~~) Seventy-five dollars for work expenses (~~depending upon~~), regardless of the number of hours worked per month.

<del>((Hours worked per month</del>	<u>Work expense deduction</u>
<del>0—40</del>	<u>\$ 20.00</u>
<del>41—80</del>	<u>40.00</u>
<del>81—120</del>	<u>60.00</u>
<del>121 or more</del>	<u>75.00))</u>

((~~iii~~)) (ii) The actual cost not to exceed the following amounts depending upon the number of hours worked per month for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC or refugee assistance. No deduction shall

be made for child care provided by a parent or stepparent.

Hours worked per month	Child care maximum deductions
0 - 40	\$ 40.00
41 - 80	80.00
81 - 120	120.00
121 or more	160.00

~~((iv) For individuals found otherwise eligible to receive assistance or who have received assistance in one of the prior four months, thirty-dollar plus one-third of the remainder not already disregarded.~~

~~(v) The thirty-dollar and one-third disregard shall be applied for a maximum of four consecutive months; it cannot be applied again until he or she is a nonrecipient for twelve consecutive months.~~

~~Total gross monthly earned income for the purpose of this rule means the combined gross earned income of nonstudent dependent children and adults who are included in the AFDC assistance unit.))~~

~~(b) The following shall be disregarded sequentially from the combined gross earned income of nonstudent dependent children and adults included in the AFDC assistance unit.~~

~~(i) For individuals found otherwise eligible to receive assistance or having received assistance in one of the four prior months, thirty dollars and one-third of the remainder not already disregarded. The thirty dollars and one-third disregard shall be applied for a maximum of four consecutive months; it cannot be applied again until he or she has been a nonrecipient for twelve consecutive months.~~

~~(ii) After expiration of the disregard in subsection (6)(b)(i) of this section, thirty dollars shall be disregarded for a maximum of eight consecutive months, whether or not the recipient has earnings or is receiving assistance; it cannot be applied again until he or she has been a nonrecipient for twelve consecutive months. This provision is effective November 1, 1984.~~

~~(c) The exemptions and deductions in subsection (6)(a)((ii) through (v)) and (b) of this section will not be applied for any month if the individual within a period of thirty days preceding the month in which the income was received:~~

~~(i) Terminated his or her employment or reduced his or her earned income without good cause(;;); or~~

~~(ii) Refused without good cause to accept employment in which he or she is able to engage which is offered through SES, or is otherwise offered by an employer if the offer of such employment is determined by the local office to be a bona fide offer of employment(;;); or~~

~~(iii) Failed without good cause as determined by the CSO, to report earnings to the department on or before the eighteenth day of the month following the month in which the income was received, or by the first following work day if the eighteenth day of the month falls on a weekend or holiday. Under these circumstances, the thirty-dollar and one-third exemption shall be counted in the ((four-month)) applicable time limits. Any circumstance beyond the control of the recipient shall constitute good cause.~~

(c) If a recipient requests termination in order to break the consecutiveness of the ~~((four-month))~~ applicable time limits for the thirty-dollar plus one-third exemption, and would have been eligible, the months of voluntary nonreceipt of assistance shall be counted toward the ~~((four-month))~~ applicable time limits.

(d) If a recipient quits work without good cause, the thirty-dollar and one-third exemption shall be deemed to have been received and shall be counted toward the ~~((four-month))~~ applicable time limits.

(e) Months in which the applicant/recipient received the thirty-dollar and one-third exemption in another state shall not apply ~~((towards))~~ toward the ~~((four-month limit unless there is a break in assistance which was not done voluntarily to break the continuity of the four-month limit))~~ applicable time limits.

(7) The following conditions when verified shall constitute good cause for refusal of an offer of employment or refusal to continue employment:

(a) Physical, mental, or emotional inability of the individual to satisfactorily perform the work required;

(b) Inability of the individual to get to and from the job without undue cost or hardship to him or her;

(c) The nature of the work would be hazardous to the individual;

(d) The wages do not meet any applicable minimum wage requirements and are not customary for such work in the community;

(e) The job is available because of a labor dispute;

(f) Adequate child care is not available to the single parent AFDC household.

#### AMENDATORY SECTION (Amending Order 2049, filed 11/16/83)

WAC 388-28-575 DISREGARD OF INCOME AND RESOURCES. (1) In determining need and the amount of the assistance payment in AFDC, the following shall be disregarded as income and resources:

(a) Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the commissioner of education, U.S. Department of Health and Human Services. The entire amount of such loan or grant is disregarded, irrespective of the use to which the funds are put.

(b) Any per capita judgment funds paid under P.L. 92-254 to members of the ~~((Blackfeet))~~ Blackfoot Tribe of the ~~((Blackfeet))~~ Blackfoot Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana.

(c) Any Indian claim settlement funds distributed per capita or held in trust as authorized in section 7 of P.L. 93-134 or section 6 of P.L. 94-114.

(d) The income and resources of an individual receiving benefits under Supplemental Security Income for the period such benefits are received.

(e) Any payments received by Alaska natives under the Alaska Native Claims Settlement Act, to the extent such payments are exempt from taxation under section 21(a) of that act.

(f) From August 1, 1975, to September 30, 1976, forty percent of the first fifty dollars collected by the office

of support enforcement in payment on the support obligations for the current month.

(g) Wages, training allowances, and/or all moneys received under the Job Training Partnership Act (JTPA) by a dependent child who is a full-time student or part-time student who is not a full-time employee shall be disregarded both for the one hundred ~~((fifty))~~ eighty-five percent of need test for six months, if wages, and in computing the family's assistance payment.

(h) Retroactive AFDC benefits resulting from a court order modifying a department policy.

(i) The part of a Veterans' Administration educational assistance payment for the student's educational expenses, such as, but not limited to, tuition, books, fees, equipment, transportation for school purposes, and child care services necessary for school attendance.

(j) HUD community development block grant funds obtained and used under conditions precluding use for current living costs.

(k) The first fifty dollars per month of the current monthly support obligation of any child support collected on the family's behalf or received by the family.

(2) In determining need and the amount of the assistance payment in AFDC and GA, the following shall be disregarded as income and resources:

(a) Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(b) The value of the coupon allotment under the Food Stamp Act of 1964, as amended.

(c) Any compensation provided to volunteers in ACTION programs established by Titles II and III of P.L. 93-113, the Domestic Volunteer Service Act of 1973.

(d) Any compensation provided volunteers in ACTION programs established by Title I of P.L. 93-113, the Domestic Volunteer Service Act.

(e) Any benefits received under the women, infants and children program (WIC) of the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended.

(f) Payments made under the Community Services Administration's Emergency Energy Conservation Program of 1979.

(g) Energy assistance payments.

**WSR 85-04-025**

**ATTORNEY GENERAL OPINION**

**Cite as: AGO 1985 No. 4**

[January 30, 1985]

**UNIVERSITIES—COLLEGES—OFFICERS AND EMPLOYEES—OPEN PUBLIC MEETINGS ACT—FIXING SALARIES IN EXECUTIVE SESSION**

It is not clearly a violation of the Washington Open Public Meetings Act for the board of regents of a state university to consider, and by duly adopted motion fix, the salary of its president in an executive session; the legislature, however, may amend the law in various ways to deal with the matter.

Requested by:

Honorable Phil Talmadge  
State Senator, 34th District  
432 Public Lands Building  
Olympia, Washington 98504

**WSR 85-04-026**

**ADOPTED RULES**

**HOSPITAL COMMISSION**

[Order 85-01, Resolution No. 85-01—Filed January 31, 1985]

Be it resolved by the Washington State Hospital Commission, acting at the Seattle Airport Hilton, Seattle, Washington, that it does adopt the annexed rules relating to:

Amend the text of the commission's *Accounting and Reporting Manual for Hospitals*, second edition, filed with the code reviser on June 8, 1984, as Order No. 84-01, but not published as part of the Washington Administrative Code. A quarterly report and instructions for completing the report will be added to chapter 10000 in the manual.

WAC 261-20-057 is a new section requiring each hospital to submit a quarterly summary utilization and financial report within 45 days after the end of each calendar quarter.

WAC 261-20-090 is being amended to allow the commission to levy a civil penalty as provided for in RCW 70.39.200.

This action is taken pursuant to Notice No. WSR 85-01-052 filed with the code reviser on December 17, 1984. 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 70.39 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 24, 1985.

By Maurice A. Click  
Executive Director

**Reviser's note:** The text of the adopted amendments to the Washington State Hospital Commission's *Accounting and Reporting Manual for Hospitals*, second edition, has been omitted from publication in the Register under the authority of RCW 34.04.050(3) as being unduly cumbersome to publish. Copies of the adopted Washington State Hospital Commission's *Accounting and Reporting Manual for Hospitals*, second edition, can be obtained by writing to the Washington State Hospital Commission, Mailstop FJ-21, Olympia, WA 98504.

**NEW SECTION**

WAC 261-20-057 SUBMISSION OF QUARTERLY REPORTS. (1) Each hospital shall submit a quarterly summary utilization and financial report within forty-five days after the end of each calendar quarter



beginning on or after January 1, 1985. The quarterly report shall contain that information specified by the commission and shall be submitted in the form and manner specified by the commission.

(2) The report submitted pursuant to this section must be signed by the hospital's chief executive officer or chief financial officer.

**AMENDATORY SECTION** (Amending Order 83-02, Resolution No. 83-02, filed 2/28/83)

**WAC 261-20-090 ((CRIMINAL PROVISIONS)) PENALTIES FOR VIOLATION.** RCW 70.39.200 provides that every person who shall violate or knowingly aid and abet the violation of chapter 70.39 RCW or any valid orders, rules, or regulations thereunder, or who fails to perform shall be guilty of misdemeanor. Following official notice to the accused by the commission of an alleged violation, each day upon which violating the provisions of chapter 70.39 RCW may be enjoined from continuing such violation. Failure to file the reports required by WAC 261-20-040(1), 261-20-050(1), and 261-20-057(1) shall constitute a violation, and the commission may levy a civil penalty not to exceed one hundred dollars per day for each day following official notice of the violation by the commission. The executive director of the commission may grant extensions of time to file the reports, in which cases failure to file the reports shall not constitute a violation until the extension period has expired.

**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.

## WSR 85-04-027

### ADOPTED RULES

### DEPARTMENT OF LICENSING

[Order PFT 85-001—Filed January 31, 1985]

I, John Gonzalez, director of the Department of Licensing, do promulgate and adopt at Olympia, Washington, the annexed rules relating to aircraft fuel tax, amending WAC 308-78-010, 308-78-040, 308-78-045, 308-78-050, 308-78-070 and 308-78-080.

This action is taken pursuant to Notice No. WSR 84-20-018 filed with the code reviser on September 25, 1984. 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 82.42.040 which directs that the director of the Department of Licensing has authority to implement the provisions of chapter 82.42 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 11, 1985.

By John Gonzalez  
Director

**AMENDATORY SECTION** (Amending Order MV 696, filed 10/6/82)

**WAC 308-78-010 DEFINITIONS.** (1) "Aircraft fuel" includes any combustible gas or liquid, which is normally defined as motor vehicle fuel under chapter 82.36 RCW or a special fuel under chapter 82.38 RCW, when it is used to propel an aircraft.

(2) "User" means any person other than a distributor who is licensed to acquire aircraft fuel without payment of the aircraft fuel tax at time of acquisition.

(3) "Local service commuter" means an operator who operates at least five round trips per week between two or more points in passenger service and publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

(4) "Operation for testing and experimental purposes" shall include only those flights conducted under either an experimental, research and development, or special airworthiness certificate issued by the FAA or other documented experimental or testing flights including the flight of other aircraft used in the test or experimental flight.

(5) "Private, nonstate funded airfield" means an airport not eligible to receive state funding under chapter 47.68 RCW.

**AMENDATORY SECTION** (Amending Order MV 696, filed 10/6/82)

**WAC 308-78-040 TAX EXEMPT TRANSACTIONS.** (See WAC 308-78-080—Refunds) A distributor may sell aircraft fuel without collecting aircraft fuel tax when delivery is made by the distributor:

- (1) To a buyer at a point outside the state; or
- (2) To a common or contract carrier under a bill of lading naming the distributor as consignor to the buyer outside the state; or
- (3) To United States or foreign government agencies; or
- (4) To aircraft fuel users licensed by the department; or
- (5) Directly into the aircraft fuel tanks of equipment operated by air carriers (~~and~~), supplemental air carriers, and foreign flag carriers operating under part 121 of the Federal Aviation Regulations, and local service (~~air carriers operating scheduled service under either part 121 or 135 of the Federal Aviation Regulations, and foreign flag carriers~~) commuters; or
- (6) To another licensed distributor.

AMENDATORY SECTION (Amending Order MV 696, filed 10/6/82)

WAC 308-78-045 TAX EXEMPT USE. Exemption from the aircraft fuel tax may be claimed for the uses specified in RCW 82.42.020 and 82.42.030 subject to the following conditions:

(1) Operation of aircraft by air carriers, supplemental air carriers, and ~~((local service commuters shall be exempt from the aircraft fuel tax when such operation is directly related to the transportation of passengers or cargo within the authority granted by federal or state authorities))~~ foreign flag carriers, operating under part 121 of the Federal Aviation Regulations, and local service commuters.

(2) Exemption from the aircraft fuel tax for testing and experimental purposes shall be granted only to persons primarily engaged in manufacture or remanufacture of aircraft and only for flight operations of an experimental aircraft or an aircraft being tested following manufacture or repair prior to delivery to a customer. Fuel used in the operation of an aircraft which is necessary to the conduct of a test or experimental flight of another aircraft is also tax exempt.

(3) ~~((Exemption from the aircraft fuel tax for aircraft crew training will be granted in accordance with rules promulgated by the aeronautics division of the Washington department of transportation.))~~ Aircraft fuel used in connection with aircraft crew training shall be exempt from the aircraft fuel tax when: (a) The personnel receiving training are the crews of a certified air carrier; (b) the aircraft used for training purposes may appropriately be used to train crews to operate the type of aircraft purchased by the air carrier; (c) the crew training occurs in Washington state; and (d) the primary purpose of the flight is for crew training and not for an otherwise taxable purpose.

(4) Exemption from the aircraft fuel tax for application of pesticides, herbicides or other agricultural chemicals will be allowed only for fuel consumed while the chemicals are being applied and for flight operations attendant thereto.

AMENDATORY SECTION (Amending Order MV 696, filed 10/6/82)

WAC 308-78-050 SUPPORTING DOCUMENTS FOR TAX EXEMPT TRANSACTIONS. ~~((+))~~ The provisions of RCW 82.36.230 relating to exemptions from motor vehicle fuel tax shall be applicable to the claiming of exemption from aircraft fuel tax. In addition, the department may require the distributor to execute such other certificates as may be particularly appropriate to exemptions from the imposition of the aircraft fuel tax.

~~(2))~~ The distributor shall retain sales invoices, contracts, purchase orders, bills of lading and other documents in support of the tax exemption claimed. Records must be kept in original form for three years.

AMENDATORY SECTION (Amending Order MV 696, filed 10/6/82)

WAC 308-78-070 RECORDS. (1) Stock records. Every distributor and user shall maintain a complete stock summary of the gallons of aircraft fuel handled each month which reflects inventories, receipts, sales, use, transfers, loss or gain, and other distribution. The stock summary shall be supported by:

(a) Physical inventories of bulk storage facilities and mobile storage facilities taken at the close of each calendar month;

(b) A record of fuel receipts together with invoices, bills of lading, transfer documents, and other documents relative to the acquisition of fuel;

(c) A record of fuel disbursements supported by sales invoices and other documents relative to the disbursements of fuel.

(2) Invoices. An original invoice shall be issued at the time of each sale, or delivery, and shall show:

(a) An imprinted serial number;

(b) The imprinted name of the distributor;

(c) The date of delivery;

(d) The name and address of the purchaser (address not required on credit card deliveries);

(e) The location of the storage facility from which the fuel was withdrawn;

(f) The type or grade of fuel;

(g) The number of gallons;

(h) The price per gallon and the total amount charged;

(i) The statement: "Ex Washington Aircraft Fuel Tax" for tax exempt sales. The distributor or user license number must be shown for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers.

(3) Own use. Every distributor and user shall maintain a withdrawal record covering this total usage during the month, which contains the same information concerning each withdrawal of aircraft fuel for own use as required in subsections (2)(c), (e), (f), and (g).

(4) Each person claiming an exemption from the aircraft fuel tax shall keep records in a form convenient to the operator, of each flight or series of flights for which tax exempt use is claimed. Such records shall include:

(a) Flight or block time of each flight or series of flights;

(b) Type of aircraft;

(c) Purpose of each flight or series of flights;

(d) Dates;

(e) Gallons consumed for each flight or series of flights.

(5) Maintenance and audit of records. Every distributor and user shall maintain and keep for a period of not less than three years in their original form such records as the department may require. The department may make such examinations of the records, stocks, facilities, equipment, and aircraft of distributors and users as necessary in carrying out the provisions of chapter 10, Laws of 1967 ex. sess., as amended. If such examination or

investigations disclose that any reports filed with the department have shown incorrectly the gallonage of aircraft fuel or the tax accruing thereon, the department may make such changes in subsequent reports and payments as necessary to correct the errors disclosed.

**AMENDATORY SECTION** (Amending Order MV 696, filed 10/6/82)

**WAC 308-78-080 REFUNDS.** (1) Any person claiming a refund for aircraft fuel tax shall file a claim upon forms provided by the department in the same manner and under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.310.

(2) A refund of aircraft fuel tax, which has been collected, may be claimed on aircraft fuel which has been:

(a) Used for purposes exempted under RCW 82.42-.020 or 82.42.030;

(b) Exported from this state for use outside this state under the same conditions as provided for refund of motor vehicle fuel in RCW 82.36.300. Any aircraft fuel carried from this state in the fuel tank of an aircraft shall not be considered as exported from this state;

(c) Used in equipment, other than aircraft, not licensed to be operated over and along any public highway as provided for refund of motor vehicle fuel in RCW 82.36.280;

(d) Lost or destroyed under the same conditions as provided for tax exempt losses in WAC 308-78-060;

(e) Sold by a dealer who has paid the aircraft fuel tax, to the United States or foreign government agencies. The dealer shall file an exemption certificate, which shall contain an assignment to the dealer of the purchaser's right to a refund, and each invoice covering such sale shall have the statement: "Ex Washington Aircraft Fuel Tax" clearly marked thereon.

(3) Claims for refund may be filed at any time but not later than thirteen months from the date of purchase of such aircraft fuel under the same conditions as provided for motor vehicle fuel in RCW 82.36.330.

(4) The department may examine the books and records of the claimant in order to establish the validity of any claim for refund under the same conditions as provided for motor vehicle fuel in RCW 82.36.340.

**WSR 85-04-028**

**ADOPTED RULES**

**DEPARTMENT OF LICENSING**

**(Podiatry Board)**

[Order PL 510—Filed January 31, 1985]

Be it resolved by the Washington State Podiatry Board, acting at Bellevue, Washington, that it does adopt the annexed rules relating to the Uniform Disciplinary Act, new section WAC 308-31-200.

This action is taken pursuant to Notice No. WSR 84-21-116 filed with the code reviser on October 24, 1984. 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 18.22.017 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 24, 1985.

By Laura R. Heye  
Executive Secretary

**NEW SECTION**

**WAC 308-31-200 UNIFORM DISCIPLINARY ACT.** The board elects to adopt the Uniform Disciplinary Act, chapter 18.130 RCW, in lieu of the disciplinary provisions contained in chapter 18.22 RCW, effective August 1, 1985.

**WSR 85-04-029**

**ADOPTED RULES**

**DEPARTMENT OF LICENSING**

**(Board of Registration for Landscape Architects)**

[Order PL 511—Filed January 31, 1985]

Be it resolved by the Washington State Board of Registration for Landscape Architects, acting at Seattle, Washington, that it does adopt the annexed rules relating to adding new sections WAC 308-13-005, 308-13-022, 308-13-025, 308-13-032, amending WAC 308-13-010, 308-13-015, 308-13-020, 308-13-040, 308-13-050, 308-13-100, 308-13-110, and repealing WAC 308-13-030, 308-13-070, 308-13-080 and 308-13-090.

This action is taken pursuant to Notice No. WSR 84-22-064 filed with the code reviser on November 7, 1984. 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 18.96.060 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 28, 1985.

By Sidney W. Beckett  
Executive Secretary

**NEW SECTION**

**WAC 308-13-005 DEFINITIONS.** (1) "Registered college" as used in RCW 18.96.070 means a college or school listed under the landscape architectural accreditation board's list of schools having accredited programs in landscape architecture.

(2) "Entire examination" as referred to in RCW 18.96.090 means the written and graphic examination approved by the board, including the plant identification examination.

(3) The word "principal" as used in this chapter means a member of a firm offering landscape architectural services to the public who is a landscape architect, a shareholder and director of landscape architecture if the practice is through a corporation, a partner if the practice is through a partnership or the owner if the practice is through a sole proprietorship.

(4) "UNE" means the Uniform National Examination for landscape architects.

AMENDATORY SECTION (Amending Order PL-343, filed 5/7/80)

WAC 308-13-010 STATE BOARD OF REGISTRATION. (1) Meetings. The Washington state board of registration for landscape architects, hereinafter called the board, shall hold an annual public meeting during April of each year for the purpose of election of board officers (~~(, recommending fees, changes in board rules, approval of colleges of landscape architecture,)~~) and any other business of a public nature. (~~(Special public meetings may be held at any time as determined by the board. Public notice of all public meetings shall be provided as required by law.~~))

~~Executive session meetings may be held at any time as determined necessary by the board, upon call by the chairman, or upon request by a majority of the board. The executive secretary shall provide at least one week's advance notice of such executive session. Executive session meetings shall be conducted as specified under RCW 42.30.110.~~

~~Hearings before the board shall be held as required by the registration law, upon call of the chairman or majority of the board.~~

~~(2) Rules of order. Robert's Rules of Order shall govern the conduct of business at meetings and sessions of the board.~~

~~(3) Quorum. A quorum at any regular or special meeting or session shall consist of three members of the board. In the interval between meetings, any business decision approved in writing by a quorum of the members of the board shall be deemed effective.~~

~~4)) (2) Officers. At the annual public meeting, the board shall elect a chairman, a vice chairman, and a secretary for the ensuing year. The secretary may delegate the office's responsibilities in all or in part to the executive secretary.~~

AMENDATORY SECTION (Amending Order 2472, filed 12/16/69)

WAC 308-13-015 POWERS AND DUTIES OF THE BOARD. The board shall:

(1) (~~(Adopt and amend all rules of procedure, not inconsistent with the constitutional laws of this state, which may be necessary for the proper performance of its duties and the regulation of the proceedings before it. Such adoption or amendment of rules of procedure shall~~)

~~be done at the annual public meeting or in a special public meeting, provided notice of the subject matter for adoption has been publicly announced in advance.~~

~~(2)) Determine the qualifications of candidates for examination (~~(for registration, including the annual approval of)~~), by conducting examination applicant qualification reviews prior to the examination.~~

~~(2) Approve registered colleges of landscape architecture for acceptance of educational qualifications in lieu of experience per RCW 18.96.070.~~

~~(3) Hold examinations of qualified persons who shall apply for registration as landscape architects (~~(, and to promulgate such rules and regulations with reference thereto as they deem proper)~~).~~

~~(4) Examine (~~(applicants)~~) and act on applications for registration by reciprocity and make recommendations to the director of (~~(licenses)~~) licensing for issuance or refusal thereof.~~

~~(5) Examine and act on applications for reinstatement of licenses which have been suspended or revoked.~~

~~(6) Investigate and hold hearings on complaints against registrants and advise the director of findings of evidence of violation of chapter 18.96 RCW.~~

AMENDATORY SECTION (Amending Order PL 246, filed 4/26/76)

WAC 308-13-020 QUALIFICATIONS FOR ADMITTANCE TO THE EXAMINATION. Applicants shall file with the director of (~~(licenses at least sixty days prior to the written examination date a statement of intent to take the examination)~~) licensing on or before March 15 an application, on forms provided by the board, accompanied by fee and verification of (~~(educational and experience qualifications)~~) academic and practical training and such additional evidence as may be required to satisfy the board that the applicant has the following qualifications:

~~(1) Possession of good moral character, verified by five references, three from landscape architects and two from other persons.~~

~~(2) Attainment of at least eighteen years of age.~~

~~(3) (~~(A specific record of at least seven years of training and experience under the supervision of a registered or practicing landscape architect, of which:~~~~

~~(a) The board will accept a first degree in landscape architecture in a landscape architectural college accredited by the National Commission on Accrediting as a maximum of four years' formal education credit, and from a nonaccredited but board-approved landscape architectural college a maximum of three years' formal educational credit towards the required seven years' minimum of qualifying experience required for eligibility for examination and registration.~~

~~(b) The board will accept the CLARB table of equivalents as a guide for the evaluation of education, training and experience.~~

~~(c) Where graduation has not been attained, the board will accept each completed full year of attendance in a landscape architectural college referred to in WAC 308-13-020 (3)(a) and (b) as evidence of an equivalent period towards attaining experience. PROVIDED, That~~

only subjects in which the applicant has received a passing grade may be credited towards the number of credits required to complete a full year's attendance.

(d) ~~The board will accept two years of teaching in a college of landscape architecture referred to in WAC 308-13-020 (3)(a) and (b) as one-year credit, for a maximum of two years' credit toward the required seven-year experience requirement.~~

(e) ~~For applicants lacking a degree in landscape architecture from a landscape architectural college as referred to in WAC 308-13-020 (3)(a) and (b), the board will accept qualifying experience under the supervision of a registered or practicing landscape architect as credit toward the required seven-year experience requirement.~~

(f) Practical employment experience of less than three months shall not be considered qualifying.) A minimum of seven years of any combination of academic and practical training experience approved by the board, e.g.

(a) ACADEMIC TRAINING

(i) With a passing grade, 32 semester credit hours or 48 quarter credit hours is considered to be one year. Any fraction, one-half year or greater, will be counted one-half year, and less than one-half year will not be counted.

(ii) A degree in landscape architecture or credits from a registered college will be weighted at one hundred percent with a four year maximum credit for academic training.

(iii) Credits in landscape architecture from a college not registered may be weighted up to seventy-five percent with a three year maximum credit for academic training.

(iv) Credits in architecture or civil engineering will be weighted at fifty percent with a two year maximum credit for academic training.

(b) PRACTICAL TRAINING

(i) Practical training experience, work in landscape architecture and related work experience, will be measured in calendar years.

(ii) No training prior to graduation from high school will be accepted.

(iii) At least one year of practical training experience shall be attained after termination of academic training.

(iv) Employment duration less than three months will not be counted.

(v) One-third of the required minimum practical training must be under the direct supervision of a landscape architect.

(vi) Work under the direct supervision of a landscape architect will be weighted at one hundred percent, no limit.

(vii) Work under the direct supervision of an architect, engineer, city or urban planner, nurseryman or landscape contractor will be weighted at seventy-five percent, in any combination limited to two-thirds of the required training experience.

(viii) Employment by governmental agencies, when diversified and comparable to employment in the offices of a landscape architect, when directly related to landscape architecture and under the direct supervision of a landscape architect, will be weighted at seventy-five

percent, limited to two-thirds of the required training experience.

NEW SECTION

WAC 308-13-022 REEXAMINATION. A new application is not required. Retake applicant is responsible for sending the fees for those sections of the examination required to be retaken, and for notifying the board of any change of address or day time telephone number. Notice and fees must be postmarked on or before March 15th, to qualify for the June examination.

NEW SECTION

WAC 308-13-025 PROCTORING. Candidates for examination who have acquired two-thirds of their required practical training, but cannot achieve the balance of their required work experience with landscape architects, may appeal to the board to acquire the required experience through the proctoring process.

Based on a review of the applicant's academic and work experience, the board may approve the applicant's selection of a landscape architect proctor who will review and critique the applicant's work for the balance of the practical experience required. The proctoring process must involve one or more face-to-face meetings per month with the proctor. The proctor will provide the board a written report for each proctoring session. Proctoring experience will be weighted at one hundred percent of actual experience working for a landscape architect.

NEW SECTION

WAC 308-13-032 LICENSING EXAMINATION. The form of the examination required of applicants shall consist of a written and graphic examination. The board adopts the Uniform National Examination, "UNE", prepared by the Council of Landscape Architectural Registration Boards, to test the applicant's qualifications and minimum competency for registration.

(1) Procedure for admittance to the "UNE":

(a) Upon completion of the qualifications for admittance to the "UNE" under WAC 308-13-020, submit the completed application provided by the board, including fees. The complete application, including fees, must be postmarked by March 15th or earlier to be considered for the next scheduled examination.

(b) No application fee will be refunded because of withdrawal from the examination.

(c) Examination fees are refundable when notice of withdrawal is given prior to the examination application deadline, March 15th.

(d) A completed application includes:

(i) Green application form LA 656-3 with notarization;

(ii) Three landscape architect references;

(iii) Two references from related design professionals;

(iv) Transcript of academic experience showing courses taken and degree awarded;

(v) Verification of work experience;

(vi) Application and examination fees.

(e) Notice of acceptance, along with preexamination information, will be mailed to accepted applicants approximately six weeks in advance of the examination, accompanied by specific details regarding the time and place of the examination.

The written examination, the "UNE", is administered over a two-day period in June each year. The examinees are tested on their ability to exercise value judgments in actual landscape architecture situations.

(2) Examination scoring:

(a) The written parts of the examination are machine scored. The graphic parts of the examination are graded in a manner prescribed by the landscape architect board members.

(b) To pass the examination, an applicant must achieve a passing score on each section. The minimum passing score is seventy in any subject, when an average score of all sections is seventy-five percent of a possible one hundred percent.

(c) Applicants are notified of their grades by mail. No grades are given by telephone.

(d) Reexamination information is given on the examination grade sheet. NO OTHER NOTICE MAY BE GIVEN. See WAC 308-13-025 for reexamination information.

AMENDATORY SECTION (Amending Order PL-343, filed 5/7/80)

WAC 308-13-040 REVIEW OF EXAMINATIONS. ~~((+)) Any candidate for examination requesting review before the board of a subject failed must apply within 30 days after release of grades. The applicant may choose one subject only for review. Should the board raise the grade on the reviewed subject to passing, the applicant may, within five days of the notification thereof, apply for review of an additional subject of his choice.~~

~~(2) Examination papers of an individual candidate)) The graphic sections "C-Design" and "D-Design implementation" are the only parts of the examination that may be reviewed by the candidate, alone or with an agent, at the board office during normal business hours((-but)). Such papers may not be removed from the premises, nor shall they be compared by the reviewing candidates with papers of other candidates, nor shall either the questions or answers be reproduced in whole or in part in any manner.~~

AMENDATORY SECTION (Amending Order PL 206, filed 11/5/75)

WAC 308-13-050 REGISTRATION BY RECIPROCITY. (1) Any landscape architect who is registered in another state or country which extends the privileges of reciprocity to landscape architecture in this state and who desires to practice landscape architecture in Washington, shall make formal application on forms provided by the board, accompanied by ~~((a filing and investigation fee and the current registration fee in the amount of \$100.00, and which))~~ the initial license fee and the reciprocity fee. The application shall show evidence satisfactory to the board of:

(a) Having ~~((had))~~ at least the equivalent experience and responsible charge of landscape architectural work ~~((or responsible charge of landscape architectural teaching))~~ as ~~((is))~~ required of candidates for examination;

(b) Having satisfactorily completed ~~((an examination substantially equivalent to the examination))~~ the Uniform National Examination required of applicants for registration in Washington;

(c) ~~((Provides evidence satisfactory to the board that the state in which the applicant is registered grants reciprocal privileges to landscape architects registered in Washington;~~

~~(d)) Applicant's proof of compliance shall consist of:~~

(i) Education: Transcript of college grades indicating degrees earned.

(ii) References: Three landscape architect reference letters and letters of reference from two other persons acquainted with applicant's character and professional abilities.

(iii) Employment: Statements of previous ~~((qualified))~~ landscape architect employers covering full time employment for a minimum of three years ~~((if a landscape architectural college graduate and two additional years for each college year short of graduation))~~ when the applicant has an accredited degree in landscape architecture or seven years of experience working with landscape architects or a combination of seven years of education and experience, approved by the board.

(iv) Clients: Three signed letters from former clients.

(v) Examination: Certification by state of origin of registration that applicant passed examination, listing subjects taken and grades received.

(2) The board will require ~~((personal audience))~~ oral examination of any candidate for registration by reciprocity, except that ~~((personal audience))~~ oral examination may be waived in cases where supporting documentation or other evidence shows sufficient information for the board to reach a decision without ~~((audience))~~ examination.

(3) Certification: National certification by the council of landscape architectural registration boards shall be recognized by this board as satisfactory evidence for registration by reciprocity, provided the applicant has taken and passed the UNE and such certification is current and valid at the time of application for registration, and after the candidate's file has been received and approved by the board.

AMENDATORY SECTION (Amending Order 2472, filed 12/16/69)

WAC 308-13-100 REINSTATEMENT. ~~((+)) A personal interview))~~ A hearing with the board will be required of any person applying for restoration of a suspended or revoked license. The fee for reissue of license shall be the then current annual renewal fee.

AMENDATORY SECTION (Amending Order PL 169, filed 6/19/74)

WAC 308-13-110 LANDSCAPE ARCHITECT LISTINGS. Where a firm name does not identify the licensed ~~((person))~~ landscape architect, specifically ~~((in a~~

professional firm)), or persons ((named)) identified in a firm title are not all landscape architects ((registered in this state, the board will recognize as acceptable such)), firm name listings in telephone directories, announcements, brochures, business cards, letterheads, promotional literature, ((~~telephone directories~~)) and ((all)) other media intended for public display or circulation, ((if all such listings)) shall clearly identify the landscape architect(s) ((who is currently registered in Washington and who is legally)) responsible ((as a principal)) for the firm's landscape architectural work in this state.

No firm name shall include the surname of a person who is not presently or was not previously associated in the practice as a landscape architect with the named entity or its members or predecessors.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-13-030 EXAMINATIONS.

WAC 308-13-070 APPLICANT'S

QUALIFICATIONS.

WAC 308-13-080 CERTIFICATES, SEALS.

WAC 308-13-090 WITHDRAWAL OF REGISTRANT.

### **WSR 85-04-030**

#### **ADOPTED RULES**

### **BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

[Order PL 512—Filed January 31, 1985]

Be it resolved by the Washington State Board of Registration for Professional Engineers, acting at Spokane, Washington, that it does adopt the annexed rules relating to new sections WAC 196-04-030 and 196-04-040.

This action is taken pursuant to Notice No. WSR 84-23-035 filed with the code reviser on November 15, 1984. 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 January 11, 1985.

By Quentin Gateley  
Executive Secretary

### NEW SECTION

WAC 196-04-030 CHIEF EXECUTIVE OF THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS. DUTIES, QUALIFICATIONS. (1) The Chief Executive of the staff of the Board of Registration for Professional Engineers and Land Surveyors, hereinafter referred to as "Registrar," shall have the following duties:

(a) Setting policy for the daily clerical work of receiving and processing applications, complaints, investigations and general correspondence;

(b) Overseeing the examination and grading process, including personnel and site selection;

(c) Directing investigations of violations or alleged violations of all laws applicable to the practice of professional engineering and land surveying;

(d) Directing the preparation of the board's budget and the monitoring of expenditures;

(e) Scheduling, preparation and minute-keeping of board meetings;

(f) Maintaining liason with other State Board of Engineering Examiners in order to be conversant with the laws, policies and procedures of other states, so as to facilitate reciprocity provisions of chapter 18.43 RCW;

(g) Performing other duties, as may from time to time be required; and

(h) Performing duties requested by the board.

(2) The Registrar of the State Board of Registration for Professional Engineers and Land Surveyors shall possess the following minimum qualifications:

(a) Said Registrar shall hold a valid registration, issued pursuant to chapter 18.43 RCW, as a professional engineer in the state of Washington.

(b) Said Registrar shall possess at least three years of supervisory experience satisfactory to the 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.

### NEW SECTION

WAC 196-04-040 ASSISTANT REGISTRAR FOR BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS. DUTIES, QUALIFICATIONS. (1) The Assistant Registrar for the Board of Registration for Professional Engineers and Land Surveyors shall have the following duties:

(a) Receiving and investigating oral and written complaints of alleged violations of all laws pertaining to the practice of engineering and land surveying; making in person visits to engineering and land surveying offices to investigate alleged violations; preparation of disciplinary cases to be heard by the board;

(b) Assisting the Registrar in the preparation, distribution and proctoring of all examinations held by the board;

(c) Maintaining an up-to-date log of all complaints registered by the board;

(d) Acting as the supervisor of other board employees during the absence of the Registrar; and

(e) Such other duties as may be directed by the Registrar or by the board.

(2) The Assistant Registrar of the Board of Registration for Professional Engineers and Land Surveyors shall possess the following minimum qualifications.

(a) Said Assistant Registrar shall hold a valid registration, pursuant to chapter 18.43 RCW, as a professional engineer and/or land surveyor in the state of Washington.

(b) Said Assistant Registrar shall possess at least two years of supervisory experience satisfactory to the board.

**WSR 85-04-031**  
**PROPOSED RULES**  
**DEPARTMENT OF PERSONNEL**  
**(Personnel Board)**  
 [Filed February 1, 1985]

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 356-26-130 Certification—Selective—When permitted.  
 Amd WAC 356-15-060 Shift differential provisions and compensation;

that the agency will at 10:00 a.m., Thursday, March 14, 1985, 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 12, 1985.

Dated: February 1, 1985

By: Leonard Nord  
 Secretary

**STATEMENT OF PURPOSE**

Amend WAC 356-26-130.

Title: Certification—Selective—When permitted.

Purpose: Describes how selective certification requests are requested and what requirements they must meet to be approved by the Department of Personnel.

Statutory Authority: RCW 41.06.150.

Summary and Reasons: Proposed change would add a selective certification criteria to the selective certification rule. Agencies need to request selective certification of eligibles who possess valid operators license.

Responsibility for Drafting: Roger Sanford, Unit Manager, Department of Personnel, General Personnel Services Unit, 600 South Franklin, MS: FE-11, Olympia, WA 98504, phone 753-5928; Implementation: All agencies; and Enforcement: Department of Personnel.

Proposed by: Department of Personnel and Department of Social and Health Services, governmental agencies.

Amend WAC 356-15-060.

Title: Shift differential provisions and compensation.

Purpose: Describes at what time and what amount of additional salary agencies are required to pay those employees working odd shifts.

Statutory Authority: RCW 41.06.150.

Summary and Reasons: The proposed change increases the amount to be paid to employees who work odd shifts. This change would implement the 1982 and 1984 salary survey as adopted by the State Personnel Board.

Responsibility for Drafting: Leonard Nord, Secretary, State Personnel Board, 600 South Franklin, MS: FE-11, Olympia, Washington 98504, phone 753-5358; Implementation: All agencies; and Enforcement: All agencies.

Proposed by: State Personnel Board, governmental agency.

AMENDATORY SECTION (Amending Order 138, filed 11/30/79, effective 1/1/80)

WAC 356-26-130 CERTIFICATION—SELECTIVE—WHEN PERMITTED. An appointing authority may request a selective certification of eligibles who have specialized qualifications that are required for the successful performance of the duties of the position. This request must be made prior to certification.

If the director of personnel determines that the facts and reasons justify the request, the highest ranking eligibles who have the specialized qualifications shall be certified.

(1) Selective certification of eligibles of only one sex shall not be made unless there is clear evidence that efficient performance of duties to be assigned could be performed by only the sex specified.

(2) Notwithstanding any other provision of these Rules, selective certification from the open competitive register may be initiated by the director of personnel to increase employment of minority personnel, which for purposes of this regulation shall include Blacks, Orientals, Indians, other nonwhites, and Mexican- and Spanish-Americans. Such selective certification may be initiated when the director of personnel determines that minority personnel are, in proportion to the total minority population of the state, under-represented either within state employment as a whole or in a geographical area of work. Such selective certification shall apply only when all names are from the open competitive register.

(3) The director of personnel may selectively certify eligibles who are filling project positions to fill permanent positions. Such selective certification shall apply only from names on an open competitive register.

(4) Selective certification of eligibles who possess a valid motor vehicle operator's license may be required for positions whose duties require specific driving skills.

AMENDATORY SECTION (Amending Order 207, filed 6/22/84)

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 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
<del>5630-5634</del>	<del>Registered Nurses</del>	<del>23¢</del>
<del>0628-0641</del>	<del>Liquor Store Personnel/ working in the stores</del>	<del>23¢</del>
	<del>All Other Classes</del>	<del>20¢))</del>
<del>Shift Differential Schedule (Effective 2-1-85) 50¢ per hour</del>		

**WSR 85-04-032**

**EMERGENCY RULES**

**DEPARTMENT OF PERSONNEL**

**(Personnel Board)**

[Order 214—Filed February 1, 1985]

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 board adopted this change effective February 1, 1985, and rule submittal was pending final draft of several proposed changes to other parts of the same rule.

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 October 11, 1984.

By Leonard Nord  
Secretary

AMENDATORY SECTION (Amending Order 207, filed 6/22/84)

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 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
<del>5630-5634</del>	<del>Registered Nurses</del>	<del>23¢</del>
<del>0628-0641</del>	<del>Liquor Store Personnel/ working in the stores</del>	<del>23¢</del>
	<del>All Other Classes</del>	<del>20¢))</del>
<del>Shift Differential Schedule (Effective 2-1-85) 50¢ per hour</del>		

**WSR 85-04-033**

**EMERGENCY RULES**

**DEPARTMENT OF PERSONNEL**

**(Personnel Board)**

[Order 215—Filed February 1, 1985]

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 Y-rate—Administration, amending WAC 356-14-075.

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 Personnel Board adopted this change effective February 1, 1985.

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 31, 1985.

By Leonard Nord  
Secretary

AMENDATORY SECTION (Amending Order 109, filed 9/7/77)

WAC 356-14-075 Y-RATE—ADMINISTRATION. Y-RATE - A "Y-rate" is a dollar amount that:

(1) Is treated as the (~~"Basic Salary Range"~~) basic salary for an employee.

(2) Is set by the Director of Personnel or other provisions of the Merit System Rules at an amount other than that which would be paid if such action were not taken.

(3) Will remain in effect until one of the following occurs:

(a) A specific date established by the Director of Personnel is reached; or

(b) The employee leaves the (~~classification~~) class he/she occupied when the "Y-rate" was approved; or

(c) (~~The "Y-rate" comes within the salary range to which the employee would normally be entitled, at which time the "Basic Salary Range" becomes the step with the closest dollar amount that would not be less than the "Y-rate"; or~~) The range for the employee's present class is increased to include the "Y-rate" amount which formerly exceeded the top of the range. At that time, the employee's basic salary shall become the maximum step of the salary range for the class. Or,

(d) The range for the employee's present class is increased, but had already encompassed the employee's "Y-rate", which was between normal steps. At that time, the employee's basic salary shall advance to the normal step of the range which provides the closest to, but not greater than, the increase in the range. Or,

(~~(d)~~) (e) The employee's salary is reduced pursuant to MSR 356-34-020; or

(~~(e)~~) (f) The "Y-rate" is subsequently modified by the Director of Personnel.

(4) On its effective date will cause the employee to lose his or her periodic increment date unless the salary is between steps of the (~~sub~~)range (~~which will be set again in accord with 356-14-110 when the employee ceases to be "Y-rated."~~).

(5) The Director of Personnel shall report all "Y-rate" approvals 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.

WSR 85-04-034  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Public Assistance)

[Order 2201—Filed February 1, 1985]

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 388-92-015 Eligibility determination—SSI.  
Amd WAC 388-99-010 Persons eligible for medically needy assistance.

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 be of substantial benefit to certain recipients of medical assistance.

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 February 1, 1985.

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

AMENDATORY SECTION (Amending Order 2073, filed 2/1/84)

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 as categorically needy.*

(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 2191, filed 1/17/85)

**WAC 388-99-010 PERSONS ELIGIBLE FOR MEDICALLY NEEDY ASSISTANCE.** *Medically needy refers to a resident of the state of Washington whose income and/or resources are above the limits prescribed for the categorically needy and who meets the resource limits of the SSI program and is:*

(1) *Related to aid to families with dependent children (AFDC). See chapter 388-83 WAC.*

(2) *Related to supplemental security income (SSI). See chapter 388-92 WAC.*

(3) *Related to state supplementary payment program (SSP).*

(4) *Under age twenty-one and in:*

(a) *Foster care, or*

(b) *Subsidized adoption, or*

(c) *Skilled nursing facility, intermediate care facility, intermediate care facility/mentally retarded,*

(d) *An approved inpatient psychiatric facility.*

(5) *Aged, blind, or disabled and residing in a medical facility with income above the three hundred percent of the SSI benefit cap.*

(6) *The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse if:*

(a) *The ineligible spouse is related to the SSI program due to being aged, blind, or disabled; and*

(b) *The ineligible spouse is not receiving an SSI payment in his/her own right; and*

(c) *The income of the couple, including SSI payment, are considered.*

(7) *A child under five years of age, born after September 30, 1983.*

**WSR 85-04-035**

**PROPOSED RULES**

**DEPARTMENT OF FISHERIES**

[Filed February 1, 1985]

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.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 12, 1985.

The authority under which these rules are proposed is RCW 75.08.070 and 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 12, 1985.

Dated: January 28, 1985

By: Russell W. Cahill  
for William R. Wilkerson  
Director

**STATEMENT OF PURPOSE**

Title: WAC 220-44-050.

Description of Purpose: Modify bottomfish catch limits.

Statutory Authority: RCW 75.08.070 and 75.08.080.

Summary of Rule: This change allows for increased catches of widow rockfish, changes the requirements for filing notice of weekly or bi-weekly fishing activity, and defines vessel trip limit. These rules are the result of changes proposed by the Pacific Fisheries Management Council.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, 754-2429; Implementation: Gene DiDonato, 115 General Administration Building, Olympia, 753-5012; and Enforcement: James W. McKillip, 115 General Administration Building, Olympia, 753-6585.

This rule is proposed by the Washington State Department of Fisheries.

Comments: No public hearing is scheduled.

This proposal is not the result of federal law or court order.

Small Business Economic Impact Statement: This rule does not bias small businesses, and is of general applicability to all bottomfishing off the Washington coast.

**AMENDATORY SECTION** (Amending Order 84-24, filed 3/27/84)

**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) - ((50,000)) 30,000 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) per calendar week, defined as Sunday through the following Saturday, except that a fisherman having made a declaration of intent may make one landing of no more than 60,000 pounds of widow rockfish per vessel trip biweekly, defined as Sunday through the second Saturday following. The declaration of intent to fish biweekly for widow rockfish must be mailed or delivered to the Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, and must be postmarked at least seven days prior to the beginning of biweekly fishing. The declaration of intent must contain the name and address of the fisherman, the name and registration number of the vessel, the date on which biweekly fishing for widow rockfish will commence, and must be signed and dated by the fisherman. The fisherman may return to the one vessel trip per calendar week fishing at the beginning of any month by filing a declaration of intent to stop biweekly fishing for widow rockfish with the department in the above manner. The declaration to stop biweekly fishing for widow rockfish and begin one vessel trip per calendar week fishing must be made at least seven days prior to the beginning of the month in which the one vessel trip per calendar week fishing will resume. 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.

(2) Shortbelly rockfish (*Sebastes jordani*) and Idiot Rockfish (~~((*Sebastes*)~~) *Sebastes* spp.) – no maximum poundage per vessel trip; no minimum size.

(3) Pacific ocean perch (*Sebastes alutus*) – ~~((5,000 pounds or 10))~~ 20 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.) – 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))~~ per calendar week, defined as Sunday through the following Saturday, of which no more than 10,000 pounds may be yellowtail rockfish (*Sebastes flavidus*), except that a fisherman having made a declaration of intent may make one landing of no more than 60,000 pounds of all other species combined per vessel trip biweekly, defined as Sunday through the second Saturday following, of which no more than 20,000 pounds may be yellowtail rockfish. The declaration of intent to fish biweekly must be mailed or delivered to the Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, and must be postmarked at least seven days prior to the beginning of biweekly fishing. The declaration of intent must contain the name and address of the fisherman, the name and registration number of the vessel, the date on which biweekly fishing for other species of rockfish will commence, and must be signed and dated by the fisherman. The fisherman may return to the one vessel trip per calendar week fishing at the beginning of any month by filing a declaration of intent to stop biweekly fishing for other species of rockfish with the department in the above manner. The declaration to stop biweekly fishing for other species of rockfish and begin one vessel trip per calendar week fishing must be made at least seven days prior to the beginning of the month in which the one vessel trip per calendar week fishing will resume. 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.

(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; no vessel trip restrictions.

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

(7) For purposes of this section, a vessel trip is defined as having occurred upon the initiation of transfer of catch from the fishing vessel, and all fish aboard the vessel are considered part of the vessel trip limit at the initiation of transfer of catch.

## WSR 85-04-036

### ADOPTED RULES

## UTILITIES AND TRANSPORTATION COMMISSION

[Order R-219, Cause No. U-84-69—Filed February 1, 1985]

In the matter of amendment of WAC 480-120-056 relating to interest on deposits.

This action is taken pursuant to Notice No. WSR 85-01-090 filed with the code reviser on December 19, 1984. This rule change hereinafter adopted shall take effect pursuant to RCW 34.04.040(2).

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

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 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).

Pursuant to Notice No. WSR 85-01-090 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, January 30, 1985, in the Commission's Hearing Room, Sixth Floor, Highways-Licenses Building, Olympia, Washington, before Chairman Robert W. Bratton and Commissioners Mary D. Hall and A. J. "Bud" Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to January 25, 1985. Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments orally at 9:00 a.m., Wednesday, January 30, 1985, in the Commission's Hearing Room, Sixth Floor, Highways-Licenses Building, Olympia, Washington.

Written comments filed in accordance with the notice were received. Representatives of Pacific Northwest Bell Telephone Company and the Washington Independent Telephone Association supported the proposal. The public counsel section of the Office of the Attorney General suggested that the proposed amendment not be adopted.

At the January 30, 1985, meeting the commission considered the rule change proposal.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-120-056 should be amended to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-120-056 as amended will prescribe the interest rate to be paid on customers' deposits held by telephone companies.

### ORDER

WHEREFORE, IT IS ORDERED That WAC 480-120-056 as set forth in Appendix A, be amended as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rule, after first being 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 30th day of January, 1985.

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

### APPENDIX "A"

AMENDATORY SECTION (Amending Order R-147, Cause No. U-80-05, filed 7/14/80)

WAC 480-120-056 DEPOSITS. (1) Establishment of credit—Residential. An applicant for residential service may establish credit by demonstrating to the utility any one of the following subparagraphs (a), (b), or (c), subject to the provisions of subsection (3) of this section:

(a) Prior service with the utility in question of at least twelve months duration, ending no longer than one year prior to the date of application if service was not disconnected for failure to pay and no more than two delinquency notices were served upon the customer, or

(b) Prior service with a utility of the same type as that of which service is sought for at least twelve consecutive months with a satisfactory payment record as demonstrated in (1)(a) of this subsection: PROVIDED, That the reference may be quickly and easily checked, and the necessary information is provided, or

(c) Demonstrate three of the credit factors from the following factors:

(i) Full-time consecutive employment, with no more than two employers, or a regular source of income during the entire twenty-four months prior to the application for service, and the applicant is currently employed or has a regular source of income; or the applicant has a permanent, regular source of income.

(ii) Ownership of the premises to be served.

(iii) Has a savings account.

(iv) Has been issued a major charge card.

(v) Has been issued a major oil charge card.

(vi) Has been issued a local charge card.

(2) Establishment of credit - nonresidential. An applicant for nonresidential service may be required to demonstrate satisfactory credit by reasonable means appropriate under the circumstances.

(3) Deposit requirements. A deposit may be required under the following circumstances:

(a) Where the applicant has failed to establish a satisfactory credit history as outlined above.

(b) In any event, a deposit may be required when, within the twelve months prior to the application, the applicant's service of a similar type has been disconnected for failure to pay amounts owing, when due; where applicant has an unpaid, overdue balance owing for service from the utility to which application is being made or any other telephone company; or where three or more delinquency notices have been served upon the applicant by any other telephone company during the twelve months previous to the application for service.

(c) Installation or continuation of service to a residence where a prior subscriber still resides and where any balance for such service to that prior subscriber is past due or owing.

(d) When a subscriber (i) is initially provided service without a deposit on the basis of credit information supplied to the utility by the subscriber which is incorrect or cannot be verified by the utility and the subscriber would have otherwise been required to make a deposit; or (ii) has on two or more occasions in the previous twelve months tendered payment of due amounts with checks which have been dishonored; or (iii) has an unpaid, overdue balance owing for the same class of telephone service from the utility providing that service, or any other telephone company, which becomes known to the serving utility after current service has been provided; or (iv) has given the utility cause to disconnect for nonpayment, but the utility has elected not to disconnect service; or (v) has incurred excessive toll charges as defined in subsection (4)(b) of this section and the subscriber

has elected not to make full payment of all proper toll charges as provided in subsection (4)(b) of this section.

(e) Any new or additional deposit required under authority of these rules, except as may be provided for elsewhere in these rules, is due and payable on the sixth business day after written notice of the deposit requirement is mailed to the subscriber, or, if personal service is elected, by 5 p.m. of the first business day following notification.

(4) Amount of deposit.

(a) In instances where a deposit may be required by the utility, the deposit shall not exceed:

(i) For nonresidential service, two-twelfths of estimated annual billings:

(ii) For residential service, two months customary utilization for applicants or subscribers with previous verifiable service, or two months new line billings for all other residential subscribers in a reasonable amount established in the tariffs of the utility, based upon data presented for commission review.

(b) Subscribers whose toll charges exceed the estimated amount by twenty dollars or by twenty percent, whichever is greater, or whose toll charges exceed customary utilization over the previous six months by a like amount when no estimate has been taken, or whose estimated toll or customary utilization is not available and the toll charges exceed fifty percent of the two months new line billing for all utility subscribers of the same class of service as established in the tariffs of the utility, may be required, upon written or verbal notice to the subscriber, to make payment of either of the following in the subscriber's election, before the close of the next business day following receipt of the notice:

(i) Full payment of outstanding toll charges specified in said notice; or all toll charges accrued to the time of payment providing the subscriber has been notified that he or she is liable for toll charges in addition to those charges specified in the notice which come to the attention of the utility between the time of notice and of payment.

(ii) Payment of a new or additional deposit in light of the subscriber's actual use based upon two months customary utilization.

(c) If the notice herein described is mailed, receipt may be presumed on the fourth business day following date of mailing.

(d) At the time application is made for service, the utility may request an estimate of the applicant's greatest monthly toll usage during the ensuing twelve months. When such an estimate is asked and given, the applicant for service shall be advised that if the estimate is exceeded by twenty dollars or twenty percent, whichever is greater, immediate payment may be required, a deposit or additional deposit may be required, or service may be disconnected.

(5) Application of deposits. When the account of a subscriber is delinquent any amount on deposit on that account may be applied by the utility towards satisfaction of the past due amount before disconnection is effected. Written notice of such application of the deposit shall be promptly furnished to the subscriber. If an amount on deposit is applied toward satisfaction of any

past due amount, the utility may require of the subscriber an additional deposit in the amount so applied and, if applicable, payment of any past due amounts still owing after application of the deposit. Application of a deposit as provided for herein shall not prevent disconnection of service for failure by a subscriber to pay any past due amount which may remain outstanding.

(6) Transfer of deposit. Where a subscriber of whom a deposit is required transfers his service to a new location within the same utility's service area, the deposit, less any outstanding balance, shall be transferable and applicable to the new service location.

(7) Interest on deposits. Interest on deposits held shall be accrued at ~~((the))~~ a rate ~~((established according to law as interest upon judgments in superior courts of the state of Washington as of January 1 of each))~~ based upon a simple average of the effective interest rate for new issues of one year treasury bills, computed from December 1 of each year, continuing through November 30 of the following year. Deposits would earn that interest rate during January 1 through December 31 of the subsequent year. Interest shall be computed from the time of deposit to the time of refund or total application of the deposit and shall be compounded annually.

(8) Extended payment on deposit. Where a subscriber or applicant for service of whom a deposit is required is unable to pay the entire amount of the deposit in advance of installation or continuation of service, the subscriber or applicant shall be allowed to pay fifty percent of the deposit amount prior to installation or continuation of service, with the remaining amount payable in equal amounts on the utility's ordinary billing cycle during the following two months of service. A subscriber or applicant for service unable to meet this deposit requirement shall have the opportunity to receive service under subsection (9), alternative to deposit, of this section.

(9) Alternative to deposit. A residential subscriber or applicant for residential service of whom a deposit is required, but who is unable to make a deposit, shall be allowed, as an alternative to the making of a deposit, to furnish a satisfactory guarantor to secure payment of bills for service requested in a specified amount not to exceed the amount of deposit which may be required.

(10) Receipt. Where payment is made by cash, a receipt shall be furnished to each applicant or subscriber for the amount deposited.

(11) Refund of deposit. Deposits shall be refunded under the following circumstances and in the following form:

(a) Satisfactory payment. Where the subscriber has for twelve consecutive months paid for service when due in a prompt and satisfactory manner as evidenced by the following:

(i) The utility has not initiated disconnection proceedings against the subscriber.

(ii) No more than two notices of delinquency have been made to the subscriber by the utility.

(b) Termination of service. Upon termination of service, the utility shall return to the subscriber the amount then on deposit plus accrued interest, less any amounts due the utility by the subscriber for service rendered.

(c) Refunds – how made. Any deposit, plus accrued interest, shall be refunded to the subscriber either in the form of a check issued and mailed to the subscriber no longer than fifteen days following completion of twelve months' satisfactory payment as described above, or applied to the subscriber's bill for service in the thirteenth and, if appropriate, subsequent months, in accordance with the preference as to form of refund indicated by the subscriber at the time of deposit, or as thereafter modified.

(12) Should a larger or new deposit be required, the reasons therefor shall be specified in writing to the subscriber. Any requirement for a new or larger deposit shall be in conformity with the standards set forth in this rule.

**WSR 85-04-037**  
**NOTICE OF PUBLIC MEETINGS**  
**HUMAN RIGHTS COMMISSION**  
 [Memorandum—January 31, 1985]

The Washington State Human Rights Commission will conduct a special meeting, executive session only, to discuss personnel matters, on February 4, 1985. The meeting will be held by conference call which will originate in the Olympia office beginning at 1:30 p.m.

**WSR 85-04-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Order 85-2—Filed February 1, 1985]

I, Richard A. Davis, director of the Department of Labor and Industries, do promulgate and adopt at the General Administration Building, Olympia, Washington, the annexed rules relating to procedures for the deregistration of vocational rehabilitation counselors who have been registered with the Office of Rehabilitation Review, Department of Labor and Industries.

I, Richard A. Davis, 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 compelling need to address serious misconduct by registered vocational rehabilitation counselors that is, or may be harmful to industrially injured workers, coupled with inadequate guidelines in the current administrative code, establishes this as an emergency action.

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

This rule is promulgated pursuant to RCW 51.41.090 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, 1985.

By R. A. Davis

Director

AMENDATORY SECTION (Amending Order 82-40, filed 11/30/82)

WAC 296-18-040 DEFINITIONS. (1) "Firm" means any entity registered by the office of rehabilitation review, whether sole proprietorship, partnership, or corporation.

(2) A "qualified injured worker" means an employee who because of the effects of work-related injury or disease, whether or not combined with the effects of a prior industrial injury or disability:

(a) Is permanently precluded or likely to be precluded from engaging in the usual occupation or position in which the worker was engaged at the time of injury, and

(b) Can reasonably be expected to benefit from rehabilitation services which would significantly reduce or eliminate the decrease in the worker's employability.

(3) "Vocational rehabilitation services" means services that are required to determine an employee's eligibility as a qualified injured worker, and services that are designed to return an individual to suitable gainful employment. The services may include, but not be limited to medical evaluation and physical rehabilitation provided by qualified health care providers, and vocational evaluation counseling, job analysis, job modification, on-the-job training or short-term training programs with job placement services provided pursuant to this chapter.

(4) "Suitable gainful employment" means employment pursuant to the priorities established in WAC 296-18-180 which offers an opportunity to restore the injured worker as soon as possible to employment. Consideration shall be given to the worker's residual skills, aptitudes and interests, physical and mental capabilities, and earnings at the time of injury.

(5) "Vocational rehabilitation plan" means a written document completed by a registered vocational rehabilitation counselor (in cooperation with the qualified injured worker and employer) that either:

(a) Describe in detail those vocational rehabilitation services recommended to return the injured worker to suitable gainful employment; or

(b) Describe in detail why vocational rehabilitation services are not necessary to return the injured worker to suitable gainful employment.

(6) "Return to work summary report" means a document required by WAC 296-18-140 prescribed by the department, and completed by a self-insurer, that describes those vocational rehabilitation services necessary to return the claimant to employment consistent with priority (a), (b), or (c) of WAC 296-18-180.

(7) "Performance Evaluation" means a review of an individual or firm registered with the office of rehabilitation review which review (shall/may) include a determination of the adequacy of facilities, appropriateness and

effectiveness of services provided, accuracy of records and accuracy of billing for services.

(8) General Violation - A violation of chapter 51.41 RCW or these rules, such as, but not limited to reporting irregularities, or other violations which do not have a major impact on the vocational services provided the injured worker.

(9) Serious Violation - A violation of chapter 51.41 RCW or these rules, or a series of general violations when considered in total, which impacts the delivery of vocational services provided the injured worker or, a failure to timely correct a notice of violation pursuant to WAC 296-18-350 (1)(b)(iii) or failure to correct violations during a probationary period pursuant to WAC 296-18-350(3).

(10) Critical Violation - A violation of chapter 51.41 RCW or these rules, so severe as to pose an immediate threat to the health, safety or welfare of injured workers or the public.

(11) "Fact Finding Hearing" means an informal hearing held by the office of rehabilitation review for the purpose of determining if any violation(s) exists, and if so, whether the actions of the vocational rehabilitation counselor/firm constitute a general, serious or critical violation(s).

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 82-40, filed 11/30/82)

WAC 296-18-340 ((IMMEDIATE DEREGISTRATION. The office of rehabilitation review may immediately remove a vocational rehabilitation counselor or firm from the register for any combination of, but not limited to, the following:)) If the office of rehabilitation review becomes aware of a possible violation by an individual and/or firm the office of rehabilitation review may conduct an investigation of the individual and/or firm which may include but is not limited to an informal fact finding hearing, or performance evaluation. If violation(s) exist the office of rehabilitation review shall determine if they are general, serious, or critical in nature. A violation of this chapter by the individual or firm may include but is not limited to one or any combination of the following actions:

(1) Knowingly providing false or misleading information during the registration process;

(2) Failure, neglect, or refusal to comply with the statutes;

(3) Failure, neglect, or refusal to comply with department rules, policies, and orders;

(4) Failure, neglect, or refusal to submit complete, adequate, and detailed reports as required in this chapter;

(5) Failure, neglect, or refusal to respond to requests for additional reports;

(6) Intentional submission of false or misleading reports;

(7) Collusion with any other person, including workers, to submit false or misleading information;

(8) Submission of inaccurate or misleading bills;

(9) Intentional submission of false or erroneous recommendations;

(10) Charging or attempting to charge eligible injured worker for services authorized by the department or self-insurer;

(11) Persistent use of controversial, experimental, contraindicative, or unsatisfactory regimens not previously authorized by the department;

(12) Conviction in any court for any offense involving moral turpitude, in which case the record of such conviction constitutes conclusive evidence;

(13) Acts of gross misconduct in the service of vocational rehabilitation;

(14) Acts that involve conflicts of interest;

(15) Declaration of mental incompetence by a court of competent jurisdiction; or

(16) Conviction in any court of a felony.

~~((The department will issue an order pursuant to RCW 51.52.050 notifying the vocational rehabilitation counselor or firm of deregistration, the reasons for it, including the finding that the public health, safety, or welfare imperatively requires emergency action, and the length of time before the vocational rehabilitation counselor or firm may re-register.))~~

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

### NEW SECTION

WAC 296-18-345 If the office of rehabilitation review determines a registered individual employed by the department, has committed a general, serious or critical violations it shall report such violation to the director of labor and industries. The director shall begin to take appropriate action within five (5) working days. Such action shall be pursuant to the merit system rules, agency policies and procedures and collective bargaining agreements.

### AMENDATORY SECTION (Amending Order 82-40, filed 11/30/82)

WAC 296-18-350 ~~((PERFORMANCE EVALUATIONS AND DEREGISTRATION. Upon petition, or upon its own initiative, the department may periodically, or for cause, perform an on-site evaluation of each vocational rehabilitation firm. The purpose of the evaluation is to determine the adequacy of the facilities, and the appropriateness and effectiveness of services, the accuracy of records, and accuracy of billing for services.~~

~~(1) If the conditions are such that the services and performance of a registered vocational rehabilitation counselor or firm are found to be unsatisfactory, the vocational rehabilitation counselor or firm will be informally notified. The vocational rehabilitation counselor or firm will be provided up to thirty days to correct the deficiencies. In the event the deficiencies are not corrected~~

~~in the time provided, the vocational rehabilitation counselor or firm will be given a formal notice of intent to remove the vocational rehabilitation counselor or firm from the register. The notice will be in the form of a departmental order, and contain the reasons for removal, and the length of time before the vocational rehabilitation counselor or firm may reregister.~~

~~(2) In the case of a registered vocational rehabilitation counselor employed by the department, the office of rehabilitation review shall report the findings resulting from a performance evaluation of the work of a department registered vocational rehabilitation counselor to the director for appropriate action as provided by merit system rules, agency policies and procedures and collective bargaining agreements.))~~

General violation: (1) After the office of rehabilitation review conducts an investigation or performance evaluation or fact finding hearing and determines that a general violation(s) exists, the office of rehabilitation review may issue to the individual/firm registered with the office of rehabilitation review a notice of violation.

(a) The notice shall state the nature of the violation(s), the actions which must be taken to correct the violation(s), and the time period for correction. The office of rehabilitation review will conduct a follow-up investigation to insure the correction(s) has been made;

(b) If an individual/firm has received a notice of violation and fails to correct the violation(s) within the time period set forth in the notice of violation, the office of rehabilitation review may:

i conduct a performance evaluation and/or either

ii place the individual/firm on probation pursuant to WAC 296-18-350(2), or,

iii treat the violation(s) as a serious violation. The department may then deregister the vocational rehabilitation counselor/firm under the provisions of WAC 296-18-360 (serious violation).

(2) If after an investigation, performance evaluation or fact finding hearing the office of rehabilitation review finds the individual/firm has committed a violation(s), the office of rehabilitation review may place the individual/firm on probation for a period not to exceed six months. The office of rehabilitation review shall notify the individual/firm in writing of the probation, the reason for the probation and the time period of the probation. During the period of probation the office of rehabilitation review may require the individual/firm to comply with certain conditions in order to correct the violation(s) and monitor the conduct of the individual/firm during the probationary period to determine if the violation(s) has been corrected.

(3) If the individual/firm fails to correct the violation(s) during the probationary period, the office of rehabilitation review may treat the violation(s) as a serious violation. The office of rehabilitation review may then deregister the individual/firm under the provisions of WAC 296-18-360 (serious violation).

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 82-40, filed 11/30/82)

~~WAC 296-18-360 ((PETITION FOR RECONSIDERATION OF THE INTENT TO REMOVE. Pursuant to WAC 296-18-350 a vocational rehabilitation counselor or firm has been notified by the office of rehabilitation review of the intent to remove the vocational rehabilitation counselor or firm from the register, the vocational rehabilitation counselor or firm may petition the supervisor of industrial insurance for reconsideration. The petition must be made within sixty days of receiving the notice of intent. If no petition is made the notice the intent to deregister is final.~~

~~In the event a vocational rehabilitation counselor or firm petitions the supervisor of industrial insurance for a reconsideration of the intent by the office of rehabilitation review to deregister the vocational rehabilitation counselor or firm, the supervisor shall schedule an informal hearing within thirty days after the petition. The supervisor shall issue a final order fifteen days after the hearing.~~

~~Pursuant to RCW 51.52.050, the vocational rehabilitation counselor or firm may appeal the supervisor's decision to the board of industrial insurance appeals.) Serious violation. If the office of rehabilitation review determines an individual/firm has committed a serious violation, the office of rehabilitation review shall issue a notice of deregistration which shall include a description of the nature of the violation(s), the period of deregistration, including the commencement date of the deregistration, and date the individual or firm may reregister. The notice shall advise the individual/firm of the right to appeal pursuant to the provisions of this WAC 296-18-380. The notice shall be sent by certified mail.~~

**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 82-40, filed 11/30/82)

~~WAC 296-18-370 ((PERIOD OF DEREGISTRATION. Vocational rehabilitation counselors or firms deregistered pursuant to this chapter may be deregistered for a period not to exceed two years. A vocational rehabilitation counselor or firm may petition for reregistration after the period of deregistration expires.)) Critical violation. If the office of rehabilitation review determines an individual/firm has committed a critical violation(s), the office of rehabilitation review shall issue a notice of immediate deregistration which shall include a description of the violation(s), the period of deregistration, and a finding that the public health, safety, or welfare imperatively requires immediate action. The notice shall advise the individual/firm of the right to appeal pursuant to the provisions of WAC 296-18-380. The notice shall be sent by certified mail.~~

NEW SECTION

WAC 296-18-380 APPEALS. (1) Any appeal from a notice of deregistration or notice of immediate deregistration must be in writing, and received by the Director, Department of Labor and Industries, General Administration Building, Olympia, Washington 98504, within fifteen (15) working days of receipt of the notice. Upon receipt of an appeal, the Director shall conduct a hearing pursuant to the provisions of the Administrative Procedure Act, chapter 34.04, RCW.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 296-18-390 DEREGISTRATION. (1) Any individual/firm deregistered by the office of rehabilitation review shall, within three working days (from the effective date of the deregistration), return such files to the referral source as the referral source may request and may not accept any referrals or provide vocational rehabilitation services to any worker covered by Title 51 during the period of deregistration. The referral source shall re-refer the worker to a new registered VRC within three (3) working days from receipt of the file.

2) The filing of a timely appeal by a individual/firm shall not stay the deregistration of the individual/firm. The director, in his discretion may issue a stay during the pendency of the appeal at the administrative level.

3) Individuals or firms deregistered pursuant to this chapter may be deregistered for a period not to exceed two years. An individual or firm may reapply for reregistration after the period of deregistration expires.

WSR 85-04-039

ADOPTED RULES

DEPARTMENT OF ECOLOGY

[Order 84-46—Filed February 1, 1985]

I, Glen H. Fiedler, deputy director of the Department of Ecology, do promulgate and adopt at Lacey, Washington, the annexed rules relating to Winthrop, town of, WAC 173-19-3210.

This action is taken pursuant to Notice No. WSR 84-22-057 filed with the code reviser on November 7, 1984. 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 90.58.120 and 90.58.200 and is intended to administratively implement that statute.

This rule is promulgated under the general rule-making authority of the Department of Ecology as authorized in chapter 90.58 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, 1985.  
By Glen H. Fiedler  
Deputy Director

AMENDATORY SECTION (Amending Order DE 81-36, filed 12/2/81)

WAC 173-19-3210 WINTHROP, TOWN OF. Town of Winthrop master program approved December 16, 1975. Revision approved March 9, 1976. (~~Revision approved February 2, 1979~~) Revision approved February 2, 1979. Revision approved November 23, 1981. Revision approved January 31, 1985.

**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.

**WSR 85-04-040**  
**ADOPTED RULES**  
**DEPARTMENT OF ECOLOGY**  
[Order 84-46—Filed February 1, 1985]

I, Glen H. Fiedler, deputy director of the Department of Ecology, do promulgate and adopt at Lacey, Washington, the annexed rules relating to Whatcom County, WAC 173-19-450.

This action is taken pursuant to Notice Nos. WSR 84-22-057 and 85-03-046 filed with the code reviser on November 7, 1984, and January 11, 1985. 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 90.58.120 and 90.58.200 and is intended to administratively implement that statute.

This rule is promulgated under the general rule-making authority of the Department of Ecology as authorized in chapter 90.58 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, 1985.  
By Glen H. Fiedler  
Deputy Director

AMENDATORY SECTION (Amending Order DE 83-40, filed 4/2/84 [3/2/84])

WAC 173-19-450 WHATCOM COUNTY. Whatcom County master program approved August 27, 1976. Revision approved April 11, 1977. Revision approved August 11, 1978. Revision approved December 22, 1981. Revision approved January 5, 1982. Revision approved March 4, 1982. Revision approved December 15, 1982. Revision approved March 1, 1984. Revision approved January 31, 1985.

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

**WSR 85-04-041**  
**NOTICE OF PUBLIC MEETINGS**  
**NUCLEAR WASTE BOARD**  
[Memorandum—February 1, 1985]

NOTICE OF PUBLIC WORKSHOPS HELD BY WASHINGTON  
NUCLEAR WASTE BOARD ON U.S. DEPARTMENT OF  
ENERGY ENVIRONMENTAL ASSESSMENT DRAFT

The Washington State Nuclear Waste Board hereby gives notice of four public workshops for public comment on the draft U.S. Department of Energy environmental assessment. To confirm locations please contact the High-Level Nuclear Waste Management Office at (206) 459-6670. The workshops will be held at 7:00 p.m. on the following dates:

February 19	Seattle	Seattle Center, Mercer Forum 305 Harrison Street
February 21	Kennewick	Kamiakin High School 600 North Arthur
February 25	Spokane	Spokane County Health Building 1101 West College, Room 104
February 27	Vancouver	Washington State School for the Deaf 611 Grand Street

The draft USDOE environmental assessment evaluates the suitability of a proposed location on the Hanford Reservation for a high-level nuclear waste disposal site. The Nuclear Waste Board will submit its final comments to the U.S. Department of Energy by March 20.

NOTE: Participation in the state workshops is an additional opportunity for citizens, who also have the right to participate in federal hearings or to comment directly to the federal Department of Energy. These workshops are designed to solicit public reaction to issues raised by review of the USDOE's draft environmental assessment.

For more information contact the High-Level Nuclear Waste Management Office, Department of Ecology, PV-11, Olympia, WA 98504, or call (206) 459-6670. For a copy of the draft environmental assessment call TOLL-FREE: 1-800-858-1600 or write to the Department of Energy, Attention: Environmental Assessment, 1000 Independence Avenue S.W., Washington, D.C. 20585.

**WSR 85-04-042**  
**ADOPTED RULES**  
**DEPARTMENT OF GAME**  
**(Game Commission)**  
[Order 241—Filed February 1, 1985]

Be it resolved by the State Game Commission, acting at Cavanaugh's Inn, 1101 Columbia Center Boulevard, Kennewick, WA 99336, that it does adopt the annexed rules relating to hunts authorized pursuant to RCW 77-12.240, amending WAC 232-12-025.

This action is taken pursuant to Notice No. WSR 84-23-069 filed with the code reviser on November 21, 1984. 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 7, 1985.

By Vern E. Ziegler  
Chairman, Game Commission

AMENDATORY SECTION (Amending Order 222, filed 1/24/84)

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

(b) No dogs are permitted out of the vehicle, including on a strikeboard, 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 (1) (Hunting bear during closed season).

(2) Deer and elk.

(a) Only persons with a damage permit are allowed to hunt and take one deer or one elk as designated on their damage control permit.

(b) If a hunter takes an animal of the same species during an earlier hunt, that person will be ineligible for a damage hunt permit.

(c) Deer and elk damage control hunts will be antlerless only unless specified either sex on the damage permit.

(d) The April 1 to June 30 time period will be excluded from damage control hunts.

(e) Permittees may hunt only within the prescribed area and season dates as specified on their permit. If a deer or elk is wounded inside the damage hunt area, it may be pursued and taken outside permit boundaries.

(f) Within five days after expiration of a deer or elk permit, the permittee shall return to the respective region a deer/elk hunting report. If an animal is taken, the permittee shall skin the entire animal and deliver the

hide together with an incisor tooth to a Regional Game Department Office. All deer or elk hides taken pursuant to a damage permit shall be disposed of as prescribed in RCW 77.12.240. Failure to comply with this provision shall constitute ineligibility for the next year's damage permit drawings.

**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.

**WSR 85-04-043**

**PROPOSED RULES**

**DEPARTMENT OF FISHERIES**

[Filed February 1, 1985]

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 gear reduction program rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 12, 1985.

The authority under which these rules are proposed is RCW 75.08.080.

The specific statute these rules are intended to implement is RCW 75.44.110.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 12, 1985.

Dated: February 1, 1985

By: Gene DiDonato  
for William R. Wilkerson  
Director

**STATEMENT OF PURPOSE**

Title: WAC 220-95-012.

Description of Purpose: Adjust years of determination of marginal fishing.

Statutory Authority: RCW 75.08.080.

Summary of Rule: Defines marginal production for charter licenses as income of less than \$4,000 for any year between 1980 and 1984.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, Washington, 754-2429; Implementation: Robert W. Turner, 115 General Administration Building, Olympia, Washington, 753-6627; and Enforcement: James W. McKillip, 115 General Administration Building, Olympia, Washington, 753-6585.

This rule is proposed by the Washington Department of Fisheries.

Comments: No public hearing is scheduled.

This rule is not the result of federal law or court order.

Small Business Economic Impact Statement: None, this rule in itself imposes no differential economic hardship.

AMENDATORY SECTION (Amending Order 81-22, filed 4/10/81)

WAC 220-95-012 MARGINAL PRODUCTION. (1) In order to sell license, gear and vessel to the program, a commercial salmon fisherman must document, in the form of Washington state fish receiving tickets, a cumulative average catch in the top 95 percent of their respective fleet's average annual production during the base period 1973-1977. Commercial salmon fishermen landing catches in the bottom five percent of their fleet's average annual production for the same base period will be eligible to sell only licenses to the program.

(2) In order to sell license, gear and vessel to the program, a salmon charter license holder must document, in the form of income tax records, a level of income derived from charter fishing generated by the license for sale of at least \$4,000 in Washington state in any one of the years ~~((1978, 1979, and 1980))~~ 1981, 1982, or 1983. Charter salmon license holders with an income of less than \$4,000 for ~~((1978, 1979, or 1980))~~ 1981, 1982, or 1983 are eligible to sell only licenses to the program.

**WSR 85-04-044****EMERGENCY RULES****DEPARTMENT OF FISHERIES**

[Order 85-08—Filed February 1, 1985]

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 the harvestable quota of Pacific whiting is rapidly being approached, and reduced fishing time in each fishing period is a necessary imposition to assure that the resource is not over fished.

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 February 1, 1985.

By Gene DiDonato  
for William R. Wilkerson  
Director

NEW SECTION

WAC 220-48-01500M TRAWL CLOSURE. *Notwithstanding the provisions of WAC 220-48-015, 220-48-017, and 220-48-019, effective immediately until further notice it is unlawful to fish for or possess whiting taken with otter trawl gear from Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 24B, that portion of 24C south of a line projected due west from the flashing red light northwest of Lowell Point, and 26A except from 6:00 a.m. to 6:00 p.m. Mondays and Wednesday.*

**WSR 85-04-045****ADOPTED RULES****DEPARTMENT OF FISHERIES**

[Order 85-07—Filed February 1, 1985]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to volunteer cooperative enhancement programs.

This action is taken pursuant to Notice No. WSR 85-01-089 filed with the code reviser on December 19, 1984. 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 75.08.080 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 February 1, 1985.

By Gene DiDonato  
for William R. Wilkerson  
Director

## CHAPTER 220-130 WAC

VOLUNTEER COOPERATIVE FISHERIES  
ENHANCEMENT PROGRAMSNEW SECTION

WAC 220-130-010 PURPOSE. The purpose of this chapter is to establish the procedure for entering into a cooperative agreement between the department and volunteer groups pursuant to Chapter 75.52 RCW to increase the food fish and shellfish resources of the state, to provide educational opportunity and improve communication between the department and the public. This procedure includes the method of application, review process, and priority of distribution of available supplies and technical support and the method of revocation of the agreement and termination of the project, including grounds for such action.

NEW SECTION

WAC 220-130-020 DEFINITIONS. For the purposes of this chapter:

(1) Project means a volunteer fisheries resource project.

(2) Director's designee means the deputy director or the assistant director for resource management having departmental authority over the species being enhanced by the volunteer program.

NEW SECTION

WAC 220-130-030 PROPOSAL. (1) All proposals for volunteer fisheries resource projects shall be made in writing to the department on the department's application form and shall provide the following information:

a. Date of proposal.

b. Name of volunteer group or person proposing the project, including name, address and telephone number of contact person. The volunteer group shall immediately notify the Department in writing of a change in contact person.

c. Location and description of proposed project.

d. Annual dates of initiation and completion of project, or an indication that the project is ongoing throughout the year.

e. List of supplies, materials and technical assistance requested from the department and necessary for the completion or operation of the project.

(2) Applications for projects to culture and release food fish and shellfish also must provide:

a. Number of eggs, larvae, juveniles or adult food fish or shellfish requested by species.

b. The preferred stock.

c. The method and type of culturing proposed.

d. The number of food fish or shellfish to be cultured.

e. The date of release.

f. Size at release.

g. Release location(s).

#### NEW SECTION

WAC 220-130-040 REVIEW PROCEDURE. (1) A written response will be mailed to the contact person within forty-five calendar days of receipt of the application. The response shall include notice if the application is incomplete and that additional information is required, or any identifiable conflicts with legally existing land, water, or property rights, or any identifiable and unacceptable biological or resource management conflicts, or any identifiable lack of supplies, labor, or expertise either biological or non-biological, or financial resources necessary for project completion or operation. The department shall provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of a person in the department responsible for monitoring the review of the proposal, and a list of identifiable state and federal permits that will be required prior to implementation of the project. The list shall not be represented as all-inclusive. The department will identify the date by which a final acceptance or rejection of the proposal can be expected together with an explanation of why that date was selected and the process of further review to occur prior to that date.

(2) During its review of the proposal, the department will coordinate with other agencies and Indian Tribes and assist in the preparation of and coordinate the review of any necessary Hydraulic Project Application, Shellfish Import and Transfer Permit or Live Fish Import and Transfer Permit or applicable requirements of the State Environmental Policy Act.

(3) The department will exempt the volunteer group from payment of permit and license fees to the department for activities relating to the project.

(4) The department will determine its ability to meet the requirements of a project for supplies, technical expertise and other assistance, both biological and non-biological, by considering:

a. The project's consistency with department goals to preserve, protect and enhance the fishery resources of the state.

b. The ability to maximize the number of persons participating in or benefitting from the volunteer fisheries resource program.

c. The desire to maximize public awareness of the resource.

#### NEW SECTION

WAC 220-130-050 ACCEPTANCE OR REJECTION OF PROPOSAL. (1) The terms and conditions for an acceptable project will be set forth in a written agreement between the department and the volunteer group and provide specifics for project implementation. Agreements may be for up to five years.

(2) If a proposal is rejected, the department must provide in writing to the volunteer group the reasons for the rejection. The volunteer group may appeal any decision rejecting a proposal to the director or the director's designee.

#### NEW SECTION

WAC 220-130-060 PROJECT TERMINATION. (1) The department may revoke approval and terminate projects for cause. Grounds for termination include:

a. Violation of the agreement provisions.

b. Development of unacceptable biological or resource management conflicts during implementation of the project.

c. Unavailability of adequate resources of expertise necessary to complete the project.

(2) Notice of approval revocation shall be mailed to the contact person for the volunteer cooperative, stating the reason for revocation and, should the reason be violation of the agreement provisions, specifying what agreement provisions were violated and how corrective action can be accomplished to continue with the project.

(3) The volunteer cooperative may appeal any decision for agreement revocation or project termination to the director or the director's designee.

#### **WSR 85-04-046**

#### **EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Order 85-1—Filed February 1, 1985]

I, Frank B. Brouillet, Superintendent of Public Instruction, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Finance—Emergency school closure, chapter 392-129 WAC.

I, Frank B. Brouillet, 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 provisions of chapter 392-129 WAC are not clear as applied to the cancellation of

the morning kindergarten program and the commencement of the afternoon kindergarten program or the cancellation of afternoon kindergarten programs on school days when the district has commenced the morning kindergarten program on emergency school closure days. The snowfall of February 1, 1985, caused the immediate need for a clarification of existing rules in order to provide districts with clear directions for future scheduling.

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

This rule is promulgated pursuant to RCW 28A.41.170 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, 1985.

By Frank B. Brouillet  
Superintendent of Public Instruction

#### NEW SECTION

**WAC 392-129-030 APPLICATION OF CHAPTER TO HALF DAY KINDERGARTEN PROGRAMS.** *The following shall apply to the cancellation of either the morning or afternoon kindergarten program in a school district due to an unforeseen emergency:*

(1) *In the event a district has both a morning and afternoon kindergarten program scheduled on a school day and the district cancels the morning program and commences the afternoon kindergarten program, the district need not make up such school day, program hour offering, teacher contact hours, and course mix percentages required by law for the morning kindergarten program.*

(2) *In the event a district has both a morning and afternoon kindergarten program scheduled on a school day and the district commences the school day with the morning kindergarten program, the district may cancel the afternoon kindergarten program without making up such school day, program hour offering, teacher contact hours, and course mix and percentages required by law for the afternoon program.*

**WSR 85-04-047  
PROPOSED RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed February 1, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Superintendent of Public Instruction intends to adopt, amend, or repeal rules concerning Finance—Emergency school closure, chapter 392-129 WAC;

that the agency will at 9:00 a.m., Tuesday, March 19, 1985, in the Old Capitol Building, Washington and Legion, State Board of Education Conference Room,

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 21, 1985.

The authority under which these rules are proposed is RCW 28A.41.170.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 19, 1985.

Dated: February 1, 1985

By: Frank B. Brouillet  
Superintendent of Public Instruction

#### STATEMENT OF PURPOSE

Rule: Chapter 392-129 WAC, Finance—Emergency school closure.

Rule Section(s): WAC 392-129-030 Application of chapter to half day kindergarten programs.

Statutory Authority: RCW 28A.41.170.

Purpose of the Rule(s): To set forth conditions related to the apportionment of state moneys during emergency school closures.

Summary of the New Rule(s) and/or Amendments: WAC 392-129-030 permits the closure of morning or afternoon kindergarten programs on school days due to unforeseen conditions and to receive state moneys as if the program were conducted.

Reasons Which Support the Proposed Action(s): It is not practical for school districts to make up half day kindergarten sessions.

Person or Organization Proposing the Rule(s): SPI, government.

Agency Personnel Responsible for Drafting: Ralph E. Julnes, SPI, 3-2298; Implementation and Enforcement: Perry Keithley, SPI, 3-6742.

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): Is intended to interpret current rules. See definition of school day in WAC 392-129-010 and separate provision for kindergarten in WAC 392-129-020.

#### NEW SECTION

**WAC 392-129-030 APPLICATION OF CHAPTER TO HALF DAY KINDERGARTEN PROGRAMS.** *The following shall apply to the cancellation of either the morning or afternoon kindergarten program in a school district due to an unforeseen emergency:*

(1) *In the event a district has both a morning and afternoon kindergarten program scheduled on a school day and the district cancels the morning program and commences the afternoon kindergarten program, the district need not make up such school day, program hour offering, teacher contact hours, and course mix percentages required by law for the morning kindergarten program.*

(2) *In the event a district has both a morning and afternoon kindergarten program scheduled on a school day and the district commences the school day with the morning kindergarten program, the district may cancel the afternoon kindergarten program without making up such school day, program hour offering, teacher contact hours, and course mix and percentages required by law for the afternoon program.*

**WSR 85-04-048**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**  
 [Filed February 4, 1985]

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 388-92-015 Eligibility determination—SSI.  
 Amd WAC 388-99-010 Persons eligible for medically needy assistance.

It is the intention of the secretary to file these rules on an emergency basis on February 1, 1985;

that the agency will at 10:00 a.m., Wednesday, March 13, 1985, in the Auditorium, 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 20, 1985.

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 13, 1985.

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 Administrative Regulations Section, at State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by February 27, 1985. The meeting site is in a location which is barrier free.

Dated: February 1, 1985

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

#### STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.025.

Re: Amending WAC 388-92-015 and 388-99-010.

Purpose of the Rule or Rule Change: To establish eligibility requirements in the medically needy program.

The Reason(s) These Rules are Necessary: To implement a change in department policy.

Statutory Authority: RCW 74.08.090.

Summary of the Rule or Rule Change: An ineligible spouse, of an SSI beneficiary receiving a state supplement payment for the ineligible spouse, may become eligible for the medically needy program if he/she is aged,

blind or disabled and the couple meets the income and resource requirements.

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 2073, filed 2/1/84)

##### 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 medical aid as categorically needy.

(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 2191, filed 1/17/85)

WAC 388-99-010 PERSONS ELIGIBLE FOR MEDICALLY NEEDY ASSISTANCE. Medically needy refers to a resident of the state of Washington whose income and/or resources are above the limits prescribed for the categorically needy and who meets the resource limits of the SSI program and is:

(1) Related to aid to families with dependent children (AFDC). See chapter 388-83 WAC.

(2) Related to supplemental security income (SSI). See chapter 388-92 WAC.

(3) Related to state supplementary payment program (SSP).

(4) Under age twenty-one and in:

- (a) Foster care, or
- (b) Subsidized adoption, or
- (c) Skilled nursing facility, intermediate care facility, intermediate care facility/mentally retarded,
- (d) An approved inpatient psychiatric facility.

(5) Aged, blind, or disabled and residing in a medical facility with income above the three hundred percent of the SSI benefit cap.

(6) The ineligible spouse of an SSI beneficiary receiving a state supplement payment for the ineligible spouse if:

(a) The ineligible spouse is related to the SSI program due to being aged, blind, or disabled; and

(b) The ineligible spouse is not receiving an SSI payment in his/her own right; and

(c) The income of the couple, including SSI payment, are considered.

(7) A child under five years of age, born after September 30, 1983.

**WSR 85-04-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
 [Order 85-09—Filed February 4, 1985]

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 75.08.070 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 February 4, 1985.

By William R. Wilkerson  
 Director

**NEW SECTION**

**WAC 220-32-02200N LAWFUL GEAR—SEASONS—STURGEON.** *Notwithstanding the provisions of WAC 220-32-022, WAC 220-32-030, WAC 220-32-031, 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 Area 1E except as provided for in this section:*

(1) *Lawful fishing period is:*

*12:00 noon February 4 to 6:00 p.m. February 8, 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 mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon 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.*

(5) *It is lawful to sell chinook salmon taken incidentally to sturgeon fishing during the periods in subsection (1) of this section.*

**REPEALER**

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

**WAC 220-32-02200M LAWFUL GEAR—SEASONS—STURGEON. (85-06)**

**WSR 85-04-050**  
**NOTICE OF PUBLIC MEETINGS**  
**WALLA WALLA**  
**COMMUNITY COLLEGE**  
 [Memorandum—January 31, 1985]

The regular meetings of the board of trustees of Walla Walla Community College, Community College District No. 20, commencing February of the calendar year 1985 shall be held at 1:30 p.m. in the College Board Room at 500 Tausick Way, Walla Walla, Washington, except as noted, on the following dates:

Wednesday, February 27, 1985

Wednesday, March 27, 1985

Wednesday, April 24, 1985

— Clarkston Branch, Walla Walla Community College, 1284 Chestnut, Clarkston, Washington

Wednesday, May 29, 1985

Wednesday, June 26, 1985

Wednesday, July 31, 1985

(optional)

Wednesday, August 28, 1985

(optional)

Wednesday, September 25, 1985

Wednesday, October 30, 1985

Wednesday, November 27, 1985

Wednesday, December 18, 1985

**WSR 85-04-051**  
**PROPOSED RULES**  
**GRAYS HARBOR COLLEGE**  
 [Filed February 4, 1985]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that the Grays Harbor College District No. 2 board of trustees intends to adopt, amend, or repeal rules concerning withholding services for outstanding debts;

that the institution will at 8:00 p.m., Monday, March 18, 1985, in the Conference Room, Grays Harbor College, Aberdeen, Washington 98520, 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 17, 1985.



Dated: February 1, 1985

By: Joseph A. Malik  
President

### STATEMENT OF PURPOSE

Title: Withholding services for outstanding debts.

Description of Purpose: College regulation concerning withholding services for outstanding debts.

Statutory Authority: RCW 28B.50.140.

Specific Statute Rule is Intended to Implement: [No information supplied by the institution.]

Summary of Rule: Proposed rule provides that if any person, including faculty, staff, students, or former students, is indebted to the institution the institution need not provide further service to such individual.

Reasons Supporting Proposed Action: To enforce debt collection.

Agency Personnel Responsible for Drafting and Enforcement: John B. Killian, Dean of Administration, Grays Harbor College, Aberdeen, WA, (206) 532-9020; and Implementation: Dr. John Smith, Associate Dean for Admissions and Records, Grays Harbor College, Aberdeen, WA, (206) 532-9020.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Dr. Joseph A. Malik, President, Grays Harbor College, Aberdeen, WA, public.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: [No information supplied by the institution.]

Whether Rule is Necessary as Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: [No information supplied by the institution.]

Chapter 132B-122 WAC

### WITHHOLDING SERVICES FOR OUTSTANDING DEBTS

#### NEW SECTION

WAC 132B-122-010 WITHHOLDING SERVICES FOR OUTSTANDING DEBTS. If any person, including faculty, staff, student, or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, transcripts or other services which have been requested by any such person. The institution also reserves the right to off set any funds received from an individual against an outstanding overdue debt.

Upon receipt of such a request for services where there is an outstanding debt due the institution from that person, the institution shall notify the person, in writing, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided the individual. When the institution exercises its right of off set, the institution shall notify the person, in writing, of the amount applied and balance due, if any.

The notification referred to above shall also inform the individual that he has a right to a hearing before a person designated by the president of the institution if he believes the records of the institution are incorrect concerning his indebtedness. The notification shall also indicate that the request for the hearing must be made within ten days from the date of the notification.

Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the institution available for review and, at that time, shall hold an informal hearing concerning whether the individual owes or owed any outstanding debts

to the institution. After the informal hearing, a decision shall be rendered by the president's designee indicating whether the institution is correct in withholding services and/or applying off set for the outstanding debt. If the outstanding debt is found to be owed by the individual involved, the off set shall remain applied and/or no further services shall be provided. Notification of this shall be sent to the individual within five days after the hearing. This decision shall constitute an informal proceeding established by the institution pursuant to the Higher Education Administrative Procedure Act as defined in RCW 28B.19.110.

Chapter 132B-122 WAC

### WITHHOLDING SERVICES FOR OUTSTANDING DEBTS

#### NEW SECTION

WAC 132B-122-010 WITHHOLDING SERVICES FOR OUTSTANDING DEBTS. If any person, including faculty, staff, student, or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual, including but not limited to transmitting files, records, transcripts or other services which have been requested by any such person. The institution also reserves the right to off set any funds received from an individual against an outstanding overdue debt.

Upon receipt of such a request for services where there is an outstanding debt due the institution from that person, the institution shall notify the person, in writing, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided the individual. When the institution exercises its right of off set, the institution shall notify the person, in writing, of the amount applied and balance due, if any.

The notification referred to above shall also inform the individual that he has a right to a hearing before a person designated by the president of the institution if he believes the records of the institution are incorrect concerning his indebtedness. The notification shall also indicate that the request for the hearing must be made within ten days from the date of the notification.

Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the institution available for review and, at that time, shall hold an informal hearing concerning whether the individual owes or owed any outstanding debts to the institution. After the informal hearing, a decision shall be rendered by the president's designee indicating whether the institution is correct in withholding services and/or applying off set for the outstanding debt. If the outstanding debt is found to be owed by the individual involved, the off set shall remain applied and/or no further services shall be provided. Notification of this shall be sent to the individual within five days after the hearing. This decision shall constitute an informal proceeding established by the institution pursuant to the Higher Education Administrative Procedure Act as defined in RCW 28B.19.110.

WSR 85-04-052

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed February 5, 1985]

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 Decision rendering procedure—Proposal for decision, amending WAC 388-08-406;

that the agency will at 10:00 a.m., Wednesday, March 13, 1985, in the Auditorium, 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 20, 1985.

The authority under which these rules are proposed is RCW 34.04.020.

The specific statute these rules are intended to implement is RCW 34.04.020.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 13, 1985.

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 Administrative Regulations Section, at State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by February 27, 1985. The meeting site is in a location which is barrier free.

Dated: February 4, 1985

By: David A. Hogan, Director

Division of Administration and Personnel

#### STATEMENT OF PURPOSE

-Re: WAC 388-08-406.

The Purpose of the Rule Changes: To improve the contested case decision rendering procedure under the proposal for decision process and to give the public better notice of the process.

The Rules are Necessary: To clearly specify the rights of litigants and the duties and powers of the final decision maker when the proposal for decision procedure is used in contested cases. See RCW 34.04.010 (2)(b) and (3), 34.04.020(1) and 34.04.110.

Statutory Authority: RCW 43.17.060 and 43.20.0A.030 [43.20A.030]. See also RCW 34.04.110 and 43.20A.110.

Summary of the Rule Change: The rule changes are to better describe the decision rendering process under the proposal for decision procedure. The amendments state the circumstances when the secretary adopts the administrative law judge's proposed decision as the final decision, or modifies the proposed decision, or remands the case. The final decision maker is required to identify material differences between the final and proposed decisions when the administrative law judge's proposed decision is not adopted.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: David L. Henry, Chief, Office of Administrative Regulations and Hearings, mailstop OB 43, phone (206) 753-3898.

The rule change is not a result of federal law, federal court decision or state court decision.

#### AMENDATORY SECTION (Amending Order 2076, filed 2/17/84)

WAC 388-08-406 DECISION-RENDERING PROCEDURE—PROPOSAL FOR DECISION. (1) ~~((Any party adversely affected by a proposal for decision may file written argument and exception with the office of hearings. Written argument and exception must be filed in~~

~~ten days or less from the date the proposal for decision was mailed to the parties))~~ In ten days or less from the mailing of the proposal for decision, an interested party may file written exceptions and argument against the proposal for decision with the secretary or his or her designee. The exceptions and argument must set forth in detail the basis for the requested review and be mailed postage prepaid to the office of hearings and to the other party and that party's representative at their last known addresses.

(a) The ten-day period to file exception and argument may be extended by the ~~((review judge))~~ secretary or designee upon motion of a party when the motion is filed during the ten-day period and good cause for the extension is shown.

(b) The ten-day time limit for filing exception and argument to a proposal for decision may be waived by the ~~((review judge))~~ secretary or designee where the petitioner demonstrates good cause for failure to timely file. Good cause includes mistake, inadvertence, and excusable neglect on the part of petitioner or unavoidable casualty or misfortune preventing the petitioner from timely filing. Upon a showing of good cause, either party may file exception and argument within thirty days of the date the final decision was mailed to the parties.

(2) ~~((The secretary or his or her designee shall personally consider the whole record or such portions of the record as cited by a party or parties in the exception and argument. The secretary or designee shall render the final department decision))~~ Exceptions and argument shall be based on any one or more of the following grounds materially affecting the substantial rights of the party:

(a) Irregularity in the proceedings by which the petitioning party was prevented from having a fair hearing. This includes misconduct by the prevailing party and misconduct or abuse of discretion by the administrative law judge, and/or

(b) A finding or findings of fact are unsupported by substantial evidence in view of the entire record, and/or

(c) An error or errors of law, and/or

(d) Need for clarification in order for the parties to implement the decision.

(3) The other party may respond in writing to the exceptions and argument. The response must be mailed within seven days of the date the exceptions and argument were mailed to the other party. The seven-day response period may be extended by the secretary or designee on his or her own motion or the motion of a party. The response shall be mailed postage prepaid to the office of hearings and to the petitioner or, if represented, to the representative at his or her last known address.

(4) The secretary or designee may permit additional oral or written argument upon the motion of a party or the reviewing officer's own motion.

~~((3))~~ (5) The secretary or ~~((his or her))~~ designee may accept additional evidence to correct omissions in the record upon his or her own motion or the motion of a party.

(6) The secretary or designee shall personally consider the whole record or such portions of the record as cited by a party or parties in the exception and argument.

~~((4))~~ (7) The secretary or ~~((his or her))~~ designee may remand the proceedings to the administrative law judge for additional evidence or argument if:

(a) Neither party cited the law correctly applicable to the issue or issues defined at the hearing and additional evidence or argument is needed to reach a reasoned decision.

(b) Irregularity in the proceedings occurred by which the party seeking review was prevented from having a fair hearing and additional evidence or argument is necessary to cure the irregularity, or

(c) The secretary or ~~((his or her))~~ designee considers a remand necessary ~~((and both parties assent to the remand)).~~

(8) The secretary or designee shall not substantially modify the proposal for decision unless, in the reasoned opinion of the reviewing officer:

(a) Irregularity in the proceedings occurred by which a party was prevented from having a fair hearing. This includes misconduct by the prevailing party and misconduct or abuse of discretion by the administrative law judge; and/or

(b) The proposed findings of fact are unsupported by substantial evidence in view of the entire record; and/or

(c) The application of law in the proposed conclusions is erroneous; and/or

(d) There is need for clarification in order for the parties to implement the decision.

(9) The secretary or designee may issue a proposed final decision.

(10)(a) The secretary's or designee's decision shall identify any substantial difference between it and the proposal for decision.

(b) The secretary's or designee's decision may incorporate all or part of the proposal for decision by reference.

(c) The secretary's or designee's final decision shall be effective on the date of filing. The reviewing officer shall file the original of the decision in the record of the proceedings and shall mail copies to the parties and their representatives.

**WSR 85-04-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
**(Public Assistance)**  
 [Filed February 5, 1985]

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 Food stamps—Overpayments, amending WAC 388-54-850;

that the agency will at 10:00 a.m., Wednesday, March 13, 1985, in the Auditorium, 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 20, 1985.

The authority under which these rules are proposed is RCW 74.04.510.

The specific statute these rules are intended to implement is RCW 74.04.510.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 13, 1985.

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 Administrative Regulations Section, at State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by February 27, 1985. The meeting site is in a location which is barrier free.

Dated: February 4, 1985

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 388-54-850.

Purpose of the Rule Change: To delete reference to a disqualification waiver and add date of discovery for inadvertent household errors.

The Reason this Rule is Necessary: To conform to changes in program.

Summary of Rule Changes: Removing option for allowing clients to sign waivers for disqualification hearings. Establishes date of discovery for inadvertent household errors.

Person Responsible for the Drafting, Implementation and Enforcement of the Rule: Duane Kerr, Program Manager, Division of Income Assistance, mailstop OB 31C, phone 753-4918.

This rule is not necessary as a result of federal law, federal court decision, or state court decision.

AMENDATORY SECTION (Amending Order 2032, filed 10/6/83)

WAC 388-54-850 OVERPAYMENTS. (1) Definitions of overpayments for which recovery action may be taken.

(a) An administrative error overpayment is an overpayment caused solely by department action or failure to act when the household had properly and accurately reported all the household's circumstances to the department.

(b) An inadvertent household error overpayment is an overpayment caused by misunderstanding or unintended error on the part of the household.

(c) An intentional program violation overpayment is an overpayment((:

~~((i))~~ which a court or an administrative decision determined was caused by fraud or intentional program violation(~~(:~~

~~((ii))~~ For which the individual signed a disqualification consent agreement when the case had been referred for prosecution or signed a waiver of right to an administrative disqualification hearing)).

(2) Households and household members against which recovery action can be taken.

(a) The department shall take recovery action against a household which was overpaid food stamps.

(b) If the household membership at the time an agency error or inadvertent household error overpayment occurred is not the same when recovery action is to be taken, the department shall take action against the household containing a majority of those who were members at the time the overpayment occurred.

(c) If the household membership at the time an intentional program violation overpayment occurred cannot be determined, the department shall take recovery action against the household containing the individual (~~who committed~~) committing the act of intentional program violation.

(d) If the department is unable to take recovery action under subsection (2)(a), (b), or (c) of this section, then the department shall take recovery action against the household (~~which contains~~) containing the person who was the head of the household at the time the overpayment occurred.

(3) Amount of overpayment.

(a) When the department discovers an administrative error or inadvertent household error overpayment occurred in the prior twenty-four months or discovers an intentional program violation in the prior seventy-two months, the department shall calculate the allotment the household should have been authorized. The date of discovery shall be the month the overpayment is calculated by completion of the food stamp claim determination report (DSHS 5-07).

(i) If the household accurately and timely reports the household's circumstances and changes in circumstances to the department, the calculation shall be based on the day the household's circumstances were reported.

(ii) If the household did not accurately and timely report the household's circumstances and change of circumstances, the calculation shall be based on the household having accurately reported the household's circumstances to the department in the application or on the date the change of circumstances occurred.

(iii) Calculation shall be based on the department having given the household advance notice if such notice would have been required.

(b) The difference between the monthly allotment the household should have been authorized as calculated in subsection (3)(a) of this section and the monthly allotment actually authorized is the amount of the overpayment.

(4) Amount of a household's and/or household member's liability for an overpayment. The difference between the amount of the overpayment calculated in subsection (3)(b) of this section and any food

stamp lost benefits incurred prior to writing a letter demanding repayment, which had not previously been restored or used as an offset, is the amount of a household's and/or a household member's liability for an overpayment.

(5) Demand letter. Prior to initiating recovery action, the department shall provide the household member a demand letter.

(6) Methods of recovery. A household or household member may repay an overpayment in a lump sum or sums, in regular installments under a payment schedule agreed upon by the household or member and the department, and/or through reductions in the food stamp allotment.

(a) Lump sum.

(i) A household member may pay all or part of his or her liability for an overpayment in a lump sum.

(ii) A household member may use food stamp coupons, money order, check, cash, or any combination thereof to make a lump-sum payment.

(b) Installments.

(i) A household member may use food stamp coupons, money order, check, cash, or any combination thereof to make installment payments.

(ii) If the full liability for the overpayment or overpayments cannot be paid through a lump sum or allotment reduction or reductions, and the remaining amount of liability cannot be repaid in full in installment payments in three years, then the department may compromise the claim by reducing the claim to an amount allowing the household to pay the claim in three years.

(iii) The minimum installment payment schedule the department will agree to with a currently participating household member (~~who is~~) liable for an overpayment caused by inadvertent household error or intentional program violation shall be not less than the amount that could be recovered through allotment reduction.

(iv) When an installment payment schedule has been agreed to by the household member and the department, the amount to be repaid each month shall be that agreed to regardless of subsequent changes in the household's monthly household allotment unless the parties renegotiate the payment schedule and agree on a new payment schedule.

(v) A household member and/or the department may request of the other party (~~that~~) a payment schedule be renegotiated.

(A) The most recent agreed upon payment schedule shall remain in effect until the household member and the department agree to a different schedule.

(B) When a household member requests renegotiation and the department agrees the member's economic circumstances have changed enough to warrant a different schedule, the department shall offer a different schedule and/or consider any reasonable schedule the member offers.

(C) When a household member requests renegotiation and the department determines the member's economic circumstances have not changed enough to warrant a different schedule, the department shall inform the member of this determination and (~~that~~) the most recently agreed upon schedule remains in effect.

(vi) When a household member (~~who has agreed~~) agreeing to repay in installments fails to make a payment in accordance with the payment schedule:

(A) The department shall give notice informing him or her:

(I) No payment or an insufficient payment was received;

(II) The household member may contact the department to discuss renegotiation of the payment schedule; and

(III) Unless the household member makes the overdue payment or payments or contacts the department to discuss renegotiation by a specified date, the allotment of a currently participating household will be reduced without additional notice of the overpayment being recovered (~~was caused by inadvertent household error or intentional program violation~~).

(B) If the household member fails to make the overdue payments or request renegotiation of the payment schedule and the overpayment was caused by inadvertent household error or intentional program violation, the department shall reduce the food stamp allotment without additional notice.

(C) If the household member responds to the notice by making the overdue payments and wishes to continue the current payment schedule, the department shall permit him or her to do so.

(D) If the household member responds to the notice by requesting renegotiation of the payment schedule, the department shall consider the request.

(E) When the department determines agreement on a new repayment schedule cannot be reached and the overpayment was caused by inadvertent household error or intentional program violation, the department may invoke allotment reductions against a currently participating household.

(c) Reduction in food stamp allotment.

(i) Administrative error overpayment.

(A) For administrative error overpayments, the household member may repay through reduction in the food stamp allotment.

(B) The amount to be recovered each month through a reduction in allotment for an agency error overpayment shall be entirely up to the household member.

(ii) Inadvertent household error overpayment and intentional program violation overpayment. The department shall reduce a currently participating household's food stamp allotment to repay an inadvertent household error overpayment by the greater of ten percent of the household's monthly allotment or ten dollars per month and for an intentional program violation overpayment by the greater of twenty percent of the entitlement or ten dollars per month.

(A) If the household member and the department are negotiating in good faith for an agreement to repay in installments, the department shall reduce the household's food stamp allotment only when the household member and the head of the household consent.

(B) If the household member and the department have made an agreement to repay in installments and the member has made each payment when due, the department shall reduce the household's food stamp allotment only when the household member and the head of the household consent.

(7) The department shall suspend collection action when:

(a) The department determines the household member is financially unable to pay the claim; or

(b) The department determines there is little likelihood (~~that~~) the state can collect or enforce collection of any significant sum from the household member; or

(c) The department cannot locate a liable household member; or

(d) The department determines cost of further collection action is likely to exceed the amount that can be recovered.

(8) After the claim has been held in suspense for three years, the claim shall be terminated.

## WSR 85-04-054

### ADOPTED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

### (Health)

[Order 2202—Filed February 5, 1985]

I, David A. Hogan, director of the Division of Administration and Personnel, do promulgate and adopt at Olympia, Washington, the annexed rules relating to hospice regulations, new chapter 248-31 WAC.

This action is taken pursuant to Notice No. WSR 85-01-028 filed with the code reviser on December 12, 1984. 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 70.126-.040 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 4, 1985.

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

Chapter 248-31 WAC  
HOSPICE CARE AGENCY REGULATIONS

NEW SECTION

WAC 248-31-001 PURPOSE. The purpose of these rules and regulations is to establish standards for operation of certified hospice care agencies. These rules are promulgated pursuant to chapter 70.126 RCW directing the department of social and health services to adopt rules establishing standards for certification of hospices.

NEW SECTION

WAC 248-31-002 DEFINITIONS. For the purpose of this chapter, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

(1) "Administrator" means a person managing and responsible for the day-to-day operation of each certified hospice and having at least one year of supervisory or administrative experience and/or training.

(2) "Bereavement service" means consultation, support, counseling, and follow-up of a patient unit before and following death of the patient.

(3) "Bylaws or equivalent" means a set of rules adopted by a hospice for governing hospice operation.

(4) "Certification" means a statement by the department that a hospice is operating in accordance with standards of the department contained and described in chapter 70.126 RCW and chapter 248-31 WAC.

(5) "Clinical progress note" means a written, dated notation of each contact with a patient unit containing a description of signs and symptoms, treatments, medications given, the patient reaction, any changes in physical or emotional condition, and other pertinent information.

(6) "Department" means department of social and health services.

(7) "Family" means individuals, primary care givers, representatives, and others who are important to and designated by the patient and who need not be relatives.

(8) "Governing body" means the individual or group with responsibility and authority to establish policies related to operation of a hospice.

(9) "Home health aide" means an individual providing services in behalf of and coordinated by hospice and providing care of hospice patients under the supervision of a registered nurse. Such care includes ambulation and exercise, assistance with medications ordinarily self-administered, reporting changes in patient condition and needs, completing appropriate records, and personal care or household services needed to achieve the medically desired results.

(10) "Hospice" means a private or public agency or organization or entity or division thereof administering and providing hospice care and certified by the department as a hospice care agency pursuant to chapter 70.126 RCW and chapter 248-31 WAC.

(11) "Hospice care" means a group of organized and coordinated palliative services for the terminally ill, prescribed by the attending physician with care provided by

the hospice according to a hospice plan of care, and in accordance with chapter 70.126 RCW and chapter 248-31 WAC: PROVIDED, That the patient and/or patient representative is informed and expresses a preference for the type of care and services that may be provided as hospice and agrees to those services available in a specific named hospice.

(12) "Hospice plan of care" means a written, individualized plan specific to one patient unit and approved by a physician describing hospice care to be provided to the patient unit for palliation or medically necessary treatment of an illness or injury.

(13) "Inpatient care" means care provided in a facility licensed by a state of the United States as a hospital, nursing home (skilled nursing facility), or a hospice.

(14) "May" means permissive or discretionary on the part of the department.

(15) "Medical records professional" means a person having successfully completed the examination requirements of the American medical record association (AMRA), 875 N. Michigan, Suite 1850, Chicago, Illinois 60611, as specified in Standards for Initial Certification or Standards for Maintenance of Certification as adopted by the American medical records association, October 3, 1983, or having documented equivalent in education, training, and/or experience.

(16) "Occupational therapist" means an individual licensed as a registered occupational therapist (OTR) pursuant to chapter 18.59 RCW.

(17) "Owner" means the individual, partnership or corporation, or other legal entity applying for department certification or recertification or renewal of certification of a hospice and providing evidence of intent and ability to comply with standards and rules pursuant to chapter 70.126 RCW and chapter 248-31 WAC.

(18) "Patient" means the terminally ill individual.

(19) "Patient unit" means the patient and family which together compose the unit of care in hospice.

(20) "Palliative care" or "palliation" means activities, interventions, and interactions planned and executed to cause a lessening or reduction of physical, psychological, or spiritual pain or discomfort and symptoms, and intended to ease without curing.

(21) "Personnel" means volunteers, employees, individuals, and groups providing services in behalf of and coordinated by hospice. "Direct personnel" means those personnel functioning according to a specific contract or agreement between one individual and hospice in which case such agreement or contract shall require hospice responsibility for screening and selection, job description, orientation, supervision, and regular evaluation of performance of the individual. Other personnel may include persons providing care working through the auspices of and under direction of another agency, organization, or program and who shall function as personnel of hospice according to an interagency agreement or contract between hospice and the other agency, organization, or program in which case the contract or agreement shall specify all deliverers of hospice care meet qualifications required for the job to be performed and receive regular performance evaluations.

(22) "Pharmacist" means an individual licensed by the state board of pharmacy to engage in the practice of pharmacy pursuant to chapter 18.64 RCW.

(23) "Physical therapist" means an individual practicing physical therapy as defined in chapter 18.74 RCW, physical therapy, under the prescription and direction of a physician.

(24) "Physician" means an individual currently licensed as a physician pursuant to chapter 18.71 RCW or osteopathic physician and surgeon licensed pursuant to chapter 18.57 RCW.

(25) "Registered nurse" means an individual licensed under the provisions of chapter 18.88 RCW, registered nurses.

(26) "Representative" means a person who, because of a patient's mental or physical incapacity, is authorized in accordance with state law to execute or revoke an election for hospice care.

(27) "Respite care" means care of a patient in the most appropriate setting, as agreed by patient unit and hospice, for a few days or hours to relieve or replace family members or friends usually caring for the patient at home.

(28) "Self-administration" means patient or family administration of patient-owned medication to the patient as approved by the attending physician.

(29) "Shall" means compliance is mandatory.

(30) "Social worker" means a person having a masters degree from a college of social work accredited by the council on social work education (CSWE), 111 8th Avenue, New York, New York 10011, as described in Manual of Accrediting Standards for Graduate Professional Schools of Social Work, revised April 1971.

(31) "Speech therapist" means a person:

(a) Meeting the educational and experience requirements for a certificate of clinical competence in the appropriate area of speech pathology or audiology granted by the American speech, language and hearing association as described in the ASHA directory, American speech, language and hearing association, 10801 Rockville Pike, Maryland 20852, 1983; or

(b) Meeting the education requirements for a certificate of clinical competence and in the process of accumulating the supervised experience, as specifically prescribed in the ASHA directory, 1983.

(32) "Summary report" means a written, dated notation summarizing facts about hospice care given, response of the patient unit to hospice care, and coordination of hospice care.

#### NEW SECTION

WAC 248-31-010 CERTIFICATION OF HOSPICE. (1) An application for hospice certification shall be submitted on forms furnished by the department, accompanied by the fee. Applications shall be signed by the owner or designated agent.

(a) The applicant shall furnish to the department full and complete information as required by the department for the proper administration of these requirements.

(b) Fees established by the department shall be paid pursuant to RCW 43.20A.055 and chapter 440-44 WAC.

(2) The department may at any time inspect those parts of the premises of the hospice and examine those records necessary to determine compliance with this chapter, pertaining to hospice care agency certification requirements pursuant to chapter 70.126 RCW and chapter 248-31 WAC.

(a) The certificate issued shall be valid for a maximum of twenty-four months.

(b) The certificate shall not be transferrable or assignable.

(3) Hospice certification may be denied, suspended, or revoked for failure to comply with chapter 70.126 RCW or chapter 248-31 WAC. Any action to deny, suspend, or revoke certification shall comply with chapter 34.04 RCW, Administrative Procedure Act.

(4) When a change of ownership is planned, the owner shall notify the department at least thirty days prior to the date of transfer.

(a) The notification shall be written and contain the following information:

(i) Full name of the current owner and prospective new owner,

(ii) Name and address of the hospice,

(iii) The date of the proposed change of ownership.

(b) The prospective new owner shall submit a new application for hospice care agency certification with the fee at least thirty days prior to the change of ownership.

(c) A new hospice certification shall be issued only following approval of the application by the department.

(5) The hospice shall inform the department and all patient units being served at least thirty days in advance of cessation of operation with a plan specifying arrangements for referral of patients to other agencies or facilities in a manner providing for continuity of care.

#### NEW SECTION

WAC 248-31-020 GOVERNING BODY—ADMINISTRATION. (1) There shall be a governing body assuming responsibility and authority for:

(a) Establishing policy related to safe, adequate patient care and operation of the hospice.

(b) Appointing an administrator.

(c) Adopting and periodically reviewing written by-laws or an acceptable equivalent.

(d) Overseeing the management and fiscal affairs of the agency.

(e) Maintaining a record of governing body proceedings.

(f) Assuring written evaluation of hospice care agency performance.

(2) The administrator shall:

(a) Organize and direct the hospice's ongoing functions,

(b) Maintain ongoing liaison among governing body and hospice personnel,

(c) Ensure:

(i) The inpatient provider has established policies consistent with those of the hospice and agrees to abide by the patient care protocols established by the hospice for its patients;

(ii) The hospice clinical records include a record of all inpatient services and events;

(iii) A copy of the discharge summary and, if requested, a copy of the medical record are provided to the hospice;

(iv) The responsibilities of parties involved for implementation of the provisions of the agreement are specified;

(v) The hospice retains responsibility for assuring appropriate hospice care training of the personnel providing the care under the agreement; and

(vi) Inpatient care for respite purposes is provided in a setting as defined in WAC 248-31-002(13).

(d) Arrange for professional services,

(e) Employ qualified personnel and ensure adequate education and evaluation of personnel,

(f) Ensure the accuracy of public information materials and activities,

(g) Implement an effective budgeting and accounting system, and

(h) Authorize in writing a qualified alternate to act in his or her absence.

#### NEW SECTION

WAC 248-31-030 PERSONNEL. (1) Personnel practices shall be supported by written personnel policies.

(2) Personnel records shall be maintained to include:

(a) Job descriptions, including minimum qualifications for position;

(b) Qualifications of individuals who are personnel;

(c) Evidence of current licensure when applicable;

(d) Performance evaluations;

(e) Evidence of review of hospice care agency policy and procedures related to abuse and neglect of children and adults (particularly referencing chapter 26.44 RCW);

(f) Health records minimally to include one tuberculin skin test by the Mantoux method unless medically contraindicated with specifications as follows:

(i) Prior to providing patient care, each person expected to have contact with patients shall have or provide documented evidence of a tuberculin skin test by the Mantoux method;

(ii) When the skin test is negative (less than ten millimeters of induration), no further tuberculin skin testing shall be required;

(iii) A positive skin test consists of ten millimeters or more of induration read at forty-eight to seventy-two hours;

(iv) Positive reactors shall have a chest x-ray within ninety days of the first day of employment. Exceptions and specific requirements follow:

(A) Results of skin tests, report of x-ray findings, or exceptions to such shall be maintained in the hospice agency;

(B) Those with positive skin tests having completed a recommended course of preventive or curative treatment, as determined by local health officer, shall be exempted from further testing.

(g) Evidence of cardiopulmonary resuscitation training and review for personnel, other than volunteers, providing services in the home.

(3) Personnel with a communicable disease in an infectious stage shall not provide direct patient care.

(4) There shall be documentation of orientation of personnel and volunteers to hospice standards, policies, and procedures.

(5) Each hospice shall make provisions for inservice or education of hospice personnel related to safe, current practice, minimally to include:

(a) Skills at providing palliation and comfort measures,

(b) Counseling skills including grief process and spiritual needs.

#### NEW SECTION

WAC 248-31-040 GENERAL REQUIREMENTS. (1) Organization, services provided, administrative control, and lines of authority for the delegation of responsibility to the patient care level shall be clearly set forth in writing and readily identifiable.

(a) Administrative and supervisory functions shall not be delegated to another agency or organization,

(b) Hospice shall assure continuity of care in the home, outpatient, respite, and inpatient settings.

(2) Direct personnel shall provide the following services:

(a) Nursing,

(b) Social work,

(c) Physician consultation,

(d) Counseling, and

(e) Volunteers.

(3) Hospice shall ensure continuity of services provided directly or under arrangement and ensure services are provided in a manner consistent with accepted hospice principles and practices and the hospice plan of care. Hospice care shall be provided in all of the following, as necessary:

(a) The patient's home or place of residence,

(b) Inpatient care setting as defined in WAC 248-31-002(13),

(c) Respite care setting as defined in WAC 248-31-002(27).

(4) Hospice shall provide twenty-four hours per day, seven days per week availability for consultation and emergency visits to include:

(a) Nursing services, and

(b) Physician services.

(5) Other services available shall include:

(a) Home health aide,

(b) Physical therapist,

(c) Occupational therapist,

(d) Medical social services,

(e) Volunteer services,

(f) Counseling services,

(g) Bereavement services, and

(h) Spiritual care.

(6) Hospice shall provide access to emotional support as necessary for personnel providing hospice care.

(7) Hospice shall assist the patient to obtain medical supplies, drugs and biologicals, and use of medical appliances as specified in the hospice plan of care.

(8) If services are provided by arrangement with another agency or program, the hospice shall have a written contract or agreement for provision of each arranged service. The agreement shall include minimally:

- (a) Identification of the service to be provided;
  - (b) A stipulation that services shall be provided only with the expressed authorization of the hospice;
  - (c) A description of the manner in which the contracted services are coordinated, supervised, and evaluated by the hospice;
  - (d) The delineation of the role of the hospice and the other agency;
  - (e) A requirement for documenting that services are furnished in accordance with the agreement;
  - (f) The qualifications of the personnel providing the services;
  - (g) Procedures for determining charges and reimbursements;
  - (h) Responsibilities of parties involved for implementation of the agreement; and
  - (i) Hospice responsibility for training of personnel providing hospice care.
- (9) Hospice shall establish policies governing the day-to-day provision of hospice care and services minimally to include or address:
- (a) The scope of services offered;
  - (b) Admission, transfer, and discharge;
  - (c) Medical supervision of plans of care;
  - (d) Technical procedures;
  - (e) Infection control;
  - (f) Emergencies, safety, and death;
  - (g) Clinical records;
  - (h) Personnel qualifications;
  - (i) Quality assurance and utilization review mechanisms;
  - (j) Recognition and reporting of child and elderly abuse and neglect;
  - (k) Safety, cleanliness, and maintenance of equipment provided or utilized by the hospice;
  - (l) Administration of patient-owned medications; and
  - (m) The administration of treatment modalities including intravenous solutions, chemotherapy, parenteral feedings, and injections.

#### NEW SECTION

**WAC 248-31-050 QUALITY ASSURANCE.** (1) A hospice care agency shall conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of hospice care provided.

(2) At least quarterly appropriate health professionals representing the scope of the hospice care agency program shall review a ten percent sample of the clinical records opened and closed during that quarter to determine established hospice policies have been followed.

(3) The written findings shall be used by the hospice to correct identified problems and to revise hospice policies if necessary.

(4) Those responsible for the hospice care quality assurance program shall:

- (a) Implement and report on activities and mechanisms for monitoring the quality of patient care,

- (b) Identify and resolve problems, and
- (c) Make suggestions for improving care.

#### NEW SECTION

#### **WAC 248-31-060 HOSPICE PLAN OF CARE.**

(1) Hospice shall demonstrate respect for an individual's rights by:

- (a) Obtaining from the patient or patient representative a written, informed consent specifying the type of care and services that may be provided as hospice care during the course of the illness; and
- (b) Making a statement of rights and responsibilities available to the patient unit.

(2) There shall be assessment of needs of a patient requesting hospice and identification of service needs including:

- (a) Patient and family goals;
- (b) Physical, spiritual, psychosocial needs;
- (c) Estimate of scope and frequency of services needed.

(3) A written hospice plan of care shall be established and maintained for each patient unit.

(a) The hospice plan of care shall be approved by the interdisciplinary team and the attending physician.

(b) The hospice plan of care shall be reviewed and updated as indicated by changes in patient unit needs and at intervals as specified in the plan with documentation of reviews.

(4) Hospice shall furnish appropriate information per phone or in writing to the inpatient care provider, in the event a hospice patient requires inpatient care, to include a summary of current care, condition, and reason for inpatient admission.

(5) Implementation of each hospice plan of care shall be coordinated by a designated registered nurse.

#### NEW SECTION

#### **WAC 248-31-070 INTERDISCIPLINARY**

**TEAM.** (1) The hospice shall designate an interdisciplinary team or teams composed of individuals providing or supervising the hospice plan of care and services offered by the hospice, to include at least the following individuals who are direct personnel of the hospice:

- (a) A physician medical consultant;
  - (b) A registered nurse;
  - (c) A social worker; and
  - (d) A pastoral, spiritual, or other counselor.
- (2) The interdisciplinary team shall be responsible for:
- (a) Establishing a hospice plan of care within seven days following admission to hospice home care services,
  - (b) Provision or supervision of hospice care and services.

(3) A specific interdisciplinary team shall be designated for each patient unit.

(4) Liaison among all personnel providing services and care for each patient shall be maintained so efforts effectively complement one another and support objectives outlined in the hospice plan of care with documented evidence of coordination to include:

- (a) Reports in clinical records,



(b) A written summary report for each patient shall be sent to the attending physician at regular intervals, as specified in the hospice plan of care,

(c) Reports of case conferences or other interdisciplinary communication.

#### NEW SECTION

##### WAC 248-31-075 CLINICAL MANAGEMENT.

(1) There shall be a registered nurse who is direct personnel designated to manage hospice clinical services.

(2) The registered nurse designated to manage clinical services shall:

(a) Participate in development of hospice clinical policies, and

(b) Assume responsibility for clinical functions including clinical supervision of the interdisciplinary team.

#### NEW SECTION

##### WAC 248-31-080 PHYSICIAN SERVICES. (1)

Each patient admitted to hospice shall have a designated attending physician.

(2) There shall be a physician consultant to hospice who:

(a) Is direct personnel;

(b) Assumes overall responsibility for the medical component of the hospice's clinical care services.

(3) Physician direct personnel of the hospice shall:

(a) Participate in the interdisciplinary team;

(b) Provide medical management of hospice patients in the absence of an attending physician to include:

(i) Palliation;

(ii) Management of terminal illness and related conditions; and

(iii) Other medical needs.

(c) Provide medical consultation to the extent palliative and other medical needs are not met by the attending physician.

(4) Written policies and procedures shall address admission and medical treatment of patients minimally to include assessment and diagnosis by the attending physician to include:

(a) The admitting diagnosis and prognosis,

(b) Current medical findings,

(c) Any nutritional restrictions or needs,

(d) Medication orders, and

(e) Pertinent orders regarding the patient's terminal conditions.

(5) The hospice plan of care shall be reviewed and approved by the attending physician.

(6) Communication between the attending physician and other members of the interdisciplinary team shall be ongoing and documented.

(7) Provision shall be made for assuring continuity of medical care.

#### NEW SECTION

##### WAC 248-31-090 NURSING SERVICES. (1)

The hospice shall provide nursing care and services by or under the supervision of a registered nurse.

(a) Nursing service shall be directed and staffed to assure the nursing needs of patients are met.

(b) Patient care responsibilities of nursing personnel shall be specified.

(c) Services shall be provided in accordance with state laws and rules and recognized standards and practices.

(2) Functions of registered nurses include:

(a) An initial assessment;

(b) Provision of services in accordance with hospice policies;

(c) Initiation of the plan of care and necessary revision;

(d) Regular re-evaluation of nursing needs;

(e) Provisions of those services requiring substantial and specialized nursing skills;

(f) Initiation of appropriate palliative nursing procedures;

(g) Preparation of clinical progress notes and summary reports;

(h) Coordination and implementation of hospice care plan for each patient;

(i) Participation in case conferences and other processes used to coordinate hospice care for each patient;

(j) Informing the physician and other personnel of changes in the patient's condition and needs;

(k) Teaching and counseling the patient unit to meet patient needs;

(l) Participation in inservice programs and consultation with other personnel;

(m) Supervision and teaching of other nursing personnel, volunteers, and home health aides.

(3) Functions of a licensed practical nurse shall be in accordance with hospice policy and chapter 18.78 RCW.

#### NEW SECTION

##### WAC 248-31-100 COUNSELING SERVICES.

(1) Counseling services shall be available to each patient unit and shall include psychosocial, nutritional, spiritual, bereavement, and any other counseling services designated in the hospice plan of care.

(2) Psychosocial assessment and counseling related to the terminal nature of the illness shall be provided by hospice personnel as specified in the hospice plan of care.

(3) Bereavement services shall be provided through an organized program under the supervision of a qualified professional having education and experience appropriate to the care of bereaved individuals and demonstrated ability in family and/or individual counseling.

(a) The hospice plan of care for bereavement services shall reflect family needs for bereavement counseling as well as a clear delineation of services to be provided and the frequency of service delivery with duration of bereavement services up to one year following the death of the patient, as appropriate.

(b) Bereavement services available shall include, but need not be limited to:

(i) Regular survivor contact, as needed, following death;

(ii) An interchange of information between those providing bereavement services and hospice personnel providing care before the death of the patient; and

(iii) A process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

(c) Hospice personnel providing bereavement services shall receive appropriate training described in writing.

(d) Bereavement services, when provided, shall be documented.

(4) Nutritional counseling shall be provided, when indicated.

(5) Spiritual counseling shall be provided by a qualified inter-disciplinary team member and/or through a working relationship with clergy and/or spiritual counselors or advisors in the community.

(a) Each patient unit shall be notified as to the availability of clergy, spiritual counselors, and advisors.

(b) Hospice program spiritual care shall be provided as desired by the patient unit and documented in the clinical record.

#### NEW SECTION

**WAC 248-31-110 THERAPY SERVICES.** Any therapy service provided or under arrangement shall be provided as ordered by the attending physician, in accordance with the hospice plan of care, and in a manner consistent with applicable state practice laws and rules and accepted standards of practice as well as chapter 70.126 RCW and chapter 248-31 WAC.

#### NEW SECTION

**WAC 248-31-120 MEDICAL SOCIAL SERVICES.** (1) Social services shall be provided or directly supervised by a social worker as defined in WAC 248-31-002(30).

(2) Social services shall be provided in accordance with the plan of care with functions to include:

(a) Assisting, counseling, and consulting with the patient unit, physician, hospice team, and appropriate community agencies to increase understanding of the significant social and emotional factors related to patient health and medical problems and death.

(b) Participation in the development of the plan of care, case conferences, and other processes used to coordinate hospice care;

(c) Identification, mobilization, and utilization of appropriate community resources;

(d) Participation in transfer and discharge planning;

(e) Participation in inservice program; and

(f) Preparation of clinical progress notes and/or summary reports.

#### NEW SECTION

**WAC 248-31-130 HOME HEALTH AIDE SERVICES.** (1) Home health aide services, when required, shall be available to meet the needs of the patients and included in the hospice plan of care.

(2) A registered nurse shall visit the home site at least every two weeks when home health aide services are being provided. The visit shall include an assessment of the aide services.

(3) Written instructions for patient care shall be prepared by a registered nurse and available to each home health aide.

(4) Home health aides shall demonstrate ability to follow written and verbal directions and prepare reports.

(5) There shall be evidence of hospice orientation and training of home health aides to include:

(a) Functions and responsibilities of a home health aide;

(b) Purpose and goals of hospice;

(c) Documentation and recordkeeping;

(d) Rights of people receiving hospice care;

(e) Ethics and confidentiality;

(f) Personal care activities and simple nursing or therapy procedures including when and to whom to report any change in patient condition;

(g) Assistance with medications ordinarily self-administered, with assistance limited to:

(i) Communication of appropriate information to the patient unit regarding self-administration; and

(ii) Presenting a patient-owned, pharmacist- or manufacturer-prepared, original, medication container to the patient.

(h) Promotion of a safe, clean, healthful environment;

(i) Emergency and death procedures.

#### NEW SECTION

**WAC 248-31-140 VOLUNTEERS.** (1) Hospice shall have available and routinely utilize direct personnel volunteers in provision of care and services.

(2) A designated person who is direct personnel shall be responsible for volunteer coordination.

(3) Hospice shall provide or arrange for and document orientation and training consistent with standards of hospice.

(4) Volunteer activities shall be documented in the clinical record.

(5) Volunteers providing professional services shall meet all standards associated with their discipline including applicable federal and state laws and rules.

#### NEW SECTION

**WAC 248-31-150 MEDICAL SUPPLIES AND EQUIPMENT—APPARATUS—DRUGS.** (1) Medical supplies, equipment, and apparatus specified in the hospice plan of care pursuant to RCW 70.126.020(1)(b)(ii) and (1)(b)(iii) shall be made available for the patient as needed for the palliation or medically necessary treatment of an illness or injury.

(a) Written policies and procedures shall assure the safety, cleanliness, and maintenance of equipment, apparatus, and supplies.

(b) Written policies and procedures shall provide for infection control.

(c) When medical supplies, equipment, and/or apparatus are secured through a vendor, provisions for safety, cleanliness, maintenance, and infection control shall be specified in writing.

(2) Policies and procedures related to storage or delivery of drugs by a hospice shall be established by the hospice in collaboration with a pharmacist and in accordance with applicable federal and state laws and rules.

(a) Hospice shall establish a policy for disposal of controlled drugs maintained in a patient's home when

those drugs are no longer needed by the patient, e.g., patient expires.

(b) Drugs and treatments, when administered by hospice personnel, shall be administered by legally authorized personnel and as ordered by the physician.

(c) Verbal or phone orders issued by a physician shall be confirmed by authorized personnel.

(i) Orders shall be immediately recorded by the nurse or therapist confirming the order; and

(ii) Countersignature of the physician shall be obtained.

(d) Suspected drug allergies, adverse reactions to drugs, or treatments or other problems related to patient's use of drugs shall be promptly reported to the family and attending physician and addressed in the plan of care and clinical record.

### NEW SECTION

**WAC 248-31-160 CLINICAL RECORDS.** (1) A clinical record shall be established and maintained in accordance with accepted professional standards for every individual receiving hospice care and services.

(a) There shall be annual or more frequent review by a medical records professional.

(b) The record shall be current, promptly and accurately documented, readily accessible, and systematically organized to facilitate retrieval of information.

(c) Entries shall be made and signed by personnel providing the service for all services provided by hospice whether furnished directly or under arrangements made by the hospice.

(2) Each clinical record shall contain:

(a) Pertinent past and current findings;

(b) Hospice plan of care;

(c) Appropriate identifying information;

(d) Name of attending physician; and

(e) Signed and dated clinical progress notes for each service rendered incorporated into the clinical record within seven days from the day service was rendered or more frequently.

(3) Completed clinical records shall contain a final diagnosis, complications, death or discharge summary, interdisciplinary team service notes, and bereavement assessment and services.

(4) Clinical records shall be retained or information readily retrievable in Washington state for a period of no less than ten years following discharge of the patient, except the records of minors which shall be retained for a period of no less than three years following attainment of age eighteen years or ten years following discharge, whichever is longer.

(5) There shall be policies specific to the retention and destruction of clinical records.

(a) If a hospice discontinues operation, arrangements shall be made to preserve clinical records with the plan for such arrangements approved by the department prior to cessation of operation.

(b) Final destruction of clinical records or patient care data shall be accomplished in such a manner that retrieval and subsequent use of information are impossible.

(c) In the event of patient transfer to another hospice, home health agency, or to a health care facility, a copy

of the clinical record or an abstract and copy of the most recent summary report shall accompany the patient or be provided as soon as possible.

(6) Clinical record information shall be safeguarded against loss, destruction, or unauthorized use.

(a) There shall be written procedures governing use and removal of records and conditions for release of information.

(b) Release of information not authorized by law shall require prior written consent of the individual in accordance with written policy of the hospice agency.

### **WSR 85-04-055**

#### **ADOPTED RULES**

#### **DEPARTMENT OF LICENSING**

#### **(Optometry Board)**

[Order PL 516—Filed February 5, 1985]

Be it resolved by the Washington State Optometry Board, acting at Seattle, Washington, that it does adopt the annexed rules relating to minimum contact lens prescription, repealing WAC 308-53-211.

This action is taken pursuant to Notice No. WSR 85-01-085 filed with the code reviser on December 19, 1984. 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 Optometry Board as authorized in RCW 18.54.070(5).

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, 1985.

By W. D. Heaston, O.D.  
Chairman

### REPEALER

The following section of the Washington Administrative Code is repealed:

**WAC 308-53-211 MINIMUM CONTACT LENS PRESCRIPTION.**

### **WSR 85-04-056**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LICENSING**

#### **(Securities Division)**

[Filed February 5, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning the regulation of camping club contracts and camping club salespersons consisting of the following

new, amended or repealed rules in chapter 460-90A WAC:

New	WAC 460-90A-005	Organization.
New	WAC 460-90A-015	Definitions.
New	WAC 460-90A-017	Reporting events that could effect camp resorts.
New	WAC 460-90A-018	Material events that are amendments requiring notice and a filing fee.
New	WAC 460-90A-022	Exemptions from registration—Non-commercial resale contract offerings.
New	WAC 460-90A-025	Statement of record—Filings and information required upon application for registration of start-up camp resort projects and contract offerings.
New	WAC 460-90A-027	The public offering statement—Form, content and preparation.
Amd	WAC 460-90A-030	Signing of application.
New	WAC 460-90A-032	The public offering statement—Delivery to prospective purchasers.
New	WAC 460-90A-035	Cancellation escrows.
New	WAC 460-90A-045	Financial statements and information.
Amd	WAC 460-90A-070	Receipt of written disclosures.
New	WAC 460-90A-115	Renewals.
New	WAC 460-90A-122	Salesperson registrations.
New	WAC 460-90A-125	Salesperson registrations—For persons in the business of offering resale contracts.
Amd	WAC 460-90A-140	Advertisements.
Rep	WAC 460-90A-010	Camping club contract registration application.
Rep	WAC 460-90A-020	Camping club contract registration exhibits.
Rep	WAC 460-90A-040	Financial statements.
Rep	WAC 460-90A-110	Renewals.
Rep	WAC 460-90A-120	Salesperson registration.
Rep	WAC 460-90A-150	Resale by salesperson for commission of camping club contracts exempt from registration;

that the agency will at 1:30 p.m., Tuesday, March 26, 1985, in the 1st Floor Conference Room, Eastside Plaza Building, 1300 Quince Street, 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 and the specified statute these rules are intended to implement are shown below in the statement of purpose.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 26, 1985.

Written or oral submissions may also contain data, views, and arguments concerning the effect of the proposed rules or amendments of rules on economic values, pursuant to chapter 43.21H RCW.

The agency reserves the right to modify the text of these proposed rules before the hearing or in response to written or oral comments received before or during the hearing.

The agency may need to change the date for hearing or adoption on short notice. To ascertain that the hearing or adoption will take place as stated in this notice, an interested person may contact the person named below.

Correspondence relating to this notice and the proposed rules should be addressed to:

Robert A. Salerno  
Department of Licensing  
Real Estate Division  
P.O. Box 247  
Olympia, WA 98504  
753-6681

Dated: January 30, 1985  
By: Theresa Anna Aragon  
Director

#### STATEMENT OF PURPOSE

Title and Numbers of Rule Section(s) or Chapter(s):  
See above.

Statutory Authority for Adopting Rules and Specific Statutes that the Rules are Intended to Implement: WAC 460-90A-005 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.530; WAC 460-90A-015 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.300; WAC 460-90A-017 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.420; WAC 460-90A-018 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.420; WAC 460-90A-022 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.320(3); WAC 460-90A-025 is proposed under the authority of RCW 19.105.530, 19.105.320 and 19.105.380 and is intended to implement RCW 19.105.320 and 19.105.380; WAC 460-90A-027 is proposed under the authority of RCW 19.105.530 and 19.105.320 (1)(b) and is intended to implement RCW 19.105.320 (1)(b); WAC 460-90A-030 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.320(1); WAC 460-90A-032 is proposed under the authority of RCW 19.105.530 and 19.105.370 and is intended to implement RCW 19.105.370; WAC 460-90A-035 is proposed under the authority of RCW 19.105.530 and 19.105.420 and is intended to implement RCW 19.105.420; WAC 460-90A-045 is proposed under the authority of RCW 19.105.530 and 19.105.320 (1)(a) and is intended to implement RCW 19.105.380; amendment to WAC 460-90A-070 is proposed under the authority of RCW 19.105.530 and 19.105.370 and is intended to implement RCW 19.105.370.032; WAC 460-90A-115 is proposed under the authority of RCW 19.105.530 and is intended to implement RCW 19.105.420; WAC 460-90A-122 is proposed under the authority of RCW 19.105.530 and 19.105.440(3) and is intended to implement RCW 19.105.430 and 19.105.440; WAC 460-90A-125 is proposed under the authority of RCW 19.105.530 and 19.105.440(3) and is intended to implement RCW 19.105.430 and 19.105.440; and amendment to WAC 460-90A-140 is proposed under the authority of RCW 19.105.530 and 19.105.360 and is intended to implement RCW 19.105.320(1), 19.105.360 and 19.105.480.

Summary of Rules: WAC 460-90A-005 identifies a change in the director's delegation of authority for administering the Camping Club Act. Authority has been

delegated to administrator of the real estate division. It is needed to inform the public and the industry about whom they must contact on matters pertaining to camp resort regulation; 460-90A-015 makes statutory definitions of words applicable to these proposed rules and defines additional words used in the rules but not defined in the statute; 460-90A-017 provides guidelines and circumstances for determining what constitutes events that could affect camp resorts; that require notice to the agency and possible amendment to the registration or the written disclosures. It also explains the procedures for providing notice or accomplishing amendments; 460-90A-018 provides guidelines and circumstances for determining what constitutes material events that are amendments requiring notice to the agency, the filing fee prescribed in the statute, and amendment to the registration and the written disclosures. The primary difference between this rule, and the preceding rule and the reason for two somewhat similar rules, rather than a single rule, is to restrict and limit the filing fee requirements of the statute to those events and changes most likely to require significant agency staff time and resources in administration; 460-90A-022 exempts an entire category of noncommercial offerings of camp resort contracts from the registration and salesperson registrant requirements of the statute. The exemption covers all offers of resale contracts by camp resort contract owners, who are not in the business of offering camp resort contracts, and who are making such offers on their own behalf; 460-90A-025 provides applicants with a checklist to assist in determining what documentation and information will be required for a registration under the act. It will provide the agency with a checklist to determine whether or not it has received all of the documentation and information deemed necessary for determining the veracity and competency of the public offering statement, whether or not impounds or reserve accounts are necessary, whether to grant, deny or place conditions on a registration application and to assist the agency with its other responsibilities under the act; 460-90A-027 provides the applicant with information about the format of the public offering statement, its disclosures, and the procedure for preparing and submitting the public offering statement to the agency for examination purposes; 460-90A-030 is amended for the purpose of conforming the language and definitions in the rule with definitions in proposed new WAC 460-90A-015; 460-90A-032 is for the purpose of clarifying an ambiguity and the phrase "prospective purchasers," to be found in RCW 19.105.370. The proposed rules clarifies which persons are to receive the public offering statement. The proposed rule also states when prospective purchasers (defined in proposed new WAC 460-90A-015) are to be provided with the public offering statement; 460-90A-035, the statute specifically calls for and this proposed new rule is for the purpose of the establishment of procedures and devices for assuring prompt refunding of money and consideration to purchasers who have given the operators timely notice of cancellation requests; 460-90A-045 replaces a former rule (WAC 460-90A-048) and proposes to clarify the financial information needed for registration and renewal applications. It proposes

adding to the informational requirements in some areas. The proposed new rules are to assist the agency in determining the financial condition of the applicant for the purpose of determining whether to require impound or reserve accounts, whether to deny, suspend, revoke or agree to registrations and the content of the public offering statement; 460-90A-070 is amended for the purpose of conforming the language and definitions in the present rule with definitions in proposed new WAC 460-90A-015 and 460-90A-032; 460-90A-115 replaces a former rule covering the same subject area, and is for the purpose of streamlining renewal requirements. It points out the fact that the form and amount of information needed for renewal purposes differs from that required at the time of original registrations; 460-90A-122 would tighten up the salesperson requirements so as to give the agency better tools to regulate and monitor salesperson representations and camp resort marketing; and 460-90A-125 would regulate persons in the business of marketing or soliciting to market resale camp resort contracts.

Reasons Supporting the Proposed Rules: WAC 460-90A-005 will inform the citizens about delegation of the directors responsibilities under the act. It will facilitate communication between the agency and the timeshare industry and the general public; 460-90A-015 will assist in the understanding of the rules; 460-90A-017 will assure that disclosures in the public offering statement are kept current and that the agency can take action on a registration or require impounds or reserve accounts, when and at the time conditions change so that they are necessary. Filing fees will not be required for material changes not ordinarily requiring expenditure of significant amounts of agency resource; 460-90A-018 will assure that disclosures in the public offering statement are kept current and that the agency can take action on a registration or require impounds or reserve accounts when conditions change making them necessary. Reviews of information and documentation under this section will ordinarily require expenditure of significant amounts of staff time, thus the filing fee provided for in the statute is required; 460-90A-022 will eliminate the necessity for owners of resale contracts not in a business of marketing them, from having to register with the agency in order to offer or sell more than one resale contract in a 12 month period. Registration requirements would constitute a heavy burden on such persons, appears unnecessary and not in the best public interest; 460-90A-025, this proposed rule and a checklist to be utilized, will assure the agency that it is receiving the documents and information that it needs for regulatory purposes. The question/answer checklist approach to be used in applying this rule, will assist the operator in determining what he/she must submit to the agency. The proposed rule takes into consideration the wide variety of structurings and the many different situations to be found in camp resorts covered under the act; 460-90A-027 will assure the agency and prospective purchasers that prospective purchasers are receiving the type and quality of information, in a format readily and easily understood by prospective purchasers, that the statute calls for; 460-90A-030 will assist in making language

and definitions uniform throughout the statute; 460-90A-032, clearing up a statutory ambiguity in the manner proposed in this rule will assure the maximum disclosure and protections for the public. It will assure that all prospective purchasers receive their disclosure and notices of cancellation rights under the act. It will also reduce the amount of agency staff time in responding to consumer informational inquiries. It will reduce salesperson misrepresentations by making all prospects aware of agency involvement whether or not prospects purchase; 460-90A-035 will protect purchaser funds until the cancellation term expires. It will also assure that consideration is returned promptly, as provided in the act; 460-90A-045 will assist the agency in obtaining more complete and reliable financial information about the operator, its affiliates and camp resorts. It also provides the agency with more flexibility in its financial information requirements; 460-90A-070 will assist the agency in assuring that every prospective purchaser receives the public offering statement. It will also assist registered operators by assuring that they will have on hand evidence of compliance; 460-90A-115 will save operators time and expense by requiring only information and documents for changes that have occurred; 460-90A-122 will allow the agency to better regulate salesperson registrations and representations; thus affording better protection for the public; 460-90A-125 will regulate an area of camp resort contract marketing not previously regulated. It will protect the public against advance fee schemes and provide some protection for the public in the resale market; and 460-90A-140 is for the purpose of protecting the public in areas of sweepstakes solicitations that have resulted in much public complaint. It will assist the public in not making trips to sales presentations and being denied promised gifts or prizes.

The Agency Personnel Responsible for the Drafting, Implementation and Enforcement of the Rule: Theresa Anna Aragon, Director, Department of Licensing, 4th Floor, Highways-Licenses Building, Olympia, WA 98504, 234-5029 scan, 753-5029 comm; Ms. Joan Baird, Assistant Director, Business and Professions, 1st Floor, Eastside Plaza Building, 1300 Quince Street, Olympia, WA 98502, 234-2241 scan, 753-2241 comm; and Mr. Robert A. Salerno, Administrator, Real Estate Division, 3rd Floor, Eastside Plaza Building, 1300 Quince Street, Olympia, WA 98502, 234-6681 scan, 753-6681 comm.

Name of the Person or Organization that is Proposing These Rules: Department of Licensing.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to These Rules: Most of these rules are necessary in order to specify sufficient details for implementing basic administrative operations under the Camping Club Act. Several of these rules are necessary because the statutes specifically requires that the statutory section must be implemented by a rule.

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.

A small business impact statement is not required for these rules. The department has reviewed the impact that the adoption of these new rules under chapter 460-90A WAC would have on camp resort operators and salespersons. We find that a small business impact statement is not required. Camp resort operators and salespersons are most appropriately class in SIC Code 7997. As such they account for less than 10% of the firms and individuals in this area. Also, they are less than 20% of all firms and individuals in all industries. Finally any impact that these proposed rules may have is intended to fall equally on all camp resort operators or salespersons.

#### NEW SECTION

WAC 460-90A-005 ORGANIZATION. The administrator, Real Estate Division, Business and Professions Administration, Department of Licensing, administers the Camping Club Act for the director of licensing. Information regarding the regulation of camp resort offerings and salespersons may be obtained by writing to: Administrator, Real Estate Division, Department of Licensing, P.O. Box 247, Olympia, Washington 98504. Persons desiring to visit the real estate division on matters relating to camp resort offerings or camp resort salespersons may do so at the real estate division offices located on the Third Floor, Eastside Plaza Building, 1300 Quince Street, Olympia, Washington.

#### NEW SECTION

WAC 460-90A-015 DEFINITIONS. (1) Words and terms used in these rules shall have the same meaning as each has in the Camping Club Act, (chapter 19.105 RCW).

(2) "Agency" means the department of licensing in the state of Washington.

(3) "Camp resort" shall be synonymous with "camping club", whether or not structured as or involved with a common-interest entity, provided the method of structuring the project meets the definition of a "camping club" in RCW 19.105.300(1), having as its primary purpose camping or outdoor recreation and includes or will include camping sites.

(4) "Camp resort program" means the rights and obligations of a purchaser and the methods and procedures for occupying or using camp resort facilities and properties, as established by the purchase contract and other written instruments, such as covenants, declarations, bylaws or rules.

(5) "Camp resort project" shall mean a camp resort and all of its parks, sites, properties and facilities, that are part of the program in which a purchaser receives use, occupancy, membership, or ownership rights.

(6) "Public offering statement" shall mean the written disclosures referred to in RCW 19.105.320(1)(b) and 19.105.370.

(7) "Statement of record" shall mean all materials, not exclusive of others, including application forms, documents, exhibits, statements, the public offering statement, correspondence, and affidavits, filed with the agency, for registration purposes.

(8) "Resale camp resort contract" shall mean a camp resort contract offered or sold which is not the original offer, transfer or sale of such contract, and not a forfeited contract being reoffered by an operator.

(9) "Start-up camp resort contract" means a camp resort contract that is being offered or sold for the first time or a forfeited contract being resold by a camp resort operator.

(10) "Advance fees" shall mean fees, funds, or consideration of any description, collected for any purpose from buyers or sellers of resale camp resort contracts, prior to the time of settlement of a purchase transaction.

(11) "Prospective purchaser" shall mean any person attending a sales presentation or touring a camp resort, when such attendance results from an operator's solicitation or advertising and any person, whether or not solicited, who requests of the operator or its agents, a public offering statement.

NEW SECTION

WAC 460-90A-017 REPORTING EVENTS THAT COULD AFFECT CAMP RESORTS. (1) Not exclusive of others, the following are events that shall require that the operator provide the agency with notice, pursuant to the provisions of RCW 19.105.420 for the purposes of keeping the public offering statement current:

(a) Any damage to the property or facilities of a camp resort caused by a physical hazard or the learning of a previously unrecognized physical hazard to the properties or facilities.

(b) Any change causing information then in the public offering statement to be incorrect, incomplete or deceptive.

(c) Any order or action by a local, state, or federal regulatory agency in the granting, denial, revocation, or suspension of a permit or authorization which affects the camp resort properties.

(d) Any change in the financial condition of the registrant, an affiliate, or a common-interest association, if it appears that such change could result in inability to provide promised sites, facilities, or services.

(e) The completion of promised facilities or the failure to complete promised facilities on a date or at the occurrence of an event, as promised.

(f) A bulk sale of the project or a significant portion of the project to another person.

(g) Changes in the instruments or documentation utilized to establish the camp resort program or a common-interest association involved in the camp resort's operations.

(h) Any change in the form or content of a purchase contract, deed, or membership certificate.

(i) Lawsuits filed or served, which name the operator, its affiliates, or the project's common-interest association and which are concerned with the camp resort properties, provisions of the Camping Club Act (Chapter 19.105 RCW) or the financial condition of the operator, the project or a common-interest association.

(j) Changes in management, if the project or its amenities are managed by a common-interest association.

(k) Any new contract, change in a contract or termination of a contract with an outside reciprocal-use or exchange entity.

(l) Any proposed change in the ratio of contracts to be sold relative to the number of camp sites available.

(2) It shall be a violation of chapter 19.105 RCW and these rules for a registrant to have knowledge or cause the occurrence of an event specified in subsection (1) of this section, without providing prompt notice of the event to the agency.

(3) Notice for the purpose of keeping the public offering statement current shall be accomplished by providing the agency with:

(a) Copies of prototypes of documents or other materials pertinent to the event.

(b) A cover letter explaining the event and submitted document.

(c) A redraft of the public offering statement by submitting the amended pages which show the proposed corrections, deletions, or additions to the existing information.

NEW SECTION

WAC 460-90A-018 MATERIAL EVENTS THAT ARE AMENDMENTS REQUIRING NOTICE AND A FILING FEE.

(1) "An event that might have a material effect in the conduct of the operation of a camp resort" as referred to in RCW 19.105.420, shall mean any event that affects the health, safety, or economic or physical welfare of a contract purchaser or any event that could be significant in a person's determination whether or not to purchase a camp resort contract.

(2) The following shall be material events and shall require both notice to the agency, pursuant to the provisions of RCW 19.105.340 and the submission of a one hundred dollar filing fee, pursuant to the provisions of RCW 19.105.410.

(a) Any proposed sale or transfer, of an interest in the project or shares of stock of the registrant which results in a change of voting, management or ownership control.

(b) Any removing, substituting, leasing, optioning, selling or withdrawing of existing properties, resorts, or facilities from the camp resort program.

(c) Any adding, deleting, or rearranging of camping sites within an existing camp resort in a manner that would reduce the size or change the number or quality of sites.

(d) Any new encumbrances, liens, or loans that affect the camp resort properties.

(e) A change in the status, provisions, or conditions of an escrow, trust, impound, reserve account or other security device being utilized to protect the interests of purchasers, whether or not impound or reserve accounts are required as a condition to registration under chapter 19.105 RCW.

(f) The filing by any person of any bankruptcy, receivership, or trustee action that involves any of the camp resort properties, the registrant, a common-interest association or an affiliate, as a party to the action.

(g) The operator makes an initial offering of stock to the public.

(h) The refinancing of all or any part of the operator's debts affecting the project.

(3) Amendment and reporting events that might have a material affect shall be accomplished by providing the agency with:

(a) The one hundred dollar amendment filing fee as required by RCW 19.105.410.

(b) Copies or prototypes of documents or other materials pertinent to the event.

(c) A cover letter explaining the event and any proposed amendment.

(d) A redraft of the public offering statement by submitting the amended pages which show the proposed corrections, deletions, or additions to the existing information.

NEW SECTION

WAC 460-90A-022 EXEMPTIONS FROM REGISTRATION — NONCOMMERCIAL RESALE CONTRACT OFFERINGS. As provided in RCW 19.105.320(3), the director exempts from the registration requirements of chapter 19.105 RCW the offering and selling of resale camp resort contracts by an owner for that owner's own account, provided that any such offering or selling is noncommercial in nature and that registration is not necessary for the protection of purchasers. Noncommercial shall mean that the owner of the resale contracts is not in the business of offering or selling camp resort contracts and such offering or selling is only incidental to any profession, occupation, or business of the owner.

NEW SECTION

WAC 460-90A-025 STATEMENT OF RECORD — FILINGS AND INFORMATION REQUIRED UPON APPLICATION FOR REGISTRATION OF START-UP CAMP RESORT PROJECTS AND CONTRACT OFFERINGS. (1) An application for registration of a start-up contract offering shall be made by completing forms prepared for such purpose by the agency.

(2) The application, documents and information filed for registration purposes shall be referred to as the statement of record.

(3) The statement of record for a registration of a start-up contract offering shall include the following:

(a) The prescribed filing fee.

(b) The completed application forms.

(c) The draft of the proposed public offering statement.

(d) A sample or prototype of any documents to be signed or initialed by and that commits purchasers. Such documents shall contain the cancellation notice required in RCW 19.105.390.

(e) Copies of all recorded or unrecorded encumbrances, mortgages, liens, deeds, leases, contracts, and any amendments thereto, that affect camp resort projects.

(f) A preliminary title report, dated within ten days of application, covering all of the acreages, park sites, and areas on which facilities are located.

(g) Financial statements and information as required by WAC 460-90A-045.

(h) If the registrant is other than a natural person, copies of relevant articles of incorporation, bylaws, partnership, or joint venture documentation.

(i) Promotional materials, including advertising and contract forms covering travel programs, discount programs, programs for the use or occupancy of in-park trailers or mobiles and those providing memberships in other recreational programs, if such materials or programs are to be utilized to promote sales of camp resort contracts or are to be offered to contract owners as part of the camp resort programs.

(j) Rules and regulations governing the use and occupancy of project parks and facilities.

(k) A statement as required pursuant to RCW 19.105.320 (1)(d).

(l) The proposed cancellation escrow agreement as required by WAC 460-90A-035.

(m) Applications for and contracts of affiliation with any outside exchange or reciprocal-use entity.

(n) Information covering purchaser costs, rules, contract forms, and any fees required for purchaser use of operator-owned trailers, mobiles, tents, or other over-night accommodations, available for purchasers as an alternative to using the purchaser's own mobile units.

(o) A statement describing the operator's, or an affiliate's or successor's right to substitute, change, or withdraw from use all or a portion of the camp resort properties and the extent to which the camping club operator, affiliates, or successors are obligated to replace the camp resort properties substituted or withdrawn within a reasonable period of time after such action, with substituted properties in the same general area, that are at least as desirable for the purpose of camping and outdoor recreation.

(i) If a nonaffiliate or any other person has the ability through existing agreements to exercise a right of withdrawal of camp resort properties in the program from use by the camp resort members, provide copies of any and all documentation evidencing the ability to exercise such right of withdrawal.

(ii) If a withdrawal becomes effective on a specific date, provide a description of the means and method of withdrawal and state the date.

(p) Whenever applicable to the structuring of the project, provide a copy or prototype of the following:

(i) Plats, maps, site plans, or surveys.

(ii) Water, sewerage, or land use authorizations or permits, or denial of permits of local jurisdictions.

(iii) A copy of any administrative, civil, or criminal proceeding involving theft, fraud, or dishonesty, or violations of any act designed to protect consumers or involving dishonest practices in any industry involving sales to consumers in which the applicant is or has within the past five years been a party.

(iv) Performance bonds, letters of credit, surety or guaranty agreements affecting the project or the program.

(v) Trust or escrow arrangements affecting the project.

(vi) Market surveys or feasibility studies, if presently available.

(vii) Appraisals of market value of the project, if presently available.

(viii) Engineering studies or surveys of physical hazards such as earthquakes, floods, beach erosions, landslides, or volcanoes, if presently available.

(ix) Covenants or declarations affecting camp resort properties.

(x) Agreements for the usage of amenities or facilities owned by persons other than operator.

(q) If the project involves a common-interest owners' association or entity of similar purposes, copies or prototypes of the following:

(i) Declaration and bylaws.

(ii) Rules and regulations.

(iii) Membership certificate and proxy forms.

(iv) Evidences of title to any personal property owned or to be owned by the association or purchasers collectively.

(v) Agreements for managing the properties.

(vi) Agreements for payment or subsidizing the payment of project operational expenses during the term of registrant marketing.

(4) The agency may waive the submission of documents or information provided by subsection (3) of this section, which it deems inappropriate for a specific project or not necessary for registration purposes, unless information or documents are required by RCW 19.105.320.

(5) The agency may require additional information if relevant to the structuring of the project and deemed necessary for protection of purchasers.

#### NEW SECTION

**WAC 460-90A-027 THE PUBLIC OFFERING STATEMENT — FORM, CONTENT, AND PREPARATION.** (1) The written disclosures provided for in RCW 19.105.320 (1)(b) and 19.105.370 shall be in a document to be known as the public offering statement.

(2) The public offering statement shall be prepared and promulgated in a form prescribed by the agency.

(3) The public offering statement shall consist of two parts:

(a) Part I, written disclosures, to be prepared by the applicant.

(b) Part II, attachments of exhibits provided by applicant in the statement of record, when required by the agency for the protection of purchasers, and a copy or prototype of the purchaser contract form(s) as required in RCW 19.105.320 (1)(b)(xiii).

(4) The applicant's disclosures for Part I of the public offering statement for a start-up camp resort contract offering shall be prepared in sections, captioned in bold print as follows:

(a) **THE CAMP RESORT OPERATOR:** Information in this section is to include the name, address, and business telephone number of the operator, the common-interest association and affiliates and a brief summary of the operator's experience in camp resort business.

(b) **THE PROJECT. GENERAL INFORMATION:** Information in this section shall specify the location and provide a brief description of the park sites and significant facilities and recreation services already available for use by purchasers in each park site and the program.

(c) **FACILITIES, AMENITIES, PARK SITES, AND PROGRAMS THAT ARE PLANNED OR PROMISED:** Information in this section is to cover that required in RCW 19.105.320 (1)(b)(iv) and (vi).

(d) **NATURE OF THE INTEREST WHICH YOU ARE PURCHASING:** Information in this section is to cover that required in RCW 19.105.320 (1)(b)(iii). If the purchase contract, membership certificate, or project rules and regulations, refer to or make use of the term(s) "club", "member", or "membership", describe whether or not any of the following are available to the purchasers:

(i) A membership in any common-interest association, nonprofit corporation or other form of common-interest community.

(ii) Shares of stock that allow participation in any profits earned by the operator or its affiliates.

(iii) The right to vote for officers and directors.

(iv) The right to make decisions on how the project or program is managed.

(v) The right to vote for or against any proposed rule changes.

(vi) Attendance at membership meetings.

(e) **OWNERSHIP OF PROJECT PROPERTIES AND ENCUMBRANCES, LIENS, AND OTHER CONDITIONS AFFECTING OWNERSHIP:** Information provided in this section is to cover that required in RCW 19.105.320 (1)(b)(v).

(f) **PURCHASER PROTECTIONS ASSURANCES OF FUTURE AVAILABILITY OF THE PROMISED CAMP RESORT SITES, FACILITIES, AND PROGRAM.** The information in this section is to be provided in bold print and include that information required by RCW 19.105.320(1)(b)(xi) and a statement describing the operator's, or an affiliate's or successor's right to substitute, change, or withdraw from use all or a portion of the camp resort properties and the extent to which the camping club operator, affiliates, or successors are obligated to replace the camp resort properties substituted or withdrawn within a reasonable period of time after such action, with substituted properties in the same general area, that are at least as desirable for the purpose of camping and outdoor recreation.

(g) **SUMMARY OF PURCHASERS RIGHTS TO AND RESTRICTIONS FOR USE OF PROJECT SITES AND FACILITIES:** The information in this section is to include that information required pursuant to RCW 19.105.320 (1)(b)(v), (vii), and (x).

(h) **RESTRICTIONS ON SALE, TRANSFER, OR ASSIGNMENT OF CAMP RESORT CONTRACTS, MEMBERSHIPS, LICENSES, OR DEEDS:** The information in this section is to be provided in bold print, underlined, and to include in summary form, that information required pursuant to RCW 19.105.320 (1)(b)(ix) and (xii).

(i) **PURCHASER COSTS:** The information in this section is to include that required pursuant to RCW 19.105.320 (1)(b)(viii).

(5) For applicants whose projects are structured as common-interest associations, or that otherwise are involved with memberships in common-interest associations which are to be responsible for management or ownership of camp resort properties, additional information is to be included in the public offering statement, pursuant to the requirements of RCW 19.105.320(vii), in a section headed "GOVERNING DOCUMENTATION — THE ' \_\_\_\_\_ ' COMMON INTEREST ASSOCIATION."

(6) Prior to approval of a registration or promulgation of the proposed public offering statement by the applicant, the applicant's draft for the public offering statement shall be reviewed by the agency to determine its completeness and accuracy.

(7) If the agency deems that sections or areas of the proposed public offering statement are incomplete, inaccurate, deceptive, or not presented in the proper format, the agency shall reject the proposed public offering statement and return it to the applicant for correction of noted deficiencies.

(8) Guidelines, instructions, and preprinted materials for preparing the public offering statement may be obtained from the agency.

**AMENDATORY SECTION** (Amending Order SDO-40-83, filed 3/2/83)

**WAC 460-90A-030 SIGNING OF APPLICATION.** An application for registration of ((camping club)) camp resort contracts shall



be signed by the (~~(camping club)~~) camp resort operator or an officer or general partner of the (~~(camping club)~~) camp resort operator. However, it may be signed by another person holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, (~~(should)~~) shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant.

#### NEW SECTION

WAC 460-90A-032 THE PUBLIC OFFERING STATEMENT — DELIVERY TO PROSPECTIVE PURCHASERS. (1) The operator or its agents shall provide each prospective purchaser with the agency-registered public offering statement prior to a sales presentation or a camp resort tour whether or not such persons purchase a camp resort contract.

(2) Any person who requests of an operator or its agents, a public offering statement, shall be provided a public offering statement, whether or not, such person has received a solicitation.

#### NEW SECTION

WAC 460-90A-035 CANCELLATION ESCROWS. (1) In order to provide cancellations and prompt return of purchaser funds upon a registrant's receipt of a request for cancellation, as provided for in RCW 19.105.390, it shall be a condition to registration that an applicant arrange and continue in operation, an escrow for purposes of holding funds and documentation and promptly processing cancellation requests.

(2) All purchaser deposits, funds, credit card slips, personal checks, other consideration, and the purchase documentation shall be placed and remain in the escrow for a period of at least seven business days for purchasers who have inspected the camp resort prior to signing a commitment and for a period of at least ten business days for purchasers who have not inspected the camp resort prior to signing a commitment, pursuant to RCW 19.105.390.

(3) Failure of a registrant to promptly provide cancellations when properly requested, return the purchaser's consideration from escrow and cancel purchase agreements shall be cause for revocation of registration or other remedies authorized by RCW 19.105.380.

(4) The agency shall review the provisions of the escrow arrangement to assure compliance.

#### NEW SECTION

WAC 460-90A-045 FINANCIAL STATEMENTS AND INFORMATION. (1) Financial statements provided by the applicant, reporting on the applicant as a business, shall be audited and prepared in accordance with generally accepted accounting principles by a public accountant independent of the operator or affiliate.

(2) The financial statements shall include a balance sheet, statements of income and changes in financial position for each of the three fiscal years preceding the date of application. For the period between the end of the previous fiscal year and the date of application, a balance sheet as of a date within one hundred twenty days prior to the date of application shall be submitted and need not be audited.

(3) In order to be assured of continued payment of the project operating expenses and the funding of capital improvement accounts for future repairs, replacement or refurbishment of depreciable properties and facilities, and for contingencies, the following financial statements, documentation or information, reporting on the financial operations of the resorts and its facilities, as distinguished from that financial information reporting on the applicant as a business, required in subsections (1) and (2) of this section, are to be provided the agency:

(a) An operating budget or projection of income and expenses for the year subsequent to the date of application indicating the estimated income and operating expenses, including funds set aside for contingencies and capital improvement accounts.

(b) The location of and amounts in all capital improvement and contingency accounts.

(c) Financial statements including a balance sheet, statements of income and changes in financial position covering the camp resort operating income and expenses and funding of capital improvement, for each of the three fiscal years preceding the date of application, or for the preceding year for a renewal applicant.

(4) All applicants shall provide a statement concerning the liens and encumbrances affecting all camp resort properties and facilities in the camp resort program, and shall include the following information:

(a) The identity of the lien or encumbrance.

(b) The identity of the holder or owner of the lien or encumbrance.

(c) A description of the property encumbered or affected.

(d) The original amount of each loan or encumbrance.

(e) The balance due and whether or not any payments are then in arrears.

(f) A schedule of amounts and dates payable or conditions of any future payments.

(g) If deemed necessary for the protection of purchasers, the agency may require reporting and confirmation of payments made on liens and encumbrances.

(5) For purposes of purchaser protection, the agency may require additional financial information in the event such information appears necessary to determine the requirements of RCW 19.105.340, and 19.105.350 or if grounds exist for administrative action under RCW 19.105.380.

(6) The agency may waive any or all of the financial information requirements of this section in the event such information does not appear necessary for purposes of determining whether an applicant must comply with RCW 19.105.340, 19.105.350 or if grounds exist for administrative action under RCW 19.105.380.

(7) The agency may require that the financial statements required in this section be consolidated with those of affiliates or other business endeavors if it appears necessary to do so for the protection of purchasers or to assist in the determination whether the applicant must comply with the requirements of RCW 19.105.340 and 19.105.350, or if grounds exist for administrative action under RCW 19.105.380.

#### AMENDATORY SECTION (Amending Order SDO-40-83, filed 3/2/83)

WAC 460-90A-070 RECEIPT OF WRITTEN DISCLOSURES. The camp(~~(ing club)~~) resort operator or salesperson shall obtain from each prospective purchaser of a camp(~~(ing club)~~) resort contract a signed statement that he or she has received the written disclosures. The (~~(camping club)~~) operator (~~(or salesperson)~~) shall retain each statement for a period of at least three years from the date of sale.

#### NEW SECTION

WAC 460-90A-115 RENEWALS. (1) Pursuant to RCW 19.105.420 an application for renewal shall be made not less than sixty days prior to the expiration date of a registration, on a form to be provided by the agency.

(2) It shall be the applicant's responsibility to procure forms and file them with the agency.

(3) The renewal application shall include the following:

(a) Affidavits by the operator stating whether or not there have been any changes in the information and documentation previously submitted for purposes of registration.

(b) Copies of prototypes of all amended, altered, or new documentation evidencing changes with the changes being underlined or referred to by footnotes.

(c) Affidavits by the operator stating whether or not there have been any changes in the information required in the public offering statement.

(d) A draft of a proposed amended public offering statement evidencing changes, with the changes being underlined or referred to by a cover letter calling the agency's attention to the proposed changes, additions to or deletions from the public offering statement previously accepted by the agency.

(e) A copy of all camp resort contract forms marked and underscored to reflect changes, additions or deletions.

(f) Financial statements and information as provided for in WAC 460-90A-045.

(g) Payment of fees provided for in RCW 19.105.410.

(4) Failure of the renewal applicant to renew in a timely manner on or before the date of permit expiration, shall mean that the registration and permit has expired. Upon expiration of registration the camping club contracts are deemed not registered and the operator must register as a new applicant pursuant to the provisions of RCW 19.105.320 and WAC 460-90A-025 and 460-90A-027.

NEW SECTION

WAC 460-90A-122 SALESPERSON REGISTRATIONS. (1) Each applicant for registration as a camp resort salesperson shall register on a form prescribed by the agency and pay a filing fee of thirty dollars.

(2) Registration as a camp resort salesperson shall be renewed annually or at the time the salesperson obtains employment by a camp resort operator subsequent to a termination of a former employment by a camp resort operator, whichever event occurs first, by the filing of a form prescribed by the agency and payment of a fee of thirty dollars.

(3) The following information shall be provided on the original application or renewal of a camp resort salesperson's registration:

- (a) The applicant's date and place of birth.
- (b) Proof of identity.
- (c) Information covering employment for the prior five years.
- (d) Information concerning any administrative action taken against permits, licenses or registrations in other professions, businesses or occupations.
- (e) An affidavit concerning knowledge of the Camping Club Act (chapter 19.105 RCW) and agency rules (chapter 460-90A WAC).
- (f) Completion of an affidavit by applicants that they have read the public offering statement covering any registered project whose camp resort contracts they are offering or selling.

(4) Persons applying for a salesperson registration for the first time shall submit fingerprint identification on a form provided by the agency. Persons applying for a renewal of a salesperson registration shall submit fingerprint cards if there has been no prior submission.

(5) Upon the occurrence of any material change in the information contained in the registrant's file, each salesperson registrant shall promptly file with the agency an amendment to the salesperson registration file stating the change(s). The following shall be material changes requiring notice to the agency:

- (a) Any termination of employment with a camp resort operator.
- (b) Upon being named a defendant or a party in any administrative, civil or criminal proceeding involving theft, fraud or dishonesty or violation of any act designed to protect consumers, or involving unethical or dishonest practices in any industry involving sales to consumers or violations of chapter 19.105 RCW, the salesperson applicant shall promptly provide to the agency a notice of the proceeding and a copy of the complaint.
- (c) A change of name.
- (d) A change of residence or mailing address.

(6) Each operator of a camp resort whose camp resort contracts are registered with the agency, shall notify the agency on a form prepared by the agency, of the employment or termination of employment of any camp resort contract salesperson at the time of such employment or termination of employment.

(7) As a condition of continued registration the salesperson registrant shall comply with the following:

(a) During the entire term of the registration the registrant is to be employed or engaged by an operator that is registered with the agency as an offeror of camp resort contracts, and the salesperson shall be offering contracts on behalf of or in the employment of such operator-registrant.

(b) Upon termination of employment with a registered camp resort operator, the camp resort salesperson registration is deemed to have expired. At such time it shall be the salesperson's responsibility to provide the agency with notice of termination and to return to the agency the salesperson registration.

(c) It shall be the salesperson's responsibility to cause the posting of the salesperson registration form in a conspicuous location on the premises where employed and where contact with the public for purposes of making sales most often occurs.

(d) The salesperson shall clearly identify himself or herself by full name, by means of a business card, lapel pin or by other means, upon contact with any prospective purchaser.

(e) The salesperson shall cooperate fully with the agency in any investigation of alleged violations by the registrant, salesperson, or others, of the Camping Club Act or these rules.

(8) Applications for registration or renewal that are for any reason defective or that are not legible shall be returned and the application shall be deemed not filed until the form is received by the agency with the deficiencies corrected.

(9) An application for renewal of a salesperson registration not filed in a timely manner or not received or acted upon by the agency prior to the expiration date shall be deemed by the agency as having expired. The salesperson must thereafter register as a new applicant for

registration. Salespersons who have failed to make timely renewal applications shall not engage in camp resort salesperson activities. It is the salesperson's responsibility to secure the necessary forms and renew a registration in a timely manner. Applications for renewal should be forwarded to the agency by registered mail at least thirty days prior to expiration of the current registration. The agency shall not be responsible for applications lost in the mail or not timely received for other reasons.

NEW SECTION

WAC 460-90A-125 SALESPERSON REGISTRATION -- FOR PERSONS IN THE BUSINESS OF OFFERING RESALE CONTRACTS (1) In addition to those applying in WAC 460-90A-122, the following additional conditions or requirements for a camp resort salesperson registration shall apply to those persons offering resale camp resort contracts, unless exempted by WAC 460-90A-022.

(a) All funds collected whether as advance fees or as payments for purchase transactions, shall be placed in an escrow account segregated and separate from those of the registrant, in a recognized Washington state depository.

(i) Funds collected for purchase transactions shall remain in escrow until such time as the purchase transaction is completed in accordance with the escrow instructions.

(ii) Funds collected as advance fees or for other purposes shall be utilized only for the purposes for which they are collected.

(iii) Funds collected are to remain in the escrow until such time as they are utilized for their designated purpose.

(iv) Any advance fees collected shall be utilized solely for the purposes stated and the salesperson registrant shall upon request, provide evidence to the agency that fees collected are being utilized for such purposes. Applicants shall agree to and thereafter provide the agency with access to audit of such funds and the escrow records at any time during normal business hours.

(v) Funds may be placed in interest bearing accounts provided the agreements are in writing and the parties agree to whom interest earned shall be paid and funds are payable upon demand.

(b) Provide evidence of permits to do business, when required by, any local, state, or federal jurisdiction.

(c) Maintain a business office or location where business records of the applicant will be kept and such records shall be available for audit purposes

(d) Submit proposed advertising for agency review pursuant to RCW 19.105.360 and WAC 460-90A-140.

(e) Submit for agency review copies or prototypes of agreements to be used for offering or soliciting camp resort contracts.

(f) If available as an ordinary course of business, provide the agency with copies of lists or print-outs of the camp resort contracts available for sale.

AMENDATORY SECTION (Amending Order SDO-40-83, filed 3/2/83)

WAC 460-90A-140 ADVERTISEMENTS. (1) No ~~((camping club))~~ camp resort operator or salesperson shall use advertising or sales promotion literature that are deceptive, false or misleading.

(2) Advertisements or sales promotion literature that offer any item (for the purposes of this ~~((WAC 460-90A-140))~~ section "item" is defined as any gift, prize, or item of value(:)) as an inducement to the recipient to buy a ~~((camping club))~~ camp resort membership, visit a ~~((camping club))~~ camp resort property, complete a tour of a ~~((camping club))~~ camp resort property, receive a sales presentation, or contact salespersons shall be subject to the following provisions:

(a) The name of the ~~((camping club))~~ camp resort operator offering such item shall be clearly disclosed;

(b) No item may be labeled "free" or a "gift" if the recipient is required to purchase a ~~((camping club))~~ camp resort contract or to give or promise to give in exchange for the item any sum of money or its equivalent;

(c) The advertisement or sales promotion literature shall identify each item and its retail fair market value. To determine the retail fair market value, the following methods may be used:

(i) ~~((Manufacturer's suggested retail price, if the camping club operator has a reasonable basis for belief that the manufacturer's suggested retail price approximates the retail value of the item; (ii)))~~ The approximate retail sales price of the item in the trade area in which the offer is made; or

~~((iii) manufacturer's suggested retail price or))~~

(ii) The approximate retail sales price in the trade area of similar items of comparable quality if the item is not available in the trade area in which the offer is made;

(iii) appraisals;

(iv) the operator's actual cost of the item.

(d) If the item is one or more of a larger group, and if offered or given on a random basis, the advertisement or sales promotion literature must disclose the actual odds of receiving each item based upon the initial odds and must be revised to reflect actual current odds at the beginning of each month of use of the free promotion if the odds change; if not offered or given on a random basis, the method of selection used must be disclosed. No promotion shall be used which is in violation of Washington state or federal laws,

(e) If receipt of the advertised item is contingent upon certain restrictions or qualifications which the recipient must meet, then a clear and complete disclosure of those restrictions and whether they apply to receipt of the gift or acceptability to buy into the program, must be made in the offer. Restrictions that must be disclosed include, but are not limited to the following:

(i) The deadline by which the recipient must buy a ((camping club)) camp resort membership, visit a ((camping club)) camp resort property, complete a tour of a ((camping club)) camp resort property, receive a sales presentation, or contact a salesperson in order to receive an item, if any such deadline exists;

(ii) The days and hours during which visits may be made, tours may be taken, or sales presentations received and the approximate length in hours of such visits, tours or sales presentations if any visit, tour, or sales presentation is necessary in order for the recipient to receive the item; and

(iii) Any requirement such as age, marital status, financial qualifications, or that both husband and wife must be present.

(f) Any person who responds to an advertisement or sales promotion in the manner specified, who performs all stated requirements and who meets the qualifications disclosed shall be entitled to receive promptly the item offered. If the ((camping club)) camp resort operator cannot provide the item because of supply or quality problems not reasonably foreseen or controllable by the operator, the operator shall provide, at the operator's option, a raincheck for the item offered or its cash equivalent, or shall provide a substitute item of ((equivalent or)) greater retail value or a raincheck for such substitute item. In case a raincheck is provided, the ((camping club)) camp resort operator shall, within a reasonable time, deliver the item or its cash equivalent to the recipient's address without additional cost or requirement to the recipient. No ((camping club)) camp resort operator or salesperson shall make any offer of an item when the operator or salesperson knows or has reason to know that the item is not readily available;

(g) Any restriction or requirement that time, money or effort must be expended by the recipient of an item in order for the recipient to use the item must be disclosed in the advertisement or sales promotion literature. Examples of such restrictions or requirements include any items that require assembly by the recipient, travel or other entertainment gifts or prizes for which there are limitations on the dates or times when the recipient may use the item, or which require non-refundable reservation deposits or additional travel costs in order for the recipient to use the travel or other entertainment gift or prize.

(h) Provisions explaining any conditions to qualify for a gift, prize, or award, must be in type at least as large and prominent as found in the original offer or notice of the award, gift, or prize.

(3) Nothing in ((subsection (2) of)) this ((WAC 460-90A-140)) section shall affect the remedies of the administrator or any person responding to advertisements or sales promotions if such advertisements or promotions are deceptive, false or misleading or otherwise in violation of chapter 19.105 RCW.

**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 each repealed:

WAC 460-90A-010 CAMPING CLUB CONTRACT REGISTRATION APPLICATION.

WAC 460-90A-020 CAMPING CLUB CONTRACT REGISTRATION EXHIBITS.

WAC 460-90A-040 FINANCIAL STATEMENTS.

WAC 460-90A-110 RENEWALS.

WAC 460-90A-120 SALESPERSON REGISTRATION.

WAC 460-90A-150 RESALE BY SALESPERSON FOR COMMISSION OF CAMPING CLUB CONTRACTS EXEMPT FROM REGISTRATION.

**WSR 85-04-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**  
[Filed February 5, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Community Development intends to adopt, amend, or repeal rules concerning local head start programs, chapter 365-40 WAC.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 25, 1985.

The authority under which these rules are proposed is RCW 43.63A.065.

The specific statute these rules are intended to implement is RCW 43.63A.065.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 12, 1985.

Dated: January 23, 1985

By: Chuck Clarke  
Deputy Director

#### STATEMENT OF PURPOSE

Title: Local head start programs, chapter 365-40 WAC.

Description of Purpose: The purpose of this chapter is to outline the conditions and procedures under which state funds will be made available for head start programs.

Statutory Authority: RCW 43.63A.065.

Summary of Rule: The state legislature has authorized the Department of Community Development (DCD) to administer a state head start program which will provide supplemental funding to local programs. This rule defines the responsibilities of the grantee and DCD in implementing this program.

Agency Personnel Responsible for Drafting: Dick Basch, Head Start Coordinator, (206) 753-5908; Implementation: Kathy Friedt, Assistant Director, (206) 753-2200; and Enforcement: Dick Thompson, Director, (206) 753-2200. Department of Community Development, Ninth and Columbia Building, MS GH-51, Olympia, Washington 98504-4151.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: The Department of Community Development, a state agency, is proposing the rule changes.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: The changes in this rule are mainly editorial with the exception of increasing the amount allowed for purchasing of nonexpendable equipment (from \$100 to \$500). This increase brings the head start program

into alignment with other programs administered by DCD.

Whether Rule is Necessary as Result of Federal Law or Federal or State Court Action: No.

AMENDATORY SECTION (Amending Order 78-04, filed 10/25/78)

WAC 365-40-010 PURPOSE AND AUTHORITY. (1) The purpose of this chapter is to outline the conditions and procedures under which state funds will be made available for Head Start programs.

(2) This activity is undertaken pursuant to RCW 43.06.110 and chapter 43.63A RCW.

AMENDATORY SECTION (Amending Order 78-04, filed 10/25/78)

WAC 365-40-020 DEFINITIONS. (1) "Applicant" means a unit(s) of local government (~~or combination thereof, or~~), a qualified private organization, or a combination thereof, which applies for state Head Start funds.

(2) "Contractor" means an applicant which has been allocated state Head Start funds and which has entered into a contract to carry out a Head Start program.

(3) "Director" means the director of the (~~planning and community affairs agency~~) department of community development (hereafter, the agency).

(4) "Head Start program" means an operation undertaken in accordance with the program performance standards set forth in the OCD-HS HEAD START POLICY MANUAL (OCD Notice N-30-364-4) "Head Start program performance standards," published by the United States Department of Health, Education, and Welfare July, 1975.

AMENDATORY SECTION (Amending Order 79-02, filed 7/20/79)

WAC 365-40-041 FINANCIAL SUPPORT APPLICATION PROCESS. (1) Each potential applicant will be notified by the agency that application for state Head Start financial assistance is to be made to the agency.

(2) An applicant must make formal application in the form and manner specified by the agency. Such application shall be for the period July 1 - June 30 of each fiscal year. Failure of an applicant to make application in a timely manner, within 45 days of receipt of application notice and application form from the agency, will result in no state Head Start funds being allocated.

(3) Applications for state Head Start funds shall contain the following information, in detail:

(a) A description of the services to be provided or activities proposed to be undertaken by the applicant consistent with the provisions of WAC 365-40-051 and 365-40-061.

(b) A budget specifying intended uses of state Head Start funds.

~~((c) An explanation of how the applicant will monitor the use of state funds to assure that provisions of the approved contract are being met:))~~

(4) The agency shall provide a contract for signature to the applicant or a request for additional information within thirty days of receipt of the completed application from the applicant.

AMENDATORY SECTION (Amending Order 82-01, filed 3/22/82)

WAC 365-40-051 ELIGIBILITY CRITERIA. In order to receive Head Start funds, a contractor must provide services to families and individuals eligible according to federal Head Start guidelines who are in need of skills, knowledge, opportunities and motivation to become economically self-sufficient. Each Head Start program must be designed to improve the health and general well-being of the children involved, develop their mental processes, and enhance their conceptual and verbal skills. Head Start funds may be used only for activities which result in direct and measurable services to Head Start program children. State Head Start funds are allocated to programs based on the federal enrollment levels. An additional set-aside of 3% of the pass through funds are allocated for programs with 60 or less children.

AMENDATORY SECTION (Amending Order 82-01, filed 3/22/82)

WAC 365-40-061 (~~ALLOWED AND FORBIDDEN USES OF STATE HEAD START FUNDS~~) ALLOWABLE AND UNALLOWABLE COSTS. (1) Allowable uses of state Head Start funds include but are not limited to:

(a) Purchase of supplies to be consumed by Head Start program children.

(b) Payment of salaries for nonadministrative personnel such as full or part-time teachers or specialists in speech, hearing, hygiene, reading, etc.

(c) Purchases (~~under~~) through contract (~~of~~) for medical or dental services for Head Start children and their families.

(2) (~~Forbidden uses of head start funds~~) Unallowable costs include but are not limited to:

(a) Payment of salaries for administrative personnel such as program directors, assistant directors, bookkeepers, secretaries, etc.

(b) Payment of administrative support expenses such as postage, telephone, travel, utilities, and equipment.

(c) Purchase of nonexpendable equipment with an original cost of (~~\$100~~) \$500 or more and a useful life of at least one year.

AMENDATORY SECTION (Amending Order 82-01, filed 3/22/82)

WAC 365-40-071 METHOD OF PAYMENT AND REPORTING REQUIREMENTS. (1) State Head Start funds will be paid in accordance with the provisions of the applicable contract and these regulations.

(2) All contracts will provide for monthly or quarterly expenditure reimbursement, with vouchers submitted within fifteen days of the end of each quarter or month, as appropriate.

(a) At the time of application the applicant shall state whether vouchers will be submitted on a quarterly or monthly basis.

(b) If vouchers are not submitted in a timely manner, the agency may recapture unclaimed funds.

(c) If a contractor fails to file a claim for expense reimbursement within any six month period, the agency may elect to terminate the contract.

(d) Funds allocated for a program (~~with~~) may be reduced by the amount unclaimed in the program year immediately preceding the new funding year.

(3) If an intended use is not allowable under these rules or the approved contract, the (~~voucher will not be paid~~) contractor will not be reimbursed for the cost of the item.

(4) The agency will notify the contractor within ten days of its discovery of any deficiency and of the need to take corrective action.

(5) In the event corrective action is not taken within thirty days, the contract will be terminated. Funds allocated to the contractor may be subject to redistribution upon termination of any contract.

(6) By agreement between the agency and the contractor, the provisions of the contract may be amended.

(7) Quarterly reports to the agency to assure that funds are being expended for purposes authorized in the approved contract are required in a format approved by the agency.

(8) The contractor shall submit an annual audit of funds provided under this rule by an independent auditor using standard accepted auditing techniques. Such audit may be that conducted for and provided to other funding sources. This audit report must include a breakdown of state funds by contract number.

**WSR 85-04-058**  
**EMERGENCY RULES**  
**HIGHER EDUCATION**  
**PERSONNEL BOARD**  
[Order 124—Filed February 5, 1985]

Be it resolved by the Higher Education Personnel Board, acting at the Olympic College, Bremerton, Washington, that it does adopt the annexed rules relating to shift differential, amending WAC 251-09-040.

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 this rule shall only be effective if the legislature appropriates sufficient funds to implement the increase in shift differential. The rule was adopted on an emergency basis to be consistent with rule modifications adopted by the Department of Personnel, effective February 1, 1985, and to implement shift differential increases at the earliest possible date if the legislature appropriates funds for the increase.

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 January 18, 1985.

By John A. Spitz  
Director

AMENDATORY SECTION (Amending Order 62, filed 8/30/77, effective 10/1/77)

WAC 251-09-040 *SHIFT DIFFERENTIAL*. (1) *Shift differential for employees assigned to ((an afternoon)) a shift in which the majority of time worked((:)) daily or weekly((:)) is between 5:00 p.m. and ((+2:00 midnight)) 7:00 a.m. shall be(:*

(a) ~~\$18 per hour or \$31.00 per month;~~

(b) ~~Registered nurses = \$24 per hour or \$42.00 per month.~~

(2) ~~Shift differential for employees assigned to a night shift in which the majority of time worked, daily or weekly, is between 12:00 midnight and 7:00 a.m. shall be:~~

(a) ~~\$22 per hour or \$38.00 per month;~~

(b) ~~Registered nurses = \$22 per hour or \$38.00 per month)) \$50 per hour.~~

~~((3)) (2) Shift differential shall be paid for the entire daily or weekly shift which qualifies under subsection (1) ((or (2) above)) of this section. Shift differential may also be computed and paid at the above monthly rate for employees permanently assigned to a qualifying afternoon or night shift.~~

~~((4)) (3) An employee assigned to a shift that qualifies for shift differential pay shall receive the shift differential for authorized periods of paid leave.~~

~~((5)) (4) When an employee is regularly assigned to an afternoon or evening shift that qualifies for shift differential, he/she shall continue to receive the shift differential during temporary assignment, not to exceed five working days, to a shift that does not qualify for shift differential.~~

~~((6)) (5) Shift differential shall not apply to police officers where salaries are correlated with a rotating shift in accordance with local prevailing rate practice.~~

**WSR 85-04-059**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed February 6, 1985]

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 the amending of WAC 296-15-030 posting of security, of chapter 296-15 WAC, rules and regulations for self-insured employers. It will state the method by which the surety requirement for self-insured employers is determined. The surety required of self-insured employers will insure payment of all compensation and assessments due under RCW 51.14.020, thereby protecting the state fund from loss as a result of defaulting employers. This notice also proposes to correct clerical errors in WAC 296-15-215 cash, bond or assignment of account alternative for death or permanent total disability, 296-15-230 third party actions and 296-15-050 reinsurance;

that the agency will at 9:00 a.m., Thursday, February 14, 1985, in the Second Floor Conference Room, Forum Building, 605 11th Avenue, Olympia, WA 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 1, 1985.

The authority under which these rules are proposed is RCW 51.04.020.

The specific statute these rules are intended to implement is RCW 51.14.020.

This notice is connected to and continues the matter in Notice No. WSR 85-01-073 filed with the code reviser's office on December 19, 1984.

Dated: February 6, 1985

By: Paula Stewart  
Deputy Director

**WSR 85-04-060**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**  
[Filed February 6, 1985]

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:

Amd WAC 352-32-250 Standard fees charged.  
Amd WAC 352-32-252 Off-season senior citizen pass—Fee.  
Amd WAC 352-12-020 Moorage fees.  
Amd WAC 352-32-035 Campsite reservation.  
Amd WAC 352-32-285 Applicability of fees to volunteers;

that the agency will at 9:00 a.m., Friday, March 15, 1985, in Westport, 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 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 11, 1985.

Dated: February 6, 1985  
By: Mike Reed  
Executive Assistant

### STATEMENT OF PURPOSE

Title: Standard fee charged, WAC 352-32-250; Off-season senior citizen pass—Fee, 352-32-252; Moorage fees, 352-12-020; Campsite reservation, 352-32-035; and Applicability of fees to volunteers, 352-32-285.

Description of Purpose: The amendments to the rules referenced above increase fees for use of campsites; modify the season during which the off-season senior citizen pass is valid, and increase the fee for the pass; increase fees for boat moorage; increase fees for reservation of campsites; and exempt volunteers from boat moorage fee requirements.

Statutory Authority: RCW 43.51.040 and 43.51.060.

Summary of Rule: The amendments to the rules referenced above increase standard campsite fees and utility site basic fees from \$5.50 to \$6.00 and increase environmental learning center fees; expands the use season for the off-season senior citizen pass; increases moorage fees; increases fees for reservation of campsites; and exempts volunteers from boat moorage fees.

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 those 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.

Agency Comments: [No information supplied by agency.]

Federal Law/Court Action: The amendments to the rules referenced above are not necessary because of federal law or federal or state court action.

### AMENDATORY SECTION (Amending Order 77, filed 4/16/84)

WAC 352-32-035 CAMPSITE RESERVATION. (1) Advance campsite 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 \$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: PROVIDED, HOWEVER, The fee shall be \$4.00 effective January 1, 1986. Payment of the ~~(\$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 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 be valid for one year from the date of issue. 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 Friday, Saturday, and the night before a holiday. After these hours your site may be reassigned 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 77, filed 4/16/84)

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)~~ \$6.00 per night;

(2) Overnight camping - utility campsite: ~~(\$5.50)~~ \$6.00 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)~~ \$4.50 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: ~~(\$2.85)~~ \$2.95 per camper per night: PROVIDED, HOWEVER, The fee shall be ~~(\$2.95)~~ \$3.15 per camper per night, effective ~~(September 6, 1983)~~ September 3, 1985;

(a) Camp Wooten and Cornet Bay environmental learning centers during the season the swimming pools are operational: ~~(\$3.25)~~ \$3.35 per camper per night: PROVIDED, HOWEVER, The fee shall be ~~(\$3.35)~~ \$3.55 per camper per night, effective ~~(September 6, 1983)~~ September 3, 1985;

(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.

#### AMENDATORY SECTION (Amending Order 71, filed 11/22/83)

WAC 352-32-252 OFF SEASON SENIOR CITIZEN PASS—FEE. (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least one year shall, upon application to the commission, receive an off-season citizen pass which entitles the holder and the holder's camping unit to thirty nights of camping at any camping areas made available by the commission between ~~((September+5))~~ the day following the Labor Day legal holiday and April 30. Each such pass shall be valid only during one off-season period and may be renewed after being used for thirty nights of camping.

(2) Applications for off-season senior citizen passes shall be made on forms prescribed by the commission and shall be accepted only after ~~((September+))~~ August 15 for the following off-season period.

(3) The fee for each off-season senior citizen pass and renewal shall be ~~((+\$12.00))~~ \$15.00. A surcharge equal to the fee for an electrical hookup established in WAC 352-32-250 shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

(4) For pass holders who travel by car or recreational vehicle a camping unit shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. One additional vehicle without built-in sleeping accommodations may be part of the camping unit of a holder at one campsite or portion of a designated group camping or emergency area when in the judgment of a ranger the constructed facilities so warrant and the total number of guests of the holder do not exceed seven.

(5) For pass holders who travel by a mode of transportation other than car or recreational vehicle a camping unit shall include the pass holder and up to five guests who travel with the holder and use one campsite or portion of a designated group camping or emergency area.

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass holder shall return a pass to the commission.

#### AMENDATORY SECTION (Amending Order 60, filed 4/14/82)

WAC 352-32-285 APPLICABILITY OF STANDARD FEES TO VOLUNTEERS IN PARKS. The standard fees set forth in WAC 352-32-250, 352-12-020 pursuant to RCW 43.51.060(6) shall not apply whenever any individual, group, organization, association, or agency shall volunteer to perform personal services in lieu of standard fees if the following conditions are met:

(1) The park manager has determined that the personal service is desirable;

(2) At least four hours of service per day are performed for each campsite or boat moorage occupied;

(3) The service performed does not replace or supplant that which would otherwise be performed by parks employees or contractors;

(4) The service performed is not one commonly performed by members of an organized trade union;

(5) The service performed does not result in any type of development which will necessarily create future operating costs to the commission.

The limit placed on any camper by WAC 352-32-030(5) shall not apply to persons qualifying under this section. Continuous occupancy of facilities by the same person or persons qualifying under this section shall be limited to 30 consecutive nights, unless otherwise approved by the director.

This section does not expand or limit the provisions of RCW 43.51.130 - 43.51.160.

#### AMENDATORY SECTION (Amending Order 77, filed 4/16/84)

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, ~~((55-00))~~ \$5.50 per night;

(b) Vessels under twenty-six feet in length, ~~((33-00))~~ \$3.50 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, vessels moored to floats not attached to piers, 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.

### WSR 85-04-061 PROPOSED RULES LIQUOR CONTROL BOARD [Filed February 6, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Liquor Control Board intends to adopt, amend, or repeal rules concerning class H license issued to premises without a cocktail lounge, WAC 314-16-196;

that the agency will at 9:30 a.m., Wednesday, March 13, 1985, in the Office of the Liquor Control Board, 5th Floor, Capital Plaza Building, 1025 East Union Avenue, 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 66.98.070.

The specific statute these rules are intended to implement is RCW 66.24.400.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 13, 1985.

Dated: February 6, 1985

By: L. H. Pedersen  
Chairman

#### STATEMENT OF PURPOSE

Title: WAC 314-16-196 Class H license issued to premises without a cocktail lounge.

Description of Purpose: The purpose of this amendment is to establish requirements for the service of alcoholic beverages in class H premises that have both a cocktail lounge and a service bar.

Statutory Authority: RCW 66.98.070.

Statutes Implemented by the Rule: RCW 66.24.400.

Summary of Rule: Currently the rule indicates that premises not having cocktail lounges have certain restrictions, namely, that the service of liquor must be by an employee or by the licensee of an establishment and may only take place during hours that the full restaurant menu is available. Also that service bars must be located in such a manner as to be removed from the sight of customers. The amendment to this rule establishes that service of all alcoholic beverages in class H premises shall be from approved cocktail lounges or approved service bars.

Reason Supporting Proposed Action: Since the passage of the class H law in 1948 and the first issuance of class H licenses in 1949, the board restricted the configuration and size of cocktail lounges. It was always assumed that service of alcoholic beverages would be either from an approved lounge or service bar. This has been a long standing policy of the board to require that the service of alcoholic beverages come from a lounge or service bar. The amendment to this rule will make such a restriction enforceable.

Agency Personnel Involved: In addition to the board, the following agency personnel have responsibility for drafting, implementing and enforcing this rule: Ray Hensel, Supervisor, License Division, Capital Plaza Building, Olympia, WA 98504, phone (206) 753-6259.

Person or Organization Proposing Rule: This rule was proposed by the Washington State Liquor Control Board.

Agency Comments: None.

Necessity of Rule: This rule was not made necessary as a result of federal law or federal or state court action.

Small Business Economic Impact Statement: Cost impact for both small and large businesses would be minimal to zero.

AMENDATORY SECTION (Amending Order 125 and Resolution No. 134, filed 6/15/83)

WAC 314-16-196 CLASS H LICENSE ISSUED TO PREMISES WITHOUT A COCKTAIL LOUNGE. (1) Before the board shall issue a Class H license to a bona fide restaurant, the applicant shall present, and receive the approval of the board for, a one-quarter inch equals one foot scale drawing of the proposed premises indicating that the premises will have a cocktail lounge comprising not more than thirty-five percent of the total public floor space of the premises, as compared to dining space which as a minimum must be sixty-five percent of the public floor space of the premises or that the premises will have a service bar(s) in lieu of the cocktail lounge.

(2) Those premises not having cocktail lounges, or having a service bar(s) in addition to a cocktail lounge, shall have their ((approved)) service bar(s) approved by the board and located in such a manner as to be removed from the sight of customers. Service of liquor from such service bar(s) will be by the licensee or licensee's employees only and may take place only during hours that the full restaurant menu is available and a chef or cook is on duty. Service of all alcoholic beverages in a Class H premises shall be from an approved cocktail lounge or approved service bar.

(3) A Class H licensed restaurant having a service bar(s) in lieu of a cocktail lounge shall not be eligible for added activities such as dancing, live music, or entertainment.

(4) If the board issues a Class H license to a bona fide restaurant which has a service bar in lieu of an approved cocktail lounge and the licensee subsequently applies for approval to install a cocktail lounge in place of the previously approved service bar operation, the board will process such a change in the same manner as an application for a new Class H license (i.e. notice will be given by posting at the premises, local officials, churches and schools will be notified, etc.).

## WSR 85-04-062

### PROPOSED RULES

#### DEPARTMENT OF NATURAL RESOURCES

[Filed February 6, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Commissioner of Public Lands intends to adopt, amend, or repeal rules

concerning establishment of rules and regulations relating to leasing for coal exploration and mining on state trust lands managed by the Department of Natural Resources;

that the agency will at 2 p.m., Thursday, March 28, 1985, in the Thurston County Courthouse, Building #1, Room 152, 2000 Lakeridge Drive S.W., Olympia, 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 15, 1985.

The authority under which these rules are proposed is RCW 79.01.668 and 43.30.150.

The specific statute these rules are intended to implement is RCW 79.01.652 through 79.01.696.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before April 8, 1985.

Dated: February 6, 1985

By: Brian J. Boyle

Commissioner of Public Lands

### STATEMENT OF PURPOSE

Establishment of chapter 332-14 WAC, Coal leasing rules and regulations; WAC 332-14-010 Definitions; 332-14-020 Jurisdiction; 332-14-030 Lands available for exploration and leasing—Authority to withhold; 332-14-040 Applications; 332-14-050 Refund of application fees; 332-14-060 Coal option contract and coal mining lease—Area—Term; 332-14-070 Coal option contract; 332-14-080 Coal mining leases—Environmental analysis; 332-14-090 Converting coal option contract—Lease; 332-14-100 Procedure for award of coal mining lease at public auction; 332-14-110 Consolidation of leases; 332-14-120 Re-lease of coal leases; 332-14-130 Lease—minimum annual royalty; 332-14-140 Late royalty payments—Interest rate; 332-14-150 Procedure where surface rights encumbered; 332-14-160 Surety arrangements; 332-14-170 Plan of activities—Coal option contract; 332-14-180 Plan of development/operation/reclamation—Coal mining lease; 332-14-190 Reclamation—Federal permit required; 332-14-200 Diligence and forfeiture; 332-14-210 Assignments; 332-14-220 Timber; 332-14-230 Use of premises; 332-14-240 Right to audit business records; 332-14-250 Plugging and abandonment procedures for exploration drill holes; 332-14-260 Access road construction and maintenance standards; 332-14-270 Exploration reports—Confidentiality; and 332-14-280 Compliance with other laws.

Purpose of the Proposed Rules: To implement RCW 79.01.652 through 79.01.696 for coal mining.

Summary of Rules: Establishes leasing rules and regulations for coal exploration and mining on state trust lands.

Proponent of Rules: Department of Natural Resources.

Agency Personnel Responsible for Drafting: Kenneth E. Solt, Manager, Lands Division, Department of Natural Resources, Public Lands Building, Olympia, Washington 98504, phone (206) 753-2989; Implementation and Enforcement: Art Stearns, Department Supervisor, Room 201, Public Lands Building, Department



of Natural Resources, Olympia, Washington 98504, phone (206) 753-5331, and Kenneth E. Solt, Manager, Lands Division, Department of Natural Resources, Public Lands Building, Olympia, Washington 98504, phone (206) 753-2989.

Agency Comments: The establishment of the proposed rules and regulations is designed to elaborate upon and more clearly define implementation of the statutes relating to leasing department-managed lands for coal exploration and production.

Small Business Economic Impact Statement: The Department of Natural Resources proposes to establish chapter 332-14 WAC, coal leasing rules and regulations. Coal exploration occurs infrequently in Washington state and it is determined that neither 20 percent of all industries nor 10 percent of one industry are significantly impacted by the proposed regulation.

Chapter 332-14 WAC  
Coal Leasing Rules and Regulations

NEW SECTION

WAC 332-14-010 DEFINITIONS. The following terms are applicable when used in the chapter and shall be defined as follows unless the context clearly requires otherwise:

(1) "Abandon" means the removal of all drilling and production equipment from the site and the restoration of the surface of the site to standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington."

(2) "Auction" means competitive lease bidding by oral or sealed bids or a combination thereof.

(3) "Blending" means combining two or more grades of coal to achieve desired chemical or combustive properties.

(4) "Coal" means a black or brownish-black solid combustible substance which has been subjected to the natural process of coalification and which falls within the classification of coal by rank for: lignite, subbituminous, bituminous or anthracite as defined in the American Society of Testing Material Standards.

(5) "Coal mining lease" means a lease not to exceed twenty years entitling the operator to develop, mine and market a known coal resource on state lands.

(6) "Coal option contract" means a one-year agreement entitling its holder to explore for coal on one section or 640 acres, whichever is larger and to remove up to 250 tons of coal for testing purposes.

(7) "Commingling" means the mixing of coal from the leased premises with coal from land other than the leased premises.

(8) "Department" means the department of natural resources.

(9) "Development" means any work which occurs after exploration and which furthers coal production.

(10) "Exploration" means investigation to determine presence, quantity and quality of coal resources by geologic, geophysical, geochemical or other means.

(11) "Exploration drill hole" means an exploratory drill hole, constructed for the purpose of determining depth, thickness, quality and quantity of coal, for the identification of underlying rock formations in which the coals occur and the determination of hydrological conditions.

(12) "Gross Receipts from Mining" means the fair market price per ton according to grade as prepared for market at the first point of sale or commercial use.

(13) "Grout" means a cementing agent which is used for plugging and sealing exploration drill holes.

(14) "Improvements, structures, and development work" means anything considered a fixture in law or the removal of overburden or the diversion of drainage or other work preparatory to removal of coal, placed upon or attached to state lands that has added value to the state's interest therein.

(15) "Logical Mining Unit" means contiguous lands in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to recoverable coal reserves. A logical mining unit may consist of one or more state leases under the control of a single lessee and may include intervening or adjacent lands in private or public ownership.

(16) "Mine" means any excavation made for production of coal for commercial sale or use.

(17) "Office of Surface Mining" means United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement or its successor.

(18) "Plug and abandon" means the placing of permanent plugs in a coal exploration drill-hole in such a way and at such intervals as are necessary to prevent future leakage of either fluid or gases from the drill hole to the surface or from one aquifer to another.

(19) "Production" means the work of extracting and preparing coal in commercial quantities for market or for consumption.

(20) "Reclamation" means rehabilitation of surface-mined areas to those required standards set forth by the Office of Surface Mining in 30 CFR, Part 947, Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington or by a federally approved state program.

(21) "SEPA" means the State Environmental Policy Act, Chapter 43.21C RCW.

(22) "State land" means land where all or part of the subsurface coal rights are owned by the state and are managed by the department.

(23) "Surface rights" means the rights to the use of the surface of the property not including subsurface rights.

(24) "Ton" means ton as defined by RCW 79.01.668.

(25) "Treatment" means improving the physical or chemical properties of coal.

(26) "Washing" means the separation of coal from undesired contaminants through use of a fluid medium.

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.

NEW SECTION

WAC 332-14-020 JURISDICTION. These rules shall be applicable to all state lands which the department is authorized to lease for the purpose of prospecting, developing and extracting coal resources. These rules are promulgated pursuant to RCW 79.01.652 through RCW 79.01.696.

NEW SECTION

WAC 332-14-030 LANDS AVAILABLE FOR EXPLORATION AND LEASING - AUTHORITY TO WITHHOLD. State lands subject to the management of the department shall be available for coal exploration in accordance with these regulations. The department is not required to offer any tract of land for coal exploration or coal mining unless it determines that the interests of the state would be served.

NEW SECTION

WAC 332-14-040 APPLICATIONS. Applications for coal option contracts or coal mining leases shall be filed with the department in Olympia, Washington on forms provided by the department. An applicant may file more than one application and acquire more than one option contract or mining lease. Each application for a coal option contract or a coal mining lease shall be accompanied by a fee of one dollar per acre for the lands applied for but in no case less than fifty dollars. Fees shall be based upon acreages as determined by the department.

NEW SECTION

WAC 332-14-050 REFUND OF APPLICATION FEES. If an application for a coal option contract or a coal mining lease is rejected by the department, application fees may be refunded after deducting expenses incurred in investigating the character of the land.

NEW SECTION

WAC 332-14-060 COAL OPTION CONTRACT AND COAL MINING LEASE - AREA - TERM. One section of land or 640 acres, whichever is the larger area, may be the subject of a coal option contract or a coal mining lease. The term of a coal option contract may not exceed one year. The term of a coal mining lease may not exceed twenty years. The acreage in a single application does not need to be contiguous. The total area of a coal option contract or a coal mining

lease shall be limited to a logical mining unit as determined by the department.

#### NEW SECTION

WAC 332-14-070 COAL OPTION CONTRACT. The department may issue a coal option contract after investigation of the character of the state lands if the department deems it to be in the best interests of the state. An option contract may be conditioned or denied based upon the department's analysis of potential environmental impacts arising from applicant's proposed exploration activities upon the premises. Applications will be considered received by the department upon the date of its arrival at the department's Olympia office. Applications for an option contract will not be considered during the term of an existing option contract. If more than one application for a coal option contract is received on the same day for the same premises, the successful applicant will be chosen by drawing lots. The coal option contract will be prepared by the department and mailed to the applicant for execution. Applicant shall have thirty days from the date of the mailing to sign and return the option contract to the department. Failure to return the signed contract within the specified period may result in the rejection of the application.

#### NEW SECTION

WAC 332-14-080 COAL MINING LEASES - ENVIRONMENTAL ANALYSIS. The department may condition or deny a coal mining lease based upon analysis of potential adverse environmental impacts. If a coal mining lease is awarded at public auction and is subsequently denied based upon potential adverse environmental impacts, all bid deposits will be refunded.

#### NEW SECTION

WAC 332-14-090 CONVERTING COAL OPTION CONTRACT - LEASE. To convert a coal option contract to a coal mining lease, the holder must submit an application for conversion on a form provided by the department. Applicant shall provide a detailed report of the results of its investigation and exploration together with its proposed plan of development for the extraction and production of coal and a proposed reclamation plan.

#### NEW SECTION

WAC 332-14-100 PROCEDURE FOR AWARD OF COAL MINING LEASE AT PUBLIC AUCTION. The department may offer coal mining leases for lands known to contain workable coal at public auction and award the lease to the highest bidder. Public bidding shall be by sealed bid followed by oral auction. Oral bidding will be confined to persons previously submitting sealed bids. Notice of the public auction shall be given at least thirty days prior to the auction in two newspapers of general circulation, one of which shall be in the county in which the premises are located. The notice shall specify the following:

1. Place, date, and hour of the auction;
2. Legal description of the premises;
3. Royalty rates per RCW 79.01.668;
4. The minimum acceptable bonus bid.

Sealed bids shall be submitted in accordance with the notice of auction and shall be accompanied by a certified check for one-fifth of the total bid, together with the entire first year's minimum annual per acre royalty as established in the proposed lease. Unsuccessful sealed bidders will have their deposits refunded. A successful oral bidder shall submit payment within ten days of an additional payment to equal one-fifth of its total bid.

The coal lease will be awarded to the highest bidder, provided that it is duly executed and returned to the department with the balance of the bid. If an executed coal lease and the required payments are not received by the department within thirty days of the date of the auction, the proposed lease may be awarded to the next highest bidder and any monies deposited by the defaulting bidder shall be forfeited to the department.

Award of a coal mining lease does not authorize any activities thereunder until SEPA requirements have been satisfied by the lessee.

#### NEW SECTION

WAC 332-14-110 CONSOLIDATION OF LEASES. The holder of two or more coal mining leases may apply to the department for consolidation of leases in order to facilitate operations. If the department finds, after investigation and examination, that the proposed consolidation will be in the best interests of the state, approval will be issued.

#### NEW SECTION

WAC 332-14-120 RE-LEASE OF COAL LEASES. An existing lessee may make application to re-lease the premises for a like term from the department. If the department receives no other application and, after inspection and investigation regarding the development and improvement of the premises during original lease term, determines that it is in the best interests of the state to re-lease the premises, it shall fix the royalties for the ensuing term and issue a renewal lease for a term up to twenty years. If application is received from a new applicant, the state shall lease the premises at public auction.

If a person other than the original lessee shall be awarded the lease, they shall assume reclamation obligations and reimburse the original lessee for the value of the structures, improvements or development work which adds value to the premises as determined by the department. When bids are evaluated, the department shall extend a preference to the existing lessee to meet the terms of a higher competing offer.

An application for re-lease shall be filed with the department at least sixty days, but not more than one year prior to expiration of the lease. Unless a timely application for re-lease is made, the department will not recognize any added premises values nor will reimbursement be required of a new lessee.

#### NEW SECTION

WAC 332-14-130 LEASE-MINIMUM ANNUAL ROYALTY. The lessee shall pay the first year's minimum annual per acre royalty prior to execution of the lease. Each subsequent minimum per acre royalty payment shall be paid in advance each year. Minimum per acre royalty payment shall be credited against production royalties due for the same lease year.

#### NEW SECTION

WAC 332-14-140 LATE ROYALTY PAYMENTS - INTEREST RATE. Past due royalty payments shall bear interest at the highest rate permitted by RCW 19.52.020 per month. Costs of collection, including attorney's fees, shall be recoverable in addition to interest.

#### NEW SECTION

WAC 332-14-150 PROCEDURE WHERE SURFACE RIGHTS ENCUMBERED. The holder of a coal option contract or a coal lessee shall have a right of action in the superior court of the county in which the premises are located to ascertain and determine the amount of damages, if any, which will accrue to the holder of surface rights by reason of the exercise of any of the exploratory, prospecting or mining rights conveyed by the department if agreement cannot be reached regarding damages. The term of any coal option contract or coal mining lease shall begin thirty days after the entry of the final judgment in such action, if the action has been pursued with due diligence.

#### NEW SECTION

WAC 332-14-160 SURETY ARRANGEMENTS. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other surety arrangement satisfactory to the department, in an amount determined by the department, in order to guarantee performance of the terms and conditions of an option contract or mining lease. Such surety arrangement shall be submitted for approval prior to commencing operations and shall be not less than one thousand dollars for an option contract and not less than ten thousand dollars for a mining lease. The department may, during the term of contract or lease, increase the amount of the surety arrangement for operational changes requiring increased levels of performance. The department may authorize a single surety arrangement for more than one state lease held by a person.

NEW SECTION

WAC 332-14-170 **PLAN OF ACTIVITIES – COAL OPTION CONTRACT.** The applicant for a coal option contract shall submit a plan of activities which shall include but is not limited to the following:

- (1) The type, location, and schedule of exploratory drilling and trenching activities;
- (2) Location of other significant activities, including type and depth of drilling, trenching, and adit construction;
- (3) Proposed roads;
- (4) Reclamation, including method of plugging and sealing drill holes and adits;
- (5) Proposed erosion control plans for roads, landings, drilling platforms, and trenches; and
- (6) Proximity to surface water including proposed stream crossing.

If the holder of a coal option contract desires changes to the approved plan of activities, department approval is required.

NEW SECTION

WAC 332-14-180 **PLAN OF DEVELOPMENT/OPERATION/RECLAMATION – COAL MINING LEASE.** The successful bidder for a coal mining lease pursuant to RCW 79.01.672 shall submit a plan for mining to include a fully detailed plan for orderly development and extraction of coal and reclamation of the premises. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

NEW SECTION

WAC 332-14-190 **RECLAMATION – FEDERAL PERMIT REQUIRED.** All surface mining and reclamation activities shall be in accordance with the terms of a surface mine reclamation permit obtained from the U.S. Department of the Interior, Office of Surface Mining and Enforcement or a federally approved state permit.

NEW SECTION

WAC 332-14-200 **DILIGENCE AND FORFEITURE** The holder of any coal mining lease shall expend at least fifty thousand dollars per year in exploration, mine development, mine operation, or reclamation activities on the premises, or on the logical mining unit of which the lands are a part unless a written waiver is issued by the department. Proof of such expenditure shall be submitted to the department on the anniversary date of the lease. Failure to expend this amount of money may result in forfeiture of the coal lease. Applicants for coal leases shall identify the logical mining unit in which the lands applied for lie. In the event the department, after investigation and examination, finds that the proposed logical mining unit will be in the best interest of the state, such designation of a logical mining unit will be approved. In the event the department finds that the proposed logical mining unit will not be in the best interest of the state, the diligence requirements shall apply only to the lands included within the lease. The boundaries of a designated logical mining unit may be adjusted if a coal lease is renewed.

NEW SECTION

WAC 332-14-210 **ASSIGNMENTS.** Coal mining leases are assignable in accordance with RCW 79.01.292. Coal option contracts are not assignable.

NEW SECTION

WAC 332-14-220 **TIMBER.** No timber owned by the state shall be cut, removed or destroyed by a lessee prior to approval by the department. Lessee shall mark all timber proposed to be cut, removed or destroyed and the department shall appraise the timber. The department shall have the option of selling the timber or allowing the lessee to cut, remove or destroy it upon payment of its appraised value.

NEW SECTION

WAC 332-14-230 **USE OF PREMISES.** On premises consumption and blending, commingling, washing or storage of coal may be authorized as a part of an approved plan of development and mining without payment of additional compensation to the department.

NEW SECTION

WAC 332-14-240 **RIGHT TO AUDIT BUSINESS RECORDS.** The department may, during normal business hours, examine the premises, improvements, operations or production facilities and may inspect books, records or federal income tax returns of the lessee in order to ascertain the production of coal and to determine compliance with the terms and conditions of the coal lease, approved development, mining or reclamation plans or these regulations.

NEW SECTION

WAC 332-14-250 **PLUGGING AND ABANDONMENT PROCEDURES FOR EXPLORATION DRILL HOLES.** All exploration drill holes shall be properly plugged and abandoned by the holder of any coal option contract or coal mining lessee according to the following requirements:

1. No drill holes shall be plugged and abandoned until the method and manner of plugging has been approved by the department. Drill holes not necessary for hydrological monitoring measurements shall be plugged and abandoned as soon as practical following drilling and probing. Hydrological monitoring holes shall be cased and capped while in use.
2. All drill holes in which gas is present, or which exhibit artesian ground water flow, or which encounter ground water zones, shall be plugged with grout, cement or approved gel. These plugs shall extend a minimum of 100 feet above and below all ground water zones or to the top and bottom of the hole.
3. Plugs below the water level of the drill hole must be made by a method which precludes dilution of the plugging material.
4. All exploration drill holes must have surface plugs sufficient to effect a permanent seal. The top of the plug must be installed deeper than three feet below the original surface with a permanent identification monument in the soil above the plug.
5. Unused drilling supplies and debris extraneous to drilling operations must be removed from the premises and the excavation must be backfilled to its approximate original land surface. Each drill site shall be graded to its approximate original contour and shall be left in a stable condition. Within thirty days after completion of all exploration activities, the lessee shall file a sworn statement on a form provided by the department setting forth in detail the methods used in sealing all drill holes and restoring the premises to a stable condition.

NEW SECTION

WAC 332-14-260 **ACCESS ROAD CONSTRUCTION AND MAINTENANCE STANDARDS.** Access roads authorized to be constructed and/or maintained on state lands or under right of way easement agreements shall conform to standards approved by the department.

NEW SECTION

WAC 332-14-270 **EXPLORATION REPORTS – CONFIDENTIALITY.** A coal option contract holder or a coal mining lessee shall submit a semi-annual report to the department of all geophysical, geologic and qualitative coal data, analyses and maps which are gathered or prepared during exploration activities on the premises. This report shall include sampling information, geologic, geophysical and driller's logs and all analytical results. Sampling or drilling points shall be referenced by bearing and distances from identifiable land marks or by legal description. Such data, analyses or maps shall be confidential and not available for public inspection or copying for five years from the date of filing the report.

NEW SECTION

WAC 332-14-280 **COMPLIANCE WITH OTHER LAWS.** All development or production activities authorized by the lease shall be conducted in accordance with applicable federal and state laws, rules and regulations. Compliance shall be the sole responsibility of the holder of any coal option contract or coal mining lessee and not the responsibility of the department.

**WSR 85-04-063**  
**PROPOSED RULES**  
**1989 CENTENNIAL COMMISSION**  
 [Filed February 6, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the 1989 Washington Centennial Commission intends to adopt, amend, or repeal rules concerning the procurement of services and the selection of projects;

that the agency will at 11:30 a.m., Thursday, March 21, 1985, in the Office of the Secretary of State, Legislative Building, Olympia, 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 chapter 27.60 RCW.

The specific statute these rules are intended to implement is chapter 27.60 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before Friday, March 15, 1985, at 5 p.m.

Dated: February 6, 1985

By: Putnam Barber  
 Executive Secretary

#### STATEMENT OF PURPOSE

**Description of Purpose:** Establish rules for the procurement of services and the selection of projects for support.

**Statutory Authority:** Chapter 27.60 RCW.

**Summary of Rule:** Forbids discrimination. Establishes a process for recognizing multicounty projects; establishes a selection committee to assist in the choice of authors for commission sponsored major publications.

**Reasons Supporting Proposed Action:** Necessary to orderly conduct of commission's statutory responsibilities.

**Agency Personnel Responsible for Drafting, Implementation and Enforcement:** Putnam Barber, executive secretary.

**Person or Organization Proposing Rule:** The 1989 Washington Centennial Commission.

#### AMENDATORY SECTION (Amending Resolution No. 84-2, filed 1/4/85)

WAC 100-100-070 **OUTSIDE RESOURCES.** (a) The commission encourages the use of other state agencies, employees, and outside groups to implement and support the 1989 centennial.

(2) The commission may, from time to time, provide nonfinancial, organizational support and assistance to individuals and groups in the formative stages in order to facilitate the creation of the organizations with structure and characteristics suited to the operation of one or more activities in celebration of the centennial.

(3) The commission may contract with other agencies, persons, and groups in appropriate manner, to accomplish commission activities, in accordance with state law.

(4) In its own activities, and in those activities which it sponsors, supports or recognizes, the commission supports state and federal civil rights and anti-discrimination laws and regulations, encourages open access to persons of all races, creeds and backgrounds, and forbids discrimination in any form against the handicapped, minorities or any other people.

(5) Publications—Selection of Authors. In the event that the commission elects to sponsor the preparation of any book-length manuscript intended for trade or commercial publication, a sub-committee of no less than five persons will be appointed by the chairman, upon the advice of an including the chairman of the publications committee (if any), to identify by such means as they shall determine a list of appropriate potential authors or groups of authors (which list shall not include any member of the sub-committee, the commission or its staff). Proposals will then be solicited from the persons or groups on this list. With the advice of the sub-committee, and of the attorney general, the director will develop the necessary agreement or agreements to govern the preparation of a manuscript, subject to budget and any other provisions adopted by the commission.

**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 Resolution No. 84-2, filed 1/4/85)

WAC 100-100-100 **INVITATION TO THE PUBLIC.** The commission enthusiastically believes the 1989 centennial of Washington's statehood should be an event celebrated by, enjoyed by, participated in, and positively affecting the greatest number and variety of Washingtonians as possible — young, old, of varied ethnic and cultural backgrounds and interests. The commission encourages and actively seeks citizen input, thoughts, and suggestions, to the end that, in 1989, all Washingtonians can join in and say "CELEBRATE! '89" — our state's past and its future.

The commission anticipates that a wide variety of activities will be proposed in connection with the anniversary of Washington statehood which will seek to involve the residents of more than one county and which will require no financial or other support from the commission. In order to encourage such activities, and to facilitate appropriate communications among sponsors, any non-profit activity will be considered for the list of recognized centennial activities upon application to the chairman. In making application, sponsors will provide a brief written description of the proposed activity, including the name, address and telephone number of a person who may be contacted for further information, and a declaration of the non-profit nature of both the sponsor and the activity. In reviewing proposed projects, the chairman may call upon the assistance of a statewide advisory committee, who will determine whether or not a given projects meets criteria of suitability, value, consistency with the commission's goals, and non-profit and/or non-commercial status. The list of recognized centennial activities will be published from time to time by the commission in its newsletter or other convenient form.

**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 85-04-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF FISHERIES**  
 [Order 85-10—Filed February 6, 1985]

I, William R. Wilkerson, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to personal use 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 razor clam stocks are rebuilding from levels depressed by parasitic disease, and a harvestable surplus does not exist at this time.

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 February 5, 1985.

By William R. Wilkerson  
Director

### NEW SECTION

**WAC 220-56-36000H RAZOR CLAMS—AREAS AND SEASONS.** *Effective immediately until further notice it is unlawful for any person to dig for, take, or possess razor clams taken for personal use from any beach in razor clam areas 1, 2, or 3.*

### **WSR 85-04-065**

#### **PROPOSED RULES**

#### **DEPARTMENT OF FISHERIES**

[Filed February 6, 1985]

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., Tuesday, March 12, 1985, in Building 9, Rooms A and B, NOAA Regional Center, Seattle, 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 19, 1985.

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 12, 1985.

Dated: February 6, 1985

By: William R. Wilkerson  
Director

### **STATEMENT OF PURPOSE**

Title: WAC 220-20-010, 220-20-021, 220-44-020, 220-44-080, 220-48-005, 220-48-011, 220-48-013 and 220-48-015.

Description of Purpose: Modify rules regarding commercial bottomfish harvest.

Statutory Authority: RCW 75.08.080.

Summary of Rule: WAC 220-20-010 disallows peewing of discards; clarifies section; 220-20-021 requires sale of bottomfish in excess of one daily bag limit; 220-44-020 prohibits commercial smelt fishing off Olympic National Park; 220-44-080 establishes coastal otter trawl logbook requirement; 220-48-005 establishes minimum size for Puget Sound lingcod; 220-48-011 disallows smaller codends in Area 20A; decreases minimum size in pelagic trawl; 220-48-013 establishes Puget Sound otter trawl logbook requirement; and 220-48-015 closes three Puget Sound areas to bottom and beam trawl. Sets minimum depth for bottom trawl.

Reasons Supporting Proposed Action: WAC 220-20-010, peewing is unnecessarily damaging to food fish; spear fishing is lawful for carp; 220-20-021, fish caught using commercial gear and kept for personal use are unrecorded, and management needs require knowledge of amounts removed from the resource; 220-44-020, commercial fishing is incompatible with the recreational emphasis of Olympic National Park; 220-44-080, voluntary logbook completion has declined, and the information obtained from logbooks is an important management tool; 220-48-005, a minimum 22 inch size on lingcod would increase the number of spawning lingcod and would increase the numbers of lingcod greater than 30 pounds from 3% to 5%; 220-48-011, there is no directed pollack fishery in 20A, and thus no need for a small mesh fishery; 3 inch mesh is better able to harvest the available component in the whiting fishery; 220-48-013, (see WAC 220-44-080); and 220-48-015, bottom trawl is incompatible with soft shelled crab; setting minimum depths for trawling will prevent damage to herring spawning beds and minimize impact on incidental crab catch.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, Washington, 754-2429; Implementation: Mark Pederson, 115 General Administration Building, Olympia, Washington, 753-6600; and Enforcement: James W. McKillip, 115 General Administration Building, Olympia, Washington, 753-6585.

This rule is proposed by the Washington State Department of Fisheries.

Comments: None.

These proposals are not the result of federal law or court order.

Small Business Economic Impact Statement: These rules are of general applicability to bottom fishermen. No impact on 10% of the businesses in any one three digit industrial classification nor 20% of all businesses is expected.

### AMENDATORY SECTION (Amending Order 84-24, filed 3/27/84)

**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 to have in possession or under control or custody any 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 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 pallasii)
(except 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 while commercially fishing in an area to fish for or possess food fish or shellfish in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(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 department of fisheries approved and registered buoy brand 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) 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, except as provided for in this subsection: ((PROVIDED; That))

(a) It shall be lawful to use a dip net, gaff or club in the landing of food fish taken by personal-use angling.

(b) It shall be lawful to use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the food fish or shellfish while sorting commercial catches during the act of discarding those fish that are not going to be retained.

(c) It shall be lawful to use a spear in underwater spear fishing as provided for in WAC 220-56-160.

(d) It shall be lawful to use a spear to take carp as provided for in WAC 220-56-280.

(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 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 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 82-105, filed 8/13/82)

WAC 220-20-021 **SALE OF COMMERCIALY CAUGHT STURGEON AND BOTTOMFISH.** (1) It shall be unlawful for any person licensed to take sturgeon or bottom fish for commercial purposes under chapter 75.28 RCW to:

(a) Keep ~~((any))~~ in excess of three sturgeon ~~((he takes))~~ not less than 48 inches in length nor more than 72 inches in length or more than the equivalent of one limit of sport caught bottom fish taken under such license for personal use~~((or))~~. Any lingcod taken for personal use under such license east of the mouth of the Sekiu River must be greater than 22 inches in length.

(b) Sell any sturgeon ~~((he takes))~~ or bottom fish taken under such license to anyone other than a licensed wholesale dealer within or outside the state of Washington, except that a person who is ~~((himself))~~ licensed as a wholesale dealer under the provisions of RCW 75.28.300 may sell ~~((his catch))~~ to individuals or corporations other than licensed wholesale dealers~~((or))~~.

(c) Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of any sturgeon taken under such license prior to the time that the sturgeon is sold under subsection (1)(b) of this section.

(2) It shall be unlawful for any wholesale dealer licensed under RCW 75.28.300 to purchase or attempt to purchase sturgeon eggs from sturgeon taken by any person licensed to take sturgeon for commercial purposes under chapter 75.28 RCW if the sturgeon eggs have been removed from the body cavity of the sturgeon prior to the sale of the sturgeon.

**AMENDATORY SECTION** (Amending Order 84-24, filed 3/27/84)

WAC 220-44-020 **COASTAL BAITFISH GEAR.** (1) 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.

(2) It shall be 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. 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, or from any waters bounding the Olympic National Park at any time.

(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.

(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.

**NEW SECTION**

WAC 220-44-080 **OTTER TRAWL LOGBOOK REQUIRED.** It shall be unlawful for any operator of otter trawl gear to fail to possess and maintain a "Washington-Oregon-California Trawl Logbook" while fishing in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, 63, or Puget Sound Marine Fish-Shellfish Management and Catch Reporting Area 29. The logbook must be kept aboard the vessel while it is fishing in the above areas, or while having fish aboard that were caught in the above areas. The vessel operator must submit the completed logbook for inspection immediately upon request by authorized department of fisheries representatives. For each vessel trip, the operator shall record the vessel name and registration number, crew size, fuel used, departure and return date and time, general locality fished and buyers of fish landed. For each trawl tow conducted the vessel operator shall record the month and day, duration of tow, area fished, depth fished, net type, target species, and estimated weight of each species of fish retained. The departments copies of completed log sheets must be submitted to

the department for each month in which fishing activity occurs. The departments copies must be received within ten days following any calendar month in which fishing activity occurred, or within ten days 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 220-48-005 **PUGET SOUND BOTTOMFISH—GENERAL PROVISIONS.** (1) It is unlawful to retain for commercial purposes any English sole less than 12 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas except Areas 28A, 28B, 28C, and 28D.

(2) It is unlawful to take, fish for, or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial bottomfish gear in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

(3) It is unlawful to take or possess lingcod taken for commercial purposes with any gear the entire year in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 24A, 24B, 24C, 24D, 25B, 25C, 25D, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(4) It is unlawful to retain for commercial purposes any lingcod less than 22 inches in length taken by any commercial bottomfish gear in all state waters east of the mouth of the Sekiu River.

(5) It is unlawful to take or possess lingcod taken for commercial purposes with any gear from December 1 through April 14 in Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 25A, 25E and 29.

~~((5))~~ (6) 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.

**AMENDATORY SECTION** (Amending Order 84-24, filed 3/27/84)

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 in the codend section of not less than 3 ~~((+2))~~ inches while fishing for Pacific whiting during the seasons 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)))~~ and (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.

**NEW SECTION**

WAC 220-48-013 **BEAM TRAWL AND OTTER TRAWL LOGBOOKS.** It shall be unlawful for any operator of beam trawl or otter trawl gears to fail to obtain and accurately maintain a "Washington Inside Waters Trawl Logbook" while fishing for, or while in possession of, bottomfish taken from east of the mouth of the Sekiu River. A logbook must be obtained from the Washington department of fisheries and must be kept aboard the vessel while fishing, or in possession of bottomfish taken east of the mouth of the Sekiu River. The vessel operator must submit the completed logbook for inspection immediately upon request by authorized department of fisheries representatives. For each fishing trip, and prior to landing, vessel operators shall record the vessel name and state registration number, the dates and times of departure from and return to port, and the buyer(s) of the fish landed. In addition, for each trawl tow conducted during the trip,

the vessel operator shall record the month and day, duration of the tow, specific area fished, depth fished, net type, target species and estimated weight of each species of fish retained. The department copies of the completed logbook sheet(s) 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 84-24, filed 3/27/84)

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)) are 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 Klapot Point to Gibson Spit (Sequim Bay) are closed the entire year.~~

(c) Areas 20A and 21A are closed from April 15 to July 15, or until the opening of the Puget Sound shellfish pot recreational crab fishery season, whichever is earlier.

(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)) Area 24A is closed from April 15 to July 15, or until the opening of the Puget Sound shellfish pot recreational crab fishery season, whichever is earlier.~~

(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).

(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.

(7) It is unlawful to operate bottom trawl or beam trawl in waters less than 60 feet in depth in Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 25A, 25B, 25C, 25D, 25E, 26A, or 26B, and it is unlawful to operate bottom trawl or beam trawl in waters less than 30 feet deep in all other waters of Puget Sound east of the mouth of the Sekiu River.



## Table of WAC Sections Affected

### KEY TO TABLE

**Symbols:**

- AMD = Amendment of existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- REP = Repeal of existing section
- READOPT = Readoption of existing section
- REAFF = Order assuming and reaffirming rules
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule
- STMT = Statement regarding previously adopted rule

**Suffixes:**

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- 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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WSR # shows the issue of the Washington State Register where the document may be found; the last three digits show the sequence of the document within the issue.

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