

Washington State Register

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CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: The 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

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A copy of each document filed with the code reviser's office, pursuant to chapter 28B.19 or 34.04 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to noon and from 1 p.m. to 5 p.m. Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (206) 753-7470 (SCAN 234-7470).

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CERTIFICATE

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

DENNIS W. COOPER
Code Reviser

WASHINGTON STATE REGISTER

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Code Reviser

Gary Reid
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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

I. 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

<u>Issue No.</u>	<u>Closing Dates¹</u>			<u>Distribution Date</u>	<u>First Agency Action Date³</u>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS ² or 10 p. max. Non-OTS		
<i>For Inclusion in—</i>	<i>File no later than—</i>			<i>Count 20 days from—</i>	<i>For hearing/adoption on or after</i>
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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

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

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

³"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 85-07-044
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health)

[Filed March 19, 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 certificate of need, amending chapter 248-19 WAC;

that the agency will at 10:00 a.m., Wednesday, May 22, 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 May 31, 1985.

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

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

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 22, 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 May 8, 1985. The meeting site is in a location which is barrier free.

Dated: March 18, 1985

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

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Subject: Amending chapter 248-19 WAC.

Purpose of the Amendment: To comply with changes in chapter 70.38 RCW, to modify project review procedures, and to amend certificate of need coverage of home health agencies.

The rules are necessary for conformance with chapter 70.38 RCW, and to improve project review procedures.

Statutory Authority: Chapter 70.38 RCW.

Summary of Rule Changes: WAC 248-19-210 Program purpose. Elimination of redundant language on program purpose stated in RCW 70.38.015; 248-19-220 Definitions. Major changes include: (18) Ex parte contact - new definition, (26) Home health agency - change definition, (27) Home health services - new definition, (32) Institutional health services - change definition, and (46) Regional health service - new definition, other housekeeping changes; 248-19-230 Applicability of

chapter 248-19 WAC. Description of projects subject to and exempt from certificate of need review; 248-19-270 Letter of intent. Change in requirements for letters of intent. Criteria for determining projects subject to concurrent review; 248-19-280 Submission and withdrawal of applications. (1) through (5) - housekeeping changes; 248-19-295 Amendment of certificate of need applications - new section. This section includes procedures for amendment of certificate of need applications which have been struck from other WAC sections, and adds provisions for amending applications subject to concurrent review; 248-19-300 Categories of review. (1) and (2) - amendments to this section deal with different review paths for different types of projects; 248-19-310 Notification of beginning of review. (1) through (3) - changes in notification requirements when a certificate of need application review period begins; 248-19-320 Public hearings. (1) through (7) - include housekeeping changes on the public hearing component of the certificate of need review process; 248-19-326 Ex parte contact. This new section sets forth limitations on communications between parties in certificate of need reviews after the conclusion of review activities of the regional health systems agencies and the Hospital Commission; 248-19-327 Concurrent review process. This new section sets forth the types of projects for which DSHS may publish concurrent review schedules (1), and procedural requirements for applications subject to concurrent review (2) through (4); 248-19-330 Regular review process, 248-19-340 Expedited review process, and 248-19-350 Emergency review process. Housekeeping amendments on the process for applications subject to regular, expedited and emergency review; 248-19-400 Determination of cost containment. Changes in this section amend cost containment review criteria. This criterion change recognizes that "efficiency" is a consideration in determining whether a project is superior to alternative means of meeting identified needs. This criterion change adds the consideration of the "scope" (size) of a construction project in determinations that such a project fosters the containment of health care costs. The preexisting criterion concerning special needs of health care facilities with respect to energy conservation is unnecessary and thus eliminated, this because energy conservation is also included as a consideration in cost containment review criterion WAC 248-19-400 (2)(a). The existing criterion concerning project "efficiency" and "productivity" is unnecessary and thus eliminated, this because these considerations are dealt with in the context of review criterion of WAC 248-19-400(1). New review criterion WAC 248-19-400(4) implements the substantive content of RCW 70.38.115 (2)(f); 248-19-403 Major medical equipment not owned by or located in a health care facility. (1) through (5) - housekeeping changes; 248-19-405 Exemption from requirements for a certificate of need, 248-19-410 Review and action on HMO projects, 248-19-415 Projects proposed for the correction of deficiencies, 248-19-420 Written findings and actions on certificate of need applications, and 248-19-430 Provision for reconsideration decision. All these sections include housekeeping

changes; 248-19-440 Issuance, suspension, denial, revocation and transfer of a certificate of need. (6)(d) - this change references substantive review criteria in WAC 248-19-370, 248-19-380, 248-19-390 and 248-19-400 which are to be considered in determining whether or not a certificate of need issued to one person should be transferred to another; 248-19-450 Circumstances for withdrawing an amended certificate of need. House-keeping changes; 248-19-460 Validity and extension. (2) - "substantial and continuing progress" toward commencement toward a construction project is described; and 248-19-470 Monitoring of approved projects, 248-19-475 Withdrawal of a certificate of need, and 248-19-480 Right and notice of appeal. House-keeping changes.

Person Responsible for the Enforcement of the Rules: Frank Chesnut, Director, Certificate of Need Program, mailstop ET-33, phone (206) 753-5854.

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

No economic impact statement is required under the Regulatory Fairness Act, Laws of 1982.

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

WAC 248-19-210 PURPOSE OF CERTIFICATE OF NEED PROGRAM. The purpose of the certificate of need program is to ensure the obligation of capital expenditures, the development and offering of institutional health services, and the acquisition of major medical equipment are consistent with the public policy of the state of Washington, set forth in RCW 70.38.015.

~~((1)) That planning for promoting, maintaining, and assuring a high level of health for all citizens of the state, and for the provision of health services, health manpower, health facilities, and other resources is essential to the health, safety, and welfare of the people of the state. Such planning is necessary on both a state-wide and regional basis and must maintain responsiveness to changing health and social needs and conditions. The marshaling of all health resources to assure the quality and availability of health services to every person must be the goal of such planning, which must likewise assure optimum efficiency, effectiveness, equity, coordination, and economy in development and implementation to reach that goal.~~

~~(2) That the development and offering of new institutional health services should be accomplished in a manner which is orderly, timely, economical, and consistent with the effective development of necessary and adequate means of providing quality health care for persons to be served by such facilities without unnecessary duplication or fragmentation of such facilities;~~

~~(3) That the development of health resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities;~~

~~(4) That the development and maintenance of adequate health care information and statistics essential to effective health planning and resources development be accomplished; and~~

~~(5) That the strengthening of competitive forces in the health services industry, wherever competition and consumer choice can constructively serve to advance the purposes of quality assurance, cost effectiveness, and access, should be implemented.))~~

AMENDATORY SECTION (Amending Order 2082, filed 3/14/84)

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

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

(2) "Advisory review agencies" means the appropriate regional health council and, in the case of hospital projects, the hospital commission.

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

~~((3))~~ (4) "Ambulatory care facility" means any place, building, institution, or distinct part thereof not a health care facility as defined in this section and operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four-hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

~~((4))~~ (5) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using such facility is not extended to physicians or dentists outside the individual or group practice.

~~((5))~~ (6) "Applicant," except as used in WAC 248-19-390, means any person proposing to engage in any undertaking subject to review under the provisions of chapter 70.38 RCW and ~~((Title XV of the Public Health Service Act as amended by P.L. 96-79))~~ federal law.

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

~~((6))~~ (7) "Annual implementation plan" means a description of objectives which will achieve goals of the regional health ((systems)) plan and specific priorities among the objectives. The annual implementation plan is for a one-year period and must be reviewed and amended as necessary on an annual basis.

~~((7))~~ (8) "Board" means the Washington state board of health.

~~((8))~~ (9) "Capital expenditure" means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, such acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a health care facility, which if acquired directly by such facility, would be subject to review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review.

~~((9))~~ (10) "Certificate of need" means a written authorization by the secretary's designee for a person to implement a proposal for one or more undertakings.

~~((10))~~ (11) "Certificate of need ((omit)) program" means that organizational ((omit)) program of the department responsible for the management of the certificate of need program.

~~((11))~~ (12) "Commencement of ((construction)) the project" means whichever of the following occurs first: In the case of a construction project, giving notice to proceed with construction to a contractor for a construction project; beginning site preparation or development; excavating or starting the foundation for a construction project; or beginning alterations, modification, improvement, extension, or expansion of an existing building. In the case of other projects, placing an order for capital equipment or initiating a new institutional health service.

~~((+2))~~ (13) "Construction" means the erection, building, alteration, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

~~((+3))~~ (14) "Council" means the state health coordinating council established under the provisions of chapter 70.38 RCW and ~~((Title XV of the Public Health Service Act as amended by P.L. 96-79))~~ federal law.

~~((+4))~~ (15) "Days," except when called "working days," means calendar days counted by beginning with the day after the date of the act, event, or occurrence from which the designated period of time begins to run. If the last day of the period so counted should fall on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period shall run until the end of the first working day following the Saturday, Sunday, or legal holiday.

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

~~((+5))~~ (16) "Department" means the Washington state department of social and health services.

(17) "Ex parte contact" means any oral or written communication between any person in the certificate of need program or any person involved in the decision respecting an application for or the withdrawal of a certificate of need and the applicant for or holder of a certificate of need, a person acting on behalf of the applicant or holder, or any person with an interest regarding issuance or withdrawal of a certificate of need.

~~((+6))~~ (18) "Expenditure minimum" means one ~~((hundred fifty thousand))~~ million dollars for the twelve-month period beginning with ~~((October 1979))~~ July 24, 1983, ~~((and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period, in an index established by rules and regulations by the department for the purpose of making such adjustment))~~ adjusted annually by the department according to the provisions of chapter 248-156 WAC, or a lesser amount as required by federal law as necessary to the receipt of federal funds by the state.

(19) "Federal law" means P.L. 93-641 as amended or its successor.

~~((+7))~~ (20) "Health care facility" means hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, both skilled nursing facilities and intermediate care facilities, kidney disease treatment centers including freestanding ~~((hemodialysis))~~ dialysis units, ambulatory surgical facilities, rehabilitation facilities, hospices and home health agencies, and includes such facilities when owned and operated by the state or a political subdivision or instrumentality of the state and such other facilities as required by ~~((Title XV of the Public Health Service Act as amended by P.L. 93-641))~~ federal law and implementing regulations, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts. In addition, the term does not include any nonprofit hospital:

(a) Operated exclusively to provide health care services for children;

(b) Which does not charge fees for such services;

(c) Whose rate reviews are waived by the state hospital commission;

and

(d) If not contrary to federal law as necessary to the receipt of federal funds by the state.

~~((+8))~~ (21) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

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

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

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subsection ~~((+8)(b)(i))~~ (21)(b)(i) of this section to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily:

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

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

(22) "Health service area" means a geographic region appropriate for effective health planning including a broad range of health services and a population of at least four hundred fifty thousand persons.

~~((+9))~~ (23) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

~~((+0))~~ (24) "Health systems agency" means a ~~((public regional planning body or a private nonprofit corporation organized and operated in a manner consistent with the laws of the state of Washington and P.L. 93-641 and capable of performing each of the functions described in RCW 70.38-085, and is capable as determined by the secretary of the United States Department of Health and Human Services, upon recommendation of the governor or the council, of performing each of the functions described in the federal law, Title XV of the Public Health Service Act as amended by P.L. 96-79.~~

"Appropriate health systems agency" means the health systems agency for the health service area where a particular project is to be located regional health council as defined in subsection (43) of this section. This term is defined in RCW 70.38.025.

~~((+1))~~ (25) "Health systems plan" means a ~~((plan established by a health systems agency which is a detailed statement of goals and resources required to reach those goals as described in the federal law, Title XV of the Public Health Service Act as amended by P.L. 96-79))~~ regional health plan as defined in subsection (44) of this section. This term is defined in RCW 70.38.025.

~~((+2))~~ (26) "Home health agency" means ~~((any))~~ an entity ~~((which is or is to be certified as a provider of home health services in the Medicaid or Medicare program))~~ coordinating or providing the organized delivery of home health services as defined in subsection (27) of this section.

(27) "Home health services" means the provision of nursing services along with at least one other therapeutic service or with a supervised home health aide service to ill or disabled persons in their residences on a part-time or intermittent basis, as approved by a physician. The term does not include:

(a) Therapeutic services not in conjunction with nursing services, and nursing services not in conjunction with therapeutic services.

(b) A registry or referral service for nurses not acting in conjunction with therapists or others, or for therapists or others not acting in conjunction with nurses.

(c) Essentially nonhealth services, such as chore services, homemaking services, sitting services, and social services.

(d) The services provided by a hospice as defined in subsection (28) of this section.

(e) Other specific activities found by the department to be not home health services in a determination of applicability under WAC 248-19-240 or other determination, consistent with the policy of chapter 70.38 RCW and these regulations.

~~((+3))~~ (28) "Hospice" means any public or private entity, center, institution, or distinct part or parts thereof certified or to be certified as a hospice provider in the Medicare program or certified by the state of Washington to provide hospice services or providing a coordinated program of home and inpatient services for the terminally ill. Services provided by a hospice are primarily palliative and supportive rather than curative in nature, including bereavement care to the family after the patient's death, and provided by an interdisciplinary team. The services are designed to meet the physiological, psychological, social, and spiritual needs of the patient and his or her family.

~~((+4))~~ (29) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or any state-owned and operated institution primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services of injured, disabled, or sick persons. Such term includes tuberculosis hospitals but does not include psychiatric hospitals.

~~((+5))~~ (30) "Hospital commission" means the Washington state hospital commission established pursuant to chapter 70.39 RCW.

~~((+6))~~ (31) "Inpatient" means a person receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

~~((27))~~ (32) "Institutional health services" means:

(a) Health services provided in or through health care facilities and entailing annual (direct) operating costs of at least ~~((seventy-five))~~ five hundred thousand dollars for the twelve-month period beginning with ~~((October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period adjusted to reflect the change in the preceding twelve-month period in an index established by rules and regulations by the department))~~ July 24, 1983, and adjusted annually by the department according to the provisions of chapter 248-156 WAC, or a lesser amount as required by federal law and established by the department by rule;

(b) "Annual operating costs" are the expenses of a program or service which under generally accepted accounting principles are not properly capitalized, but are entirely deducted from revenue during the twelve-month accounting period in order to arrive at net income or loss for that accounting period. For hospitals, line 27, "total expenses for rate setting" on the state hospital commission cost center summary (form cc) shall be used in determining annual operating costs.

(c) Provided that no new health care facility may be initiated as an institutional health service.

~~((28))~~ (33) "Intermediate care facility" means any institution or distinct part thereof certified as an intermediate care facility for participation in the Medicaid (Title XIX of the Social Security Act) program.

~~((29))~~ (34) "Kidney disease treatment center" means any place, institution, building or agency or a distinct part thereof equipped and operated to provide services, including dialysis ~~((services))~~ and/or kidney transplantation, to persons who have end-stage renal disease.

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

~~((31))~~ (35) "Major medical equipment" means a single unit of medical equipment or a single system of components used for the provision of medical and other health services and costing in excess of one ~~((hundred fifty thousand))~~ million dollars, ~~((except that))~~ adjusted by the department according to the provisions of chapter 248-156 WAC, or a lesser amount as required by federal law and established by the department by rule. Such term does not include dental equipment or medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital, and the clinical laboratory has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such act. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

~~((32))~~ (36) "May" means ~~((permissive or discretionary))~~ an act is permitted, but not required.

~~((33))~~ (37) "Nursing home" means any home, place, institution, building or agency or distinct part thereof operating or maintaining facilities providing convalescent or chronic care, or both, for a period in excess of twenty-four consecutive hours for three or more patients not related by blood or marriage to the operator, who, by reason of illness or infirmity, are unable properly to care for themselves. Convalescent and chronic care may include, but not be limited to, any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside nursing care, application of dressings and bandages, and carrying out of treatment prescribed by a duly licensed practitioner of the healing arts. The term "nursing home" includes any such entity owned and operated by the state or licensed or required to be licensed under the provisions of chapter 18.51 RCW and any other intermediate care facility or skilled nursing facility as these terms are defined in this section. The term "nursing home" does not include: General hospitals or other places providing care and treatment for the acutely ill and maintaining and operating facilities for major surgery or obstetrics or both; psychiatric hospitals as defined in this section; private establishments, other than private psychiatric hospitals, licensed or required to be licensed under the provisions of chapter 71.12 RCW; boarding homes licensed under the provisions of chapter 18.20 RCW; or any place or institution operated to provide only board, room, and laundry to persons not in need of medical or nursing treatment or supervision.

~~((34))~~ (38) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person proposing such capital expenditure on behalf of

the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

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

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

~~((35))~~ (39) "Offer," when used in connection with health services, means the health facility provides or holds itself out as capable of providing or as having the means for the provision of one or more specific health services.

~~((36))~~ (40) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

~~((37))~~ (41) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, made for architectural designs, plans, drawings, or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which may be considered the "commencement of ~~((construction))~~ the project" as this term is defined in this section.

~~((38))~~ (42) "Project" means any and all undertakings which may be or are proposed in a single certificate of need application or for which a single certificate of need is issued.

~~((39))~~ (43) "Psychiatric hospital" means any institution or distinct part thereof primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons and licensed or required to be licensed under the provisions of chapter 71.12 RCW, or is owned and operated by the state or by a political subdivision or instrumentality of the state.

(44) "Regional health council" means a public or private nonprofit corporation organized in a manner consistent with the laws of the state and capable of performing each of the functions described in RCW 70.38.085. This term includes health systems agencies.

(45) "Regional health plan" means a document providing at least a statement of health goals and priorities for the health service area. In addition, the plan sets forth the number, type, and distribution of health facilities, services, and manpower needed within the health service area to meet the goals of the plan.

(46) "Regional health service" means level III obstetrics, level III pediatrics, level III neonatal intensive care, level III burn units, level III rehabilitation, level I trauma, organ transplants (including only bone marrow transplantation and transplantation of kidneys, heart, liver, and other solid organs), open-heart surgery, magnetic resonance imaging, and extra corporeal shock wave lithotripsy.

~~((40))~~ (47) "Rehabilitation facility" means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other health services provided under competent professional supervision.

~~((41))~~ (48) "Secretary" means the secretary of the Washington state department of social and health services or his or her designee.

~~((42))~~ (49) "Shall" means compliance is mandatory.

~~((43))~~ (50) "Skilled nursing facility" means any institution or distinct part thereof certified as a skilled nursing facility for participation in the Medicare (Title XVIII) or Medicaid (Title XIX) program.

~~((44))~~ (51) "State health plan" means a document, described in Title XV of the Public Health Service Act, developed by the department and the council in accordance with RCW 70.38.065.

~~((45))~~ (52) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

~~((46))~~ (53) "Undertaking" means any action which, according to the provisions of chapter 248-19 WAC, is subject to the requirements for a certificate of need or an exemption from the requirements for a certificate of need.

AMENDATORY SECTION (Amending Order 2082, filed 3/14/84)

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

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

(b) Any capital expenditure by or on behalf of a health care facility which substantially (~~changing~~) changes the (~~health~~) services of the facility.

~~(i) A substantial change(s) in services shall (be limited to) consist of the following(;) changes to specified services.~~

~~((ii)) (A) The establishment of a distinct organized health service(s) not offered on a regular basis within the twelve-month period prior to the time such services are proposed to be offered or the termination of such services(;). This includes the consolidation of services into a distinct unit when the service was previously offered.~~

~~((iii)) (B) The (introduction) offering of a (new technology for diagnosis or treatment) health service at a new location not formerly a part of the health care facility's campus;~~

~~((iii) A change in the level of) (C) The offering of a regional health service(;-or);~~

~~(D) A change in the number of stations, suites, units, or scanners as identified in subsection (1)(b)(ii) of this section.~~

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

~~(A) Alcoholism/substance abuse;
(B) Ambulance services, including air ambulance, licensed under chapter 18.73 RCW. This includes a change between fixed-wing and helicopter aircraft. This does not include transportation services set up solely for nonemergent interhospital transport of hospital inpatients;~~

~~(C) Brain electrical activity mapping;
(D) Burn unit;
(E) Cardiac catheterization, including a change in the number of cardiac catheterization suites;~~

~~(F) Chronic renal dialysis, including a change in the number of stations;~~

~~((Kidney lithotripsy)
(G) CT-computed tomography, including a change in the number of scanners and a change between mobile and fixed base CT scanning;~~

~~(H) Extra corporeal shock wave lithotripsy;
(I) Inpatient psychiatric services;~~

~~(J) Inpatient rehabilitation;
(K) ((NMR-nuclear)) Magnetic resonance imaging, including a change in the number of scanners;~~

~~((PET-positron emission tomography
Emergency services including regular outpatient emergency services staffed by physicians at a health care facility, and the provision of ambulance services, including air ambulance, licensed under chapter 18.73 RCW;~~

~~(L) Neonatal special care(=level-H);
(M) Obstetrics(=level-H);
(N) ((Obstetrics-level-H~~

~~Obstetrics-level-H)) Open-heart surgery, including a change in the number of open-heart surgery suites;~~

~~(O) Organ transplants, including only ((heart, liver, kidney,)) bone marrow transplantation and transplantation of kidneys, ((brain) heart, ((and lung transplants)) liver, and other solid organs;~~

~~((Open-heart surgery)
(P) Pediatrics(=level-H);
(Pediatrics-level-H~~

~~Pediatrics-level-H)) (Q) Positron emission tomography, including a change in the number of scanners;~~

~~(R) Radiation ((therapy-megavoltage,)) therapy (megavoltage and orthovoltage), including a change in the number of units and replacement of a cobalt unit with a linear accelerator((Rehabilitation-level-H~~

~~Rehabilitation-level-H
Rehabilitation-level-H
Change in the number of dialysis stations in a health care facility; and
Change from mobile to fixed base CT scanning)).~~

~~(iii) The department ((may,)) shall review and periodically ((and on an emergency basis,)) revise and update specific substantial changes in services.~~

(c) Any capital expenditure by or on behalf of a health care facility exceeding the expenditure minimum as defined by WAC 248-19-220((+6))(18). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services which under generally accepted accounting principles are not properly chargeable as an expense of operation and maintenance) essential to the acquisition, improvement,

expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure. Functional programming and general long-range planning activities, including marketing surveys and feasibility studies, are not to be included when determining whether an expenditure exceeds the expenditure minimum.

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

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

(f) Acquisition of major medical equipment:
(i) If the equipment will be owned by or located in an inpatient health care facility; or

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

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

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

(g) The sale, purchase, or lease of part or all of an existing hospital as defined in RCW 70.39.020. The acquisition of an existing health care facility other than a hospital which the department has determined, in accordance with the provisions of subsection (2) of this section, is subject to review(;-);

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

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

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

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

(2) The following provisions apply to the acquisition of existing health care facilities other than hospitals. At least thirty days before any person acquires or enters into a contract² to acquire an existing health care facility, the person shall provide written notification to the department and the appropriate regional health ~~((systems agency))~~ council, and in the case of a hospital, the hospital commission, of the person's intent to acquire the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The following rules apply to home health agencies only:

(a) The geographical extent of a home health agency as a "health care facility" is the service area designated in its certificate of need. If a home health agency's certificate of need does not designate a service area, then the agency's geographical extent is the county or counties in which it provided home health services on a regular and ongoing basis during the first twelve months of its operation under the certificate of need. If the facility lawfully operates without a certificate of need, then the geographical extent of the facility is the county or counties in which it provided home health services on a regular and ongoing basis during the twelve-month period ending May 15, 1981, if it qualified under subsection (5)(c) of this section, or in 1983 if it qualified under subsection (5)(d) of this section. A home health agency wanting to provide home health services outside the present geographical extent must obtain a certificate of need under RCW 70.38.105(4)(a) for a "new health care facility."

(b) A person possessing a certificate of need from the department to provide home health services may provide home health services of any kind, including services paid for under the Medicaid or Medicare programs, except to the extent the type of service is limited by a condition written in its certificate of need.

(c) A person that was a "home health agency" as defined by the regulation in effect on January 1, 1980, and that provided home health services on a regular and ongoing basis in any county in the state of Washington during the calendar year 1979 (the year prior to January 1, 1980, the effective date of the amendment adding home health agencies to the coverage of the certificate of need statute) may, without obtaining a certificate of need, provide in that county or counties home health services of any type, including services paid for under the Medicaid or Medicare programs. The definition of "home health agency" in effect on January 1, 1980, read:

"Home health agency" means a public agency or private organization or subdivision of such an agency or organization which is primarily engaged in providing nursing services and other therapeutic services (e.g., physical therapy, occupational therapy, nutritionist's services, and social services), within a defined geographic area, on a part-time, intermittent or visiting basis to ill or disabled persons in residences which are their homes."

A person claiming the benefits of the above definition has the burden of proving it provided the home health services in 1979, in any proceeding in which the question arises.

(d) A person that commenced providing home health services on a regular and ongoing basis in the state of Washington after January 26, 1981, in reliance on the definition of home health agency adopted by the board of health and effective that date may continue to provide

home health services without obtaining a certificate of need, except the person must obtain a certificate of need before providing services paid for under the Medicaid or Medicare programs, whether or not the entry into Medicaid or Medicare service would be otherwise reviewable as an undertaking covered by RCW 70.38.105(4).

(6) Any change in the number of dialysis stations in a kidney disease treatment center shall be considered to be a change in bed capacity of a health care facility.

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

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

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

((8)) (10) A certificate of need application, the review of which had begun but upon which final action had not been taken prior to ~~((January 1, 1981))~~ July 24, 1983, shall be reviewed and final action taken based on chapter 70.38 RCW and chapter 248-19 WAC as in effect prior to ~~((January 1, 1981))~~ July 24, 1983.

((9) Certificates of need issued prior to January 1, 1981, shall not be terminated and the periods of validity of such certificates of need shall not be modified under the provisions of chapter 248-19 WAC which become effective January 1, 1981.

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

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

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

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

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

(12) Administrative review:

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

(i) The acquisition of land;

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

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

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

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

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

(12) Any capital expenditure in excess of the expenditure minimum not otherwise subject to certificate of need review under subsection (1)(a), (b), (d), (e), (f), or (h) of this section, solely for any one or more of the following and which does not substantially affect patient

charges as determined by the department based on information provided by the applicant, is exempt from certificate of need review except to the extent required by the federal government as a condition to receipt of federal assistance:

- (a) Communications and parking facilities;
- (b) Mechanical, electrical, ventilation, heating, and air conditioning systems;
- (c) Energy conservation systems;
- (d) Repairs to, or the correction of, deficiencies in existing physical plant facilities necessary to maintain state licensure;
- (e) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;
- (f) Construction, involving physical plant facilities, including administrative and support facilities, which are not and will not be used for the provision of health services;
- (g) Acquisition of land; and
- (h) Refinancing of existing debt.

NOTE:

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

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

If a capital expenditure exceeds the expenditure minimum, for it to be required to be subject to review, the department must find that it is "on behalf of" a health care facility. Such an expenditure is also required to be subject to review if it is for the acquisition of major medical equipment and meets the conditions set forth in WAC 248-19-230 (1)(f). The same analysis would apply to a distinct research component of a legal entity, the primary activity of which is operating a hospital.

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

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

WAC 248-19-240 APPLICABILITY DETERMINATION. (1) Any person wanting to know whether an action the person is considering is subject to certificate of need requirements (chapter 248-19 WAC) should submit a written request to the certificate of need unit requesting a formal determination of applicability of the certificate of need requirements to the action.

(a) A copy of a written request for determination of applicability shall be sent simultaneously to the appropriate ~~((health systems agency and, in the case of a hospital project, to the hospital commission))~~ advisory review agencies.

(b) The written request shall be in a form prescribed by the department and contain an explicit description of the action. The description shall include the nature and extent of any construction, changes in services, and the estimated total costs of the action.

(2) The department may request such additional written information as is reasonably necessary to ~~((making))~~ make an applicability determination on the action.

(3) The department shall respond in writing to a request for an applicability determination within thirty days of receipt of all the information needed for such determination. In the written response, the department shall state the reasons for its determination that the action is or is not subject to certificate of need requirements.

(4) Information or advice given by the department as to whether an action is subject to certificate of need requirements shall not be considered an applicability determination unless it is in written form in response to a written request submitted in accordance with provisions of this section.

(5) A written applicability determination on an action in response to a written request and based on written information shall be binding upon the department: PROVIDED, The nature, extent, or cost of the action does not significantly change.

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

WAC 248-19-260 PERIODIC REPORTS ON DEVELOPMENT OF PROPOSALS. ~~((++))~~ During ~~((April))~~ January of each year, each health care facility and any other person developing proposals subject to certificate of need review shall submit to the department and the advisory review agencies a report ~~((which describes))~~ describing each such undertaking. Such report shall be submitted in a form prescribed by the department.

~~((2))~~ If the appropriate health systems agency requires submission of reports, on at least an annual basis, regarding undertakings which are under consideration, the department shall accept a copy of each such report sent to the health systems agency in lieu of the report required under subsection (1) of this section:

~~(3) Submission to the department of a long-range plan which includes all undertakings which are under consideration by a health care facility or other person shall be accepted as meeting the requirement of this section for a periodic report:))~~

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

WAC 248-19-270 LETTER OF INTENT. Any person planning to ~~((develop a construction project shall submit a letter of intent to the department at the earliest possible opportunity in the course of planning such construction project:))~~

~~(1) The letter of intent shall inform the department of the nature and scope of the project, clearly describing the size and extent of any new or expanded services which will be included))~~ propose an undertaking subject to certificate of need review (except for projects which would qualify for an emergency review under the provisions of WAC 248-19-300(2)(a)), shall submit a letter of intent in accordance with the following provisions:

(1) General.

(a) A copy of the letter of intent shall be on a form prescribed by the department and shall include the following information:

(i) A description of the extent of the services proposed;

(ii) The estimated cost of the proposed project;

(iii) A description of the service area. The specific data required for each type of health care facility will be specified in the form developed by the department.

~~((2))~~ (b) A copy of the letter of intent shall be sent to the regional health ((systems agency)) council for the health service area in which the project is to be located and, in the case of a hospital project, to the hospital commission.

~~((3))~~ (c) The letter of intent submitted in accordance with the provisions of this section does not constitute "notice of intent" with respect to the acquisition of existing health care facilities, as required by WAC 248-19-230(2) or to the acquisition of major medical equipment, as required by WAC 248-19-403.

(2) Concurrent review.

(a) Any person proposing undertakings for which a concurrent review schedule has been established according to WAC 248-19-327 shall submit a letter of intent in accordance with the schedule published by the department. Applications for projects subject to concurrent review will not be processed unless a letter of intent has been submitted in accordance with the schedule published by the department or has been granted an exemption by the department as set forth in subsection (2)(b)(i) of this section.

(b) Within thirty days following the receipt of the letter of intent, the department, after consultation with the advisory review agencies,

shall determine which of the proposed undertakings compete with another facility. To be considered competing a proposed undertaking must meet at least one of the following criteria:

(i) Applicants proposing a new hospital or total replacement of a hospital, a hospital bed addition, or a new or expanded inpatient service – The existing or proposed facilities are or will be located in the same hospital planning area,¹ the service is similar to other applicants and an applicant has a service-specific market share of patient days of ten percent or greater (using Washington state patient origin data) from the same hospital planning area, or the service is similar to other applicants and an applicant has a total hospital market share of patient days of five percent or greater from the same hospital planning area (data for total hospital services are used when service-specific market share data are not available).

Exemption to the concurrent review schedule may be granted by the department, in consultation with the advisory review agencies, when an applicant is a federally designated sole community provider and if this applicant is not proposing either a regional health service or the establishment of a new health care facility.

(ii) Applicants proposing nursing homes – The existing or proposed facilities are or will be located in the same county or nursing home planning area.

(iii) Applicants proposing the acquisition of major medical equipment – Applicants propose to provide services in a common county.

(iv) Applicants proposing ambulatory surgical centers, home health services, rehabilitation facilities, hospices, kidney dialysis services – Applicants propose to provide services to a common county or common counties.

(c) Persons proposing projects determined not to be competing with other projects must submit applications within six months of the date of the department's determination. Such projects will be subject to the regular review process.

(3) Any person intending to propose a newly developed technology or service shall submit a letter of intent to the department at the earliest possible date. A newly developed technology or service shall include any clinical equipment or service not currently provided in the state by any person or facility subject to certificate of need review and not included on the published list of substantial changes in services in WAC 248-19-230(1)(b).

(a) Upon receipt of such letter, the department shall determine within thirty days if the project constitutes a newly developed technology or service and is subject to a concurrent review. The department shall publish the concurrent review schedule at least four months, but not more than nine months, prior to the implementation of the schedule.

(b) The department may develop appropriate criteria and standards for the review of any newly developed technology or service.

(4) Expedited or regular review. Any person proposing an undertaking subject to an expedited or regular review shall submit a letter of intent at least sixty days prior to the submission of the application.

NOTE:

¹Hospital planning areas are those planning areas designated by the regional health councils for the purpose of dividing the population of a large area into geographic units for planning. These areas are referenced in the state health plan.

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

WAC 248-19-280 SUBMISSION AND WITHDRAWAL OF APPLICATIONS. (1) General.

(a) A person proposing an undertaking (~~(which is)~~) subject to review shall (~~(; prior to the date on which the certificate of need review of such undertaking begins,)~~) submit a (~~(complete)~~) certificate of need application in such form and manner and containing such information as the department, after consultation with (~~(health systems)~~) the advisory review agencies (~~(and the hospital commission)~~), has prescribed and published as necessary to such a certificate of need application.

(i) The information, which the department prescribes and publishes as required for a certificate of need application, shall be limited to the information (~~(which is)~~) necessary for the department to perform a certificate of need review and (~~(;)~~) shall vary in accordance with and be appropriate to the category of review or the type of proposed project: PROVIDED (~~(;)~~) HOWEVER, That the required information shall include that which is necessary to (~~(determining)~~) determine whether the proposed project meets applicable criteria.

(ii) Information regarding a certificate of need application (~~(which is)~~) submitted by an applicant after the department has given "notification of the beginning of review" in the manner prescribed by WAC 248-19-310 shall be submitted in writing to the department, the regional health (~~(systems agency)~~) council, and for hospital projects, to the hospital commission.

(iii) Except as provided in WAC 248-19-325, no information regarding a certificate of need application (~~(; which is)~~) submitted by an applicant after the conclusion of a public hearing conducted under the provisions of WAC 248-19-320 or the date (~~(on which)~~) of the final action of the appropriate regional health (~~(systems agency takes)~~) council or the date of the final action of the hospital commission on the application, whichever occurs (~~(first)~~) last, shall be considered by the department in reviewing and taking action on a certificate of need application. An exception to this rule shall be made when, during its final review period, the department finds an unresolved pivotal issue requires submission of further information by an applicant and the applicant agrees to an extension of the review period in order to resolve this issue as provided for in WAC 248-19-330(2)(b), 248-19-340(2)(c), and 248-19-350(4). The department shall furnish copies of its request to the applicant for such additional information to the appropriate (~~(health systems agency and, for a hospital project, to the hospital commission)~~) advisory review agencies. The department shall give public notice of such request for additional information through the same newspaper in which the "notification of beginning of review" for the project was published. The notice shall identify the project, the nature of the unresolved issue and the information requested of the applicant, and shall state the period of time allowed for receipt of written comments from interested persons.

(b) A person submitting a certificate of need application shall simultaneously submit copies of such application to the certificate of need unit of the department (~~(;)~~) and the appropriate (~~(health systems agency and, in the case of a hospital project, to the hospital commission)~~) advisory review agencies.

(i) The original and two copies of the application shall be submitted to the certificate of need unit of the department.

(ii) At least three and such additional copies of the application as may be required by the regional health (~~(systems agency)~~) council shall be submitted to the appropriate regional health (~~(systems agency)~~) council.

(iii) For a hospital project, one copy shall be submitted to the hospital commission.

(c) On or before the last day of the applicable screening period for a certificate of need application, as prescribed in subsections (2) and (3) of this section, the department shall send a written notice to the person (~~(who submitted)~~) submitting the application stating whether or not the application has been declared complete. If an application has been found to be incomplete, the notice from the department shall specifically identify the portions of the application in which the information provided has been found to be insufficient or indefinite and request the supplemental information needed to complete the application. The notice from the department shall incorporate the findings as to insufficient or indefinite application information (~~(which have been)~~) transmitted to the department by the regional health (~~(systems agency)~~) council and the hospital commission.

(d) The department shall not request any supplemental information of a type (~~(which has)~~) not (~~(been)~~) prescribed and published as being necessary to a certificate of need application for the type of project being proposed.

(e) A response to the department's request for information to supplement an incomplete application shall be written and submitted to the same agencies and in the same numbers as required for an application under the provisions of subsection (1)(b) of this section.

(2) Emergency, expedited, and regular reviews.

(a) The department (~~(;)~~) and the appropriate (~~(health systems agency, and the hospital commission for a hospital project,)~~) advisory review agencies shall, within a fifteen-day period, screen the application to determine whether the information provided in the application is complete and as explicit as is necessary for a certificate of need review. This screening period shall begin on the first day after which the department (~~(; the health systems agency and, for hospital projects, the hospital commission)~~) and the advisory review agencies have each received copies of the application.

(b) The department shall return an incomplete certificate of need application to the person (~~(who submitted)~~) submitting the application

if the department has not received a response to a request for the supplemental information sent in accordance with subsection (1)(c) of this section within forty-five days after such request was sent.

(c) A person (~~who submits~~) submitting a response to the department's request for supplemental information to complete a certificate of need application within forty-five days after the request was sent by the department, in accordance with subsection (1)(c) of this section, shall have the right to exercise one of the following options:

(i) Submission of written supplemental information and a written request that such information be screened and the applicant be given opportunity to submit further supplemental information if the application is still incomplete;

(ii) Submission of written supplemental information with a written request that review of the certificate of need application begin without the department notifying the applicant as to whether the supplemental information is adequate to complete the application; or

(iii) Submission of a written request that the incomplete application be reviewed without supplemental information.

(d) After receipt of a request for review of a certificate of need application, submitted in accordance with subsection (2)(c)(ii) or (iii) of this section, the department shall give notification of the beginning of review in the manner prescribed for a complete application in WAC 248-19-310.

(e) If a person requests the screening of supplemental information in accordance with subsection (2)(c)(i) of this section, such screening shall be carried out in the same number of days and in the same manner as required for an application in accordance with the provisions of subsection (1)(c) and (2)(a) of this section. The process of submitting and screening supplemental information may be repeated until the department declares the certificate of need application complete, the applicant requests that review of the incomplete application begin, or the one hundred twentieth day after the beginning of the first screening period for the application, whichever occurs first. The department shall return an application to the applicant if it is still incomplete on the one hundred twentieth day after the beginning of the first screening period and the applicant has not requested review of such incomplete application.

(3) ~~((Amendment of certificate of need applications:~~

~~(a) Applications for emergency review. If an applicant amends an application during the screening period, the department, after consultation with the appropriate health systems agency and, in the case of a hospital project, the hospital commission shall determine whether the amended application constitutes a new application. An application which is amended during the review period shall be considered a new application.~~

~~(b) Application for expedited or regular review:~~

~~(i) If an applicant amends an application during the screening or review period, the department, after consultation with the appropriate health systems agency and, in the case of a hospital project, the hospital commission shall determine whether the amended application constitutes a new application.~~

~~(ii) To provide any affected person the opportunity for a public hearing on an amended application, the department may extend the expedited review period as necessary to conduct such public hearing and complete the review process.~~

~~(4) Submission of an amendment to an application. An amendment to an application shall be submitted to the same agencies and in the same numbers as required for an application under the provisions of subsection (1)(b) of this section.) Concurrent review.~~

~~Applications subject to concurrent review shall be submitted to reviewing agencies in accordance with the provision of WAC 248-19-280(1). Submission and review procedures are set forth in WAC 248-19-327.~~

~~((5)) (4) Withdrawal of applications.~~

~~A certificate of need application shall be withdrawn from the certificate of need process if the department receives a written request for withdrawal of the application from the person ((who submitted)) submitting the application at any time before final action on such application has been taken by the secretary's designee.~~

~~((6)) (5) Resubmission of applications withdrawn or returned as incomplete.~~

A submission of a new certificate of need application shall be required for a certificate of need review of any undertaking for which the department has returned an incomplete application in accordance with subsection (2)(b) of this section, or for which a certificate of need application has been withdrawn in accordance with subsection ((5)) (4)

of this section. The content of the application should be updated as necessary before resubmission.

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 248-19-295 AMENDMENT OF CERTIFICATE OF NEED APPLICATIONS. (1) Amendments to certificate of need applications shall include information and documentation consistent with the requirements of WAC 248-19-280(1)(a)(i) and (b).

(2) Application for emergency review. If an applicant amends an application during the screening period, the department, after consultation with the advisory review agencies, shall determine whether the amended application constitutes a new application. An application amended during the review period shall be considered a new application.

(3) An application for expedited, regular, or concurrent review may be amended during the screening period or the advisory review period in accordance with the following provisions:

(a) An amendment may be made through the first thirty days of the expedited or regular review process. When an applicant amends an application, the review period may be extended by a period not to exceed twenty days, if additional time is required to consider the application.

(b) An amendment may be made through the first forty-five days of the concurrent review process. When an applicant amends an application, the review period for all applications reviewed concurrently shall be extended by a single thirty-day period. The forty-five days for amendments shall be divided as follows:

(i) During the first thirty days an applicant or applicants may amend an application one or more times.

(ii) When an amendment has been made to an application in the first thirty days, all applicants may make one final amendment during the remaining fifteen days of the forty-five day period.

(iii) The department shall send written notice to all applicants when an amendment to an application is submitted.

(iv) If no amendment has been made to any application through the thirty-day period, no amendments may be made during the subsequent fifteen-day period.

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

WAC 248-19-300 CATEGORIES OF REVIEW. (1) In the review of any certificate of need application, one of the following review processes shall be used: Regular review, concurrent review, emergency review ((or)), expedited review, or administrative review.

(2) Determination of review process.

The department, after any necessary consultation with the appropriate ((health systems agency and, if a hospital project, the hospital commission)) advisory review agencies, shall determine which review process will be used in the review of a given certificate of need application.

(a) Administrative review.

(i) The secretary's designee shall have the authority to review an abbreviated application proposing the obligation of any capital expenditure by or on behalf of a health care facility decreasing the total number of licensed beds or relocating licensed beds from one facility to another, by ten beds or ten percent, whichever is less, in any two-year period. Prior to making a determination of administrative review, the secretary's designee shall consult with the advisory review agencies.

(ii) An abbreviated application shall be submitted in a form acceptable to the secretary's designee in accordance with the provisions of WAC 248-19-280(1)(b).

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

(b) Emergency review.

(i) Beginning January 1, 1981, an emergency review may, with the written consent of the appropriate regional health ((systems agency)) council, be conducted when an immediate capital expenditure is required in order for a health care facility to maintain or restore basic and essential patient services.

(ii) The department may, after consulting with the appropriate ((health systems agency and, for a hospital project, the hospital commission)) advisory review agencies, determine ((that)) an application submitted for emergency review does not qualify for such review. Such

a determination and notification to the applicant shall be made within five days after receipt of the application. When the department makes a determination ~~((that))~~ an application is not subject to emergency review procedures, the application will be reviewed under another review process ~~((which is))~~ appropriate for the type of undertaking proposed. The department will notify the applicant of the other process under which the application will be reviewed.

~~((b))~~ (c) Expedited review.

~~((f))~~ Beginning ~~((January 1, 1981))~~ July 24, 1983, an expedited review shall be conducted on a certificate of need application for the following:

~~((A))~~ All projects which do not involve health services or the addition, replacement, expansion or alteration of facilities for health services.

~~((B))~~ (i) Projects proposed for the correction of deficiencies as described in WAC 248-19-415, except projects for the repair to or correction of deficiencies in the physical plant necessary to maintain state licensure, which are exempt from review by the provisions of WAC 248-19-230(12), if they do not substantially affect patient charges.

~~((C))~~ (ii) The replacement of equipment having similar functional capability and ~~((which does))~~ not ~~((result))~~ resulting in the offering or development of any new health services.

~~((D))~~ Installation, replacement, or improvement of energy conservation and mechanical and electrical systems.

~~((E))~~ (iii) Demonstration or research projects ~~((related to new technology))~~: PROVIDED, That such projects do not involve a change in bed capacity~~(:)~~ or the provision of a new institutional health service.

~~((F))~~ (iv) Acquisition of an existing health care facility.

~~((G))~~ (v) Projects ~~((which are))~~ limited to predevelopment expenditures.

~~((iii))~~ An expedited review shall be conducted on a certificate of need application for a hospital's project when:

(A) The hospital has developed a long-range facility plan in accordance with the provisions of RCW 70.38.145;

(B) When an application has been found to be consistent with the applicant's long-range health facility plan and the applicable health systems plan, annual implementation plan and state health plan; and

(C) When there has not been a significant change, since the long-range health facility plan was approved, in existing health facilities of the same type or in the need for such health facilities and services:

(iii) That until January 1, 1983, or until such time as the department has developed a common form for hospital long range plans, whichever is earlier, an expedited review may, with the written consent of the appropriate health systems agency, be conducted for a project, the type, scope and location of which has been specifically described and provided for in a current health systems plan, annual implementation plan or state health plan, or when:

(A) The hospital has developed a long range plan whose form is acceptable to the appropriate health systems agency and the department.

(B) The appropriate health systems agency has reviewed the plan in conjunction with potentially competing plans and the health systems agency has approved the hospital's long range plans.

(C) The certificate of need application for the project has been found to be consistent with the hospital's health systems agency approved long range health facility plan and the applicable health systems plan, annual implementation plan and state health plan.

(D) There has not been a significant change, since the long range health facility plan was approved, in existing health facilities of the same type or in the need for such health facilities and services; and there has not been a significant change in financial feasibility.

(E) The appropriate health systems agency has given the department a written consent to an expedited review of the project.

~~((c))~~ (d) Regular review process.

The regular review process shall be used for any application unless the department has determined ~~((that))~~ the emergency ~~((or))~~, expedited, or concurrent review process will be used in the review of such application. The regular review process will also be used to review applications for projects solely for the purposes listed in WAC 248-19-230(12) determined by the department to substantially affect patient charges, unless the project qualifies for an expedited review under subsection (2)(b)(i) of this section.

(e) Concurrent review process.

The concurrent review process shall be used for all applications determined to be competing in accordance with WAC 248-19-327.

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 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-310 NOTIFICATION OF BEGINNING OF REVIEW. (1) Notice required.

The department shall provide written notification of the beginning of the review of a certificate of need application and notification of the beginning of the review of a proposed withdrawal of a certificate of need to affected persons (other than persons residing within the geographic area served or to be served by the applicant, any persons ~~((who))~~ regularly ~~((use))~~ using health care facilities within that geographic area, and third-party payers ~~((who reimburse))~~ reimbursing health care facilities for services in the health service area in which the project is proposed to be located, and any other person ~~((who has submitted))~~ submitting a written request that the person's name be on the mailing list for such notice. Notification of the beginning of the review of a certificate of need application shall be provided to persons residing within the geographic area served or to be served by the applicant, to any person ~~((who))~~ regularly ~~((uses))~~ using health care facilities within that geographic area, and third-party payers ~~((who reimburse))~~ reimbursing health care facilities for services in the health service area in which the project is proposed to be located, through a newspaper of general circulation in the health service area of the project.

(2) Specific notice requirements.

(a) The department shall give "notification of the beginning of review" of an application after the department~~(:)~~ and the appropriate ~~((health systems agency and, for a hospital project, the hospital commission))~~ advisory review agencies have each received a complete application or the applicant's request, submitted in accordance with WAC 248-19-280(2)(c), that review of the application begin. Such notice shall be given according to the following requirements~~(:)~~:

(i) Emergency review.

When an application is being reviewed under the emergency review process, required notices shall be given within five working days following the receipt of a complete application or the applicant's written request that review of the application begin.

(ii) Expedited and regular review.

When an application is being reviewed under the expedited or regular review process, required notices shall be given within five working days of a declaration that the application is complete or the applicant's request that review of the application begin.

(b) The department shall give notification of the beginning of the review of a proposed withdrawal of a certificate of need when ~~((it))~~ the department determines ~~((that))~~ there may be good cause to withdraw a certificate of need.

(c) The notices shall include:

(i) A general description of the project;

(ii) In the case of a proposed withdrawal of a certificate of need, the reasons for the proposed withdrawal;

(iii) The proposed review schedule;

(iv) The period within which one or more affected persons may request the conduct of a public hearing during the review;

(v) The name and address of the agency to which a request for a public hearing should be sent; ~~((and))~~

(vi) The manner in which notification will be provided of the time and place of any hearing so requested;

(vii) Notice that any affected person wishing to receive notification of a meeting on the application called by the department after the end of the advisory agencies review period shall submit a written request to the department to receive notification of such meetings; and

(viii) The period within which any affected person may request notification of the meetings referenced in subsection (2)(c)(vii) of this section.

(d) The notices to other affected persons shall be mailed on the same date the notice to the public is mailed to the newspaper for publication.

(3) Beginning of review.

(a) Review of a certificate of need application under the expedited~~(:)~~ or regular ~~((or concurrent))~~ review process shall begin on the day the department sends notification of the beginning of review to the general public and other affected persons unless the department has received a written request from the applicant pursuant to WAC 248-19-280(2)(c)(iii), in which case review shall begin upon receipt of such request.

(b) Review of certificate of need applications under the concurrent review process shall begin fifteen days after the conclusion of the published time period for the submission of final applications subject to concurrent review.

(c) Review of a certificate of need application under emergency review shall begin on the first day after the date on which the department(;) and the appropriate ((health systems agency and, for a hospital project, the hospital commission)) advisory review agencies have determined the application is complete, or have each received a written request to begin review submitted by the applicant in accordance with WAC 248-19-280(2)(c).

((e)) (d) Review of a proposed withdrawal of a certificate of need shall begin on the day the department sends notification of the beginning of review to the general public and to other affected persons.

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

WAC 248-19-320 PUBLIC HEARINGS. (1) "Opportunity for a public hearing," as used in this section, shall mean a public hearing will be conducted if a valid request for such a hearing has been submitted by one or more affected persons.

(2) The department shall provide opportunity to affected persons for a public hearing on:

(a) A certificate of need application which is under review, unless the application is being reviewed according to the emergency or expedited review processes; and

(b) The proposed withdrawal of a certificate of need.

This requirement for a public hearing shall be ((deemed)) satisfied if the appropriate regional health ((systems agency)) council has provided opportunity for such a public hearing to "affected persons" as this term is defined in WAC 248-19-220: PROVIDED(;) HOWEVER, That the department has delegated the responsibility for such hearing to the appropriate regional health ((systems agency)) council, and such regional health ((systems agency)) council has followed public hearing procedures required under the provisions of this section.

(3) To be valid, a request for a public hearing on a certificate of need application or on the proposed withdrawal of a certificate of need shall:

(a) Be submitted in writing;

(b) Be received by the agency identified in the "notification of beginning of review" within fifteen days after the date on which the department's "notification of beginning of review" for the particular certificate of need application or proposed withdrawal of a certificate of need was published in a newspaper of general circulation; and

(c) Include identification of the particular certificate of need application or proposed certificate of need withdrawal for which the public hearing is requested and the full name, complete address, and signature of the person making the request.

(4) The department or the regional health ((systems agency)) council to which the department delegated responsibility for public hearings shall give written notice of a public hearing conducted pursuant to this section.

(a) Written notice shall be given to affected persons and the public at least fifteen days prior to the beginning of the public hearing.

(b) The notices shall include: Identification of the certificate of need application or certificate of need on which the public hearing is to be conducted and the date, time, and place of the public hearing.

(c) Notice to the general public to be served by the proposed project to which the certificate of need application or certificate of need pertains shall be through a newspaper of general circulation in the health service area of the proposed project. The notices to other affected persons shall be mailed on the same date the notice to the public is mailed to the newspaper for publication.

(5) In a public hearing on a certificate of need application or on a proposed withdrawal of a certificate of need, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

(6) The department or regional health ((systems agency)) council, ((whichever)) whomever conducts the hearing, shall maintain a verbatim record of a public hearing and shall not impose fees for the hearing.

(7) The department shall not be required to conduct a public hearing on a certificate of need application ((which is)) being reviewed according to the emergency or expedited review procedures.

NEW SECTION

WAC 248-19-326 EX PARTE CONTACTS. (1) There shall be no ex parte contacts as defined in WAC 248-19-220(17) after whichever of the following occurs last:

(a) The conclusion of a public hearing held in accordance with WAC 248-19-320, or

(b) The final action of the appropriate regional health council, or

(c) The final action of the hospital commission.

(2) Any of the following communications shall not be considered ex parte contacts:

(a) A communication regarding the procedure or process of the review.

(b) A communication made in a meeting open to the public requested by the department and reasonable notice of the meeting has been given to the applicant, the advisory review agencies, all applicants in a concurrent review, and all persons having previously requested in writing to be notified of all such meetings or written requests for information concerning a specific application for certificate of need or a specific proposed withdrawal of a certificate of need.

(c) A written request for information made by the department and provided to all persons specified in subsection (2)(b) of this section.

(d) A response to a request made by the department in a meeting held in accordance with subsection (2)(b) of this section or in response to subsection (2)(c) of this section, and submitted to the department and to all persons specified in subsection (2)(b) of this section.

NEW SECTION

WAC 248-19-327 CONCURRENT REVIEW PROCESS. (1) Projects for which the department may prescribe particular time schedules for the submission and concurrent review of the certificate of need applications include, but are not limited to, the following:

(a) Construction, establishment, or other development of new health care facilities;

(b) Increases in the patient bed capacity of health care facilities or redistribution of beds among facility and service categories of acute care, skilled nursing, intermediate care and boarding home care, if the bed redistribution is to be in effect for a period in excess of six months;

(c) Expansion of kidney disease treatment centers, including free standing hemodialysis units;

(d) Replacement or renovation of existing health care facilities;

(e) Substantial changes in health services as defined in WAC 248-19-230(1)(b) and establishment of new institutional health services; and

(f) Acquisition of major medical equipment.

(2) Time schedules for submission of application subject to concurrent review.

(a) The department, in cooperation with the advisory review agencies, shall prescribe particular time schedules for the submission and concurrent review of certificate of need applications for selected types of projects within a given area. Such time schedules shall be for the purpose of comparative analysis of competing or similar projects.

(b) Before prescribing time schedules for concurrent review of selected categories of projects, the department shall provide health care facilities, health maintenance organizations, and other interested persons affected by such schedules the opportunity to review and offer comment on the schedules the department proposes to prescribe. Proposed schedules shall be sent to health care facilities, health maintenance organizations, and interested persons who have requested in writing to be notified of the proposed schedules. Proposed schedules shall be published in two newspapers of general circulation, one in Seattle and one in Spokane.

(c) Prescribed schedules shall be published and distributed to all health care facilities and health maintenance organizations which may be affected by them. Prescribed schedules shall be published and distributed to other interested persons who have requested in writing to be notified of the prescribed schedules. Prescribed schedules shall be published in two newspapers of general circulation, one in King county and one in Spokane. Such publication and distribution of concurrent review schedules shall be at least four months prior to the implementation of the prescribed schedules.

(d) Review schedules for concurrent review shall provide for at least an annual review for a given project type within each service area.

(3) The concurrent review process shall not exceed one hundred fifty days from the beginning of the review period unless it is extended in accordance with WAC 248-19-295.

(a) Applications subject to concurrent review shall be submitted to the department and advisory review agencies in accordance with the concurrent review schedule published by the department.

(b) Applications subject to concurrent review shall be submitted to reviewing agencies in accordance with the provisions of WAC 248-19-280(1). Each applicant shall provide the other competing applicant or applicants with a copy or copies of the application.

(c) The department and the appropriate advisory agencies shall screen the initial application within one month to determine whether the information provided in the application is complete and as explicit as necessary for certificate of need review. The screening period shall begin on the first working day after the end of the period for submission of the initial application published by the department.

(d) Within one month after the department sends the request for supplemental information, the applicant shall exercise one of the following which will constitute submission of the final application:

(i) Submission of the requested written supplemental information; or

(ii) Submission of a written request that the incomplete application be reviewed without supplemental information.

(e) The concurrent review shall begin within fifteen days after the published date for submission of final applications.

(f) Within one hundred five days from the first day of the review period, the appropriate advisory agencies shall submit written findings and recommendations on a certificate of need application to the department unless the review period has been extended according to the provisions in subsection (4) of this section.

(g) The department shall conclude its final review and the secretary's designee shall take action on a certificate of need application within forty-five days after the end of the advisory agencies' review period unless extended according to the provisions of subsection (4) of this section.

(4) The review period for a concurrent review may be extended according to the following provisions:

(a) When an applicant amends an application, the review period shall be extended in accordance with the provisions of WAC 248-19-295.

(b) If an issue, which is pivotal to the decision of the secretary's designee remains unresolved, the department may make one request for additional information from one or more of the applicants reviewed concurrently. The request shall specify a deadline by which an applicant or applicants shall respond. The department may extend the final review period for all applications being reviewed concurrently up to, but not exceeding, thirty days after the receipt of the response or responses of the applicant or applicants to the department's request for information or after the specified deadline for response.

AMENDATORY SECTION (Amending Order 244, filed 9/15/82)

WAC 248-19-330 REGULAR REVIEW PROCESS. (1) The regular review process shall not exceed ninety days from the beginning of the review period and shall be conducted in accordance with ~~((the following subdivisions of))~~ this ~~((subsection))~~ section unless the review period is extended in accordance with the provisions of subsection (2) of this section.

(a) Within sixty days from the first day of the review period, ~~the ((health systems agency and, in the case of a hospital project, the hospital commission;))~~ advisory review agencies shall submit written findings and recommendations on a certificate of need application to the department unless either of the ~~((health systems agency or hospital commission))~~ advisory review agencies has requested and received an extension of this review period from the department.

(b) The department shall complete its final review and the secretary's designee shall make ~~((his))~~ a decision on a certificate of need application within thirty days of the end of the review period or extended review period of the ~~((health systems agency and, in the case of a hospital project, the hospital commission))~~ advisory review agencies.

(2) The review period for a regular review may be extended according to the following provisions~~((:))~~:

(a) The advisory agencies' review period ~~((for the health systems agency or, in the case of a hospital project, the hospital commission;))~~ may be extended for up to an additional thirty days upon the written request of either of ~~((these))~~ the advisory review agencies when such additional time is needed to complete the review and submit written findings and recommendations to the department. The department may grant further extensions to this review period: PROVIDED, The person ~~((who submitted))~~ submitting the certificate of need application gives written consent to such further extensions.

(b) If an issue, which is pivotal to the decision of the secretary's ~~((decision))~~ designee remains unresolved, the department may make one request for additional information from the person ~~((who submitted))~~ submitting the application. The department may extend its final review period up to but not exceeding thirty days after receipt of the applicant's written response to the department's request for information. ~~((Such pivotal issues include but are not limited to pending action for medicare or medicaid decertification, license revocation or patient trust fund violation or termination of a provider agreement;))~~

(c) The department may extend either the review period for the ~~((health systems agency and the hospital commission))~~ advisory review agencies or the department's final review period upon receipt of a written request of the person ~~((who submitted))~~ submitting the application: PROVIDED~~((:))~~ HOWEVER, That such an extension shall not exceed ~~((sixty))~~ ninety days.

(d) The department may extend the review period in accordance with WAC 248-19-295 when an application is amended in accordance with the provisions of that section.

AMENDATORY SECTION (Amending Order 244, filed 9/15/82)

WAC 248-19-340 EXPEDITED REVIEW PROCESS. (1) The expedited review process shall not exceed fifty days from the beginning of the review period unless extended in accordance with the provisions of subsection (2) of this section: PROVIDED~~((:))~~ HOWEVER, That the appropriate regional health ~~((systems agency))~~ council consents in writing to a thirty-day review period ~~((and does not need to conduct a public hearing in accordance with WAC 248-19-320))~~. If the regional health ~~((systems agency))~~ council does not consent to a thirty-day review period, the expedited review process shall not exceed eighty days from the beginning of the review period.

(a) If the advisory agencies' review period ~~((for the health systems agency))~~ is thirty days, ~~((the health systems agency and, in the case of a hospital project, the hospital commission;))~~ advisory review agencies shall submit written findings and recommendations to the department within thirty days of the beginning of the review period. If the advisory agencies' review period ~~((for the health systems agency))~~ is sixty days, the ~~((health systems agency and, in the case of a hospital project, the hospital commission;))~~ advisory review agencies shall submit written findings and recommendations to the department within sixty days of the beginning of the review period.

(b) The department shall complete its final review and the secretary's designee shall make his or her decision on a certificate of need application under an expedited review within twenty days of the end of the review period or extended review period of the ~~((health systems agency and, in the case of a hospital project, the hospital commission))~~ advisory review agencies.

(2) The review period for an expedited review may be extended according to the following provisions~~((:))~~:

(a) If the regional health ~~((systems agency))~~ council has consented to a thirty-day review period, the review period may be extended for up to an additional thirty days ~~((when the health systems agency conducts a public hearing in accordance with the provisions of WAC 248-19-320 or))~~ upon the written request of either of the advisory review agencies when additional time is needed by the ~~((health systems agency or, in the case of a hospital project, the hospital commission))~~ advisory review agencies, to complete the review and submit written findings and recommendations to the department. The department may grant further extensions to this review period: PROVIDED, The person ~~((who submitted))~~ submitting the certificate of need application gives written consent to further extension.

(b) The department may extend ~~((its final))~~ the review ~~((if a public hearing is requested))~~ period when an application is amended in accordance with the provisions of WAC ~~((248-19-320 and the hearing is conducted by the department. Such extension may be for an additional period of up to thirty days))~~ 248-19-295.

(c) If an issue, which is pivotal to the decision of the secretary's ~~((decision))~~ designee remains unresolved, the department may make one request for additional information from the person ~~((who submitted))~~ submitting the application. The department may extend its final expedited review period up to but not exceeding thirty days after receipt of the applicant's written response to the department's request for information. ~~((Such pivotal issues include but are not limited to pending action for medicare or medicaid decertification, license revocation or patient trust fund violation or termination of a provider agreement;))~~

(d) The department may extend either the expedited review period for the ~~((health systems agency and the hospital commission))~~ advisory

review agencies or the department's final review period upon receipt of a written request of the person (~~((who submitted))~~) submitting the application: PROVIDED(;) HOWEVER, That such an extension shall not exceed sixty days.

~~((3) Projects reviewed under expedited review provisions in WAC 248-19-300(2)(b)(ii) and (iii) shall not be subject to WAC 248-19-370. The evaluation of criteria in WAC 248-19-380, 248-19-390 and 248-19-400 shall be reviewed only to the extent applicable criteria were not considered in the plan approval process and a reasonable expectation exists that consideration of these criteria could materially alter the approval of projects:))~~

AMENDATORY SECTION (Amending Order 244, filed 9/15/82)

WAC 248-19-350 EMERGENCY REVIEW PROCESS. (1) The emergency review process shall not exceed fifteen working days from the beginning of the review period.

(2) Written findings and written recommendations of the (~~health systems agency, and in the case of hospital projects, the hospital commission;~~) advisory review agencies shall be submitted to the department within ten working days after the beginning of the emergency review period.

(3) The department shall complete its final review and the secretary's designee shall make his or her decision on an emergency certificate of need application within fifteen working days after the beginning of the review period unless the department extends its final review period in accordance with the provisions of subsection (4) of this section.

(4) If an issue, which is pivotal to the decision of the secretary's (~~decision~~) designee remains unresolved, the department may make one request for additional information from the person (~~who submitted~~) submitting the application. The department may extend its final emergency review period up to but not exceeding (~~thirty~~) ten days after receipt of the applicant's written response to the department's request for information. (~~Such pivotal issues include but are not limited to pending action for medicare or medicaid decertification, license revocation or patient trust fund violation or termination of a provider agreement:))~~

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

WAC 248-19-400 DETERMINATION OF COST CONTAINMENT. A determination that a proposed project will foster cost containment shall be based on the following criteria(;):

(1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.

(2) In the case of a project involving construction:

(a) The costs, scope, and methods of construction and energy (~~provision~~) conservation are reasonable; and

(b) The project will (~~probably~~) not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.

(3) (~~The project takes into consideration the special needs and circumstances of health care facilities with respect to the need for energy conservation:~~

~~(4) The project will promote efficiency or productivity)) The project will involve appropriate improvements or innovations in the financing and delivery of health services which foster cost containment and which promote quality assurance and cost effectiveness.~~

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

WAC 248-19-403 MAJOR MEDICAL EQUIPMENT NOT OWNED BY OR LOCATED IN A HEALTH CARE FACILITY.

(1) For purposes of this section, purchases, donations, and leases of major medical equipment shall be considered acquisitions of such equipment. An acquisition of major medical equipment through a transfer of such equipment for less than fair market value shall be considered an acquisition of major medical equipment if (~~its~~) the equipment's fair market value is at least (~~one hundred fifty thousand dollars~~) equivalent to the review threshold set forth in WAC 248-19-220(34).

(2) Before any person enters into a contractual arrangement¹ to acquire major medical equipment (~~which is~~) not to be owned by or located in a health care facility, such person shall submit a valid notice

to the department and the appropriate regional health (~~systems agency~~) council of the intent to acquire the equipment.

(a) The notices to the department and the appropriate regional health (~~systems agency~~) council shall be submitted in writing at least thirty days before entering into contractual arrangements to acquire the equipment with respect to which the notice is given.

(b) To be valid, a notice shall include:

(i) A complete description of the major medical equipment to be acquired and the health services to be provided with such equipment;

(ii) The name, address, and general description of the facility in which the equipment is to be located;

(iii) The date on which any contractual arrangement for acquisition of the equipment was or is to be entered into;

(iv) A statement as to whether the equipment is to be used for any hospital's inpatients and, if so, whether such use will be only on a temporary basis in the case of a natural disaster, a major accident, or equipment failure.

(3) The acquisition of major medical equipment (~~which is~~) not to be owned by or located in a health care facility shall be subject to review if the department finds that:

(a) The written notice of intent to acquire the equipment was not submitted in accordance with the provisions of subsection (2) of this section; or

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

(4) Within fifteen working days after receipt of a valid notice of intent to acquire the major medical equipment, the department shall respond to the person (~~who submitted~~) submitting the notice of intent, informing such person as to whether the acquisition of the equipment is subject to certificate of need review. A copy of the response shall be sent to the appropriate regional health (~~systems agency~~) council. If the department fails to make a determination within thirty days after the receipt of a valid notice, the major medical equipment may be acquired without a certificate of need.

(5) If a person has acquired major medical equipment not located in a health care facility which the department has determined was not subject to review under the provisions of subsections (2), (3), and (4) of this section and subsequently proposes to use such equipment to serve inpatients of a hospital on other than a temporary basis in the case of a natural disaster, a major accident, or equipment failure, the proposed new use of the major medical equipment shall be subject to certificate of need review.

NOTE:

¹ A person may enter into a contractual arrangement at an earlier date, provided such contractual arrangement is contingent upon a determination by the department that a certificate of need is not needed, or upon issuance of a certificate of need.

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

WAC 248-19-405 EXEMPTIONS FROM REQUIREMENTS FOR A CERTIFICATE OF NEED FOR HEALTH MAINTENANCE ORGANIZATIONS. (1) Provisions for exemptions.

The secretary's designee shall grant an exemption from the requirements for a certificate of need for the offering of an inpatient institutional health service, the acquisition of major medical equipment for the provision of an institutional health service, or the obligation of a capital expenditure in excess of (~~one hundred fifty thousand dollars~~) the expenditure minimum for the provision of an inpatient institutional health service to any entity (~~which meets~~) meeting the eligibility requirements set forth in (~~subdivision~~) subsection (1)(a) of this (~~subsection~~) section for such an exemption and submits an application for an exemption (~~which meets~~) meeting the requirements of (~~subdivision~~) subsection (1)(b) of this (~~subsection~~) section.

(a) Eligibility requirements.

To be eligible for an exemption from the requirements for a certificate of need for the offering of an inpatient institutional health service, the acquisition of major medical equipment for the provision of an inpatient institutional health service, or the obligation of a capital expenditure in excess of (~~one hundred fifty thousand dollars~~) the expenditure minimum for the provision of an institutional health service, an applicant entity shall be one of the following:

(i) A health maintenance organization or a combination of health maintenance organizations if:

(A) The organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals;

(B) The facility in which the service will be provided is or will be geographically located so ~~((that))~~ the service will be reasonably accessible to such enrolled individuals; and

(C) At least seventy-five percent of the patients ~~((who can))~~ reasonably ~~((be))~~ expected to receive the institutional health service will be individuals enrolled in such organization or organizations in the combination;

(ii) A health care facility if:

(A) The facility primarily provides or will provide inpatient health services;

(B) The facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals;

(C) The facility is or will be geographically located so ~~((that))~~ the service will be reasonably accessible to such enrolled individuals; and

(D) At least seventy-five percent of the patients ~~((who can))~~ reasonably ~~((be))~~ expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

(iii) A health care facility (or portion thereof) if:

(A) The facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application for an exemption is submitted, at least fifteen years remain in the term of the lease;

(B) The facility is or will be geographically located so ~~((that))~~ the service will be reasonably accessible to such enrolled individuals; and

(C) At least seventy-five percent of the patients ~~((who can))~~ reasonably ~~((be))~~ expected to receive the institutional health service will be individuals enrolled with such organization;

(b) Requirements for an application for exemption.

An application for an exemption from a certificate of need shall meet the following requirements(-):

(i) The application for an exemption shall have been submitted at least thirty days prior to the offering of the institutional health service, acquisition of major medical equipment, or obligation of the capital expenditure to which the application pertains. A copy of the application for the exemption shall be sent simultaneously to the appropriate ~~((health systems agency and, in the case of a hospital, to the hospital commission))~~ advisory review agencies.

(ii) A complete application shall be submitted in such form and manner as has been prescribed by the department. The information which the department prescribes shall include:

(A) All of the information required to make a determination that the applicant entity qualifies in accordance with ~~((subdivision))~~ subsection (1)(a) of this ((subsection)) section; and

(B) A complete description of the offering, acquisition, or obligation to which the application pertains.

(2) Action on an application for exemption.

(a) Within thirty days after receipt of a complete application for exemption from certificate of need requirements, the department shall send the applicant a written notice ~~((that))~~ the exemption has been granted or denied. A copy of such written notice shall be sent simultaneously to the appropriate ~~((health systems agency and, in the case of a hospital, to the hospital commission))~~ advisory review agencies.

(b) The secretary's designee shall deny an exemption if he or she finds the applicant has not met the requirements of subsections (1) (a) and (b) of this section. Written notice of the denial shall include the specific reasons for the denial.

(c) In the case of an application for a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date the application for an exemption is submitted, the secretary's designee shall grant the exemption if he or she determines the facility (or portion thereof) will meet the applicable requirements of subsection (1)(a) of this section when the facility first provides health services.

(d) If the secretary's designee fails to grant or deny an exemption in accordance with the provisions of this section within thirty days after receipt of a complete application for such exemption, the applicant for

the exemption may seek a writ of mandamus from superior court pursuant to chapter 7.16 RCW.

(3) Subsequent sale, lease, or acquisition of exempt facilities or equipment.

Subsequent sale, lease, or acquisition of exempt health care facilities (or portions thereof) or medical equipment for which an exemption was granted under the provisions of subsection (2) of this section, any acquisition of a controlling interest in such facility or equipment, and any use of such facility or equipment by a person other than the one to whom the exemption was granted, shall meet one of the following conditions:

(a) A certificate of need for the purchase, lease, acquisition of controlling interest in, or use of such facility or equipment, shall have been applied for and issued by the department; or

(b) The department shall have determined, after receipt of an application for an exemption, submitted in accordance with subsection (1) of this section, that the requirements of either subsection (1)(a)(i) or subsection (1)(a)(ii)(A) and (B) are met.

(4) The method of payment for services (i.e., prepaid or fee for service) shall not be considered relevant in determining whether an undertaking of a health maintenance organization qualifies for an exemption under this section.

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

WAC 248-19-410 REVIEW AND ACTION ON HEALTH MAINTENANCE ORGANIZATION PROJECTS. (1) Undertakings requiring a certificate of need.

A certificate of need shall be required for any undertaking which, in accordance with WAC 248-19-230, is subject to the provisions of chapter 248-19 WAC, unless an exemption has been granted for such undertaking under the provisions of WAC 248-19-405.

(2) Required approval.

The secretary's designee shall issue a certificate of need for a proposed project if the certificate of need applicant for the proposed project is a health maintenance organization or a health care facility controlled (directly or indirectly) by a health maintenance organization and the department finds the proposed project meets the criteria set forth in WAC ~~((248-19-370(7)))~~ 248-19-370(6).

(3) Limitation on denials.

The secretary's designee shall not deny a certificate of need to a health maintenance organization or a health care facility controlled (directly or indirectly) by a health maintenance organization solely because a proposed project is not discussed in the applicable regional health ((systems)) plan, annual implementation plan, or state health plan.

(4) Sale, acquisition, or lease of facilities or equipment for which a certificate of need has been issued.

A health care facility (or portion thereof) or medical equipment for which a certificate of need has been issued under the provisions of this section shall not be sold or leased and a controlling interest in such facility or equipment or in a lease of the facility or equipment shall not be acquired unless an exemption or a certificate of need for such sale, lease, or acquisition has been granted by the secretary's designee.

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

WAC 248-19-415 PROJECTS PROPOSED FOR THE CORRECTION OF DEFICIENCIES. (1) For the purposes of this section, "correction of deficiencies" shall mean one or more of the following:

(a) Eliminating or preventing imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations; or

(b) Complying with state licensing standards; or

(c) Complying with accreditation or certification standards which must be met to receive reimbursement under Titles XVIII or XIX of the Social Security Act.

(2) An application ~~((which is))~~ submitted for a project ~~((which is))~~ limited to the correction of deficiencies, as defined in subsection (1) of this section, shall be approved unless the department finds, after consultation with the appropriate regional health ((systems-agency)) council, that:

(a) The facility or service with respect to which such capital expenditure is proposed is not needed; or

(b) The obligation of such capital expenditure is not consistent with the state health plan in effect.

(3) A determination (~~that~~) a facility or service is not needed shall be made only if the department finds (~~that~~) the facility or service has been identified in the state health plan as not being needed.

(4) An application (~~which is~~) submitted for the correction of deficiencies (~~;~~) shall be reviewed under the expedited review process, in accordance with WAC 248-19-340, unless it qualifies for emergency review in accordance with WAC 248-19-350.

(5) An application reviewed under the provisions of this section shall be approved only to the extent (~~that~~) the capital expenditure is needed for the correction of the deficiency.

(6) If the department finds (~~that~~) any portion of the project or the project as a whole is not needed for the correction of deficiencies, such portion or entire project shall be reviewed in accordance with WAC 248-19-360, 248-19-370, 248-19-380, 248-19-390, and 248-19-400.

(7) If the department finds (~~that~~) a proposed capital expenditure is needed to correct deficiencies, as defined in subsection (1) of this section, the criteria in WAC 248-19-370 shall not be applied to the consideration of the project.

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

WAC 248-19-420 WRITTEN FINDINGS AND ACTIONS ON CERTIFICATE OF NEED APPLICATIONS. (1) Written findings.

(a) The findings of the department's review of a certificate of need application shall be stated in writing and include the basis for the decision of the secretary's ((decision)) designee as to whether a certificate of need is to be issued or denied for the proposed project.

(b) In making its findings and taking action on a certificate of need application, the department shall use all criteria contained in chapter 248-19 WAC (~~which are~~) applicable to the proposed project.

(i) The written findings shall identify any criterion (~~which~~) the department has decided is not applicable to the particular project and give the reason for such decision.

(ii) The secretary's designee may deny a certificate of need if the applicant has not provided the information which is necessary to a determination that the project meets all applicable criteria and which the department has prescribed and published as necessary to a certificate of need review of the type proposed: **PROVIDED(;**) **HOWEVER,** That the department has requested such information in a screening letter sent in accordance with WAC 248-19-280(1)(c).

(c) The department shall make written findings on the extent to which the project meets the criteria set forth in WAC 248-19-370(1) and (2) when the secretary's designee issues a certificate of need directly related to the provision of health services, beds, or major medical equipment: **PROVIDED(;**) **HOWEVER,** That no such written finding shall be necessary for projects for the correction of deficiencies of the types described in WAC 248-19-415 and for projects proposed by or on behalf of a health maintenance organization or a health care facility (~~which is~~) controlled, directly or indirectly, by a health maintenance organization.

(d) When, as a part of concurrent review proceedings, the secretary's designee makes a decision to approve an application or applications and to disapprove other competing applications, he or she shall provide a specific written statement of reasons for determining the approved application or applications to be superior.

(2) Separability of application and action.

When a certificate of need application is for multiple services or multiple components or the proposed project is to be multiphased, the secretary's designee may take individual and different action on separable portions of the proposed project.

(3) Conditional certificate of need.

(a) The secretary's designee in making his or her decision on a certificate of need application may decide to issue a conditional certificate of need if the department finds (~~that~~) the project is justified only under specific circumstances: **PROVIDED(;**) **HOWEVER,** That conditions shall relate directly to the project being reviewed and to review criteria.

(b) When the department finds (~~that~~) a project for which a certificate of need is to be issued does not satisfy the review criteria set forth in WAC 248-19-370(1) and (2), the secretary's designee may impose a condition or conditions that the applicant take affirmative steps so as to satisfy those review criteria. In evaluating the accessibility of the project, the current accessibility of the facility as a whole shall be taken into consideration.

(c) The conditions attached to a certificate of need may be released by the secretary's designee upon the request of the health care facility

or health maintenance organization for which the certificate of need was issued (~~PROVIDED, It can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of chapter 70.38 RCW~~).

(i) The request must include information needed by the department demonstrating the conditions are no longer valid and the release of such conditions would be consistent with the purpose of chapter 70.38 RCW.

(ii) A request for the removal of a condition must be submitted in accordance with WAC 248-19-280 and will be reviewed in accordance with the regular or expedited review procedures described in WAC 248-19-330 or WAC 248-19-340.

(4) Distribution of written findings and statement of decision.

(a) A copy of the department's written findings and statement of the decision of the secretary's ((decision)) designee on a certificate of need application shall be sent to:

(i) The person (~~who submitted~~) submitting the certificate of need application;

(ii) The regional health ((systems agency)) council for the health service area in which the proposed project is to be located;

(iii) The hospital commission, if the proposed project is for a hospital;

(iv) In the case of a project proposed by a health maintenance organization, the appropriate regional office of the United States Department of Health and Human Services; and

(v) When the secretary's designee issues a certificate of need for a project which does not satisfy the review criteria set forth in WAC 248-19-370 (1) and (2), the appropriate regional office of the Department of Health and Human Services.

(b) The written findings and statement of the decision of the secretary's ((decision)) designee on a certificate of need application shall be available to others (~~who request~~) requesting the certificate of need unit to provide access to a copy of such findings and statement.

(5) Explanation of inconsistency with the regional health ((systems agency)) council recommendation or plan.

The department shall send to the applicant and to the appropriate regional health ((systems agency)) council a detailed, written statement as to the reasons why a decision (~~which~~) the secretary has made on a certificate of need application is inconsistent with any of the following:

(a) The regional health ((systems agency's)) council's recommendation as to the action to be taken on the certificate of need application;

(b) The goals and policies of the applicable regional health ((systems)) plan; or

(c) The priorities of the applicable annual implementation plan.

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

WAC 248-19-430 PROVISION FOR RECONSIDERATION DECISION. (1) Any person may, for good cause shown, request a public hearing for the purpose of reconsideration of the decision of the secretary's ((decision)) designee on a certificate of need application or withdrawal of a certificate of need.¹

(2) The department shall conduct a reconsideration hearing if it finds the request is in accord with the following requirements (~~;~~):

(a) The request for a reconsideration hearing shall be written, be received by the department within thirty days of the department's decision on the certificate of need application or withdrawal of the certificate of need, state in detail the grounds which the person requesting the hearing believes to show good cause, and be signed by the person making the request.

(b) Grounds which the department may deem to show good cause for a reconsideration hearing shall include but not be limited to the following:

(i) Significant relevant information not previously considered by the department which, with reasonable diligence, could not have been presented before the department made its decision;

(ii) Information on significant changes in factors or circumstances relied upon by the department in making its findings and decision; or

(iii) Evidence the department materially failed to follow adopted procedures in reaching a decision.

(3) A reconsideration hearing shall commence within thirty days after receipt of the request for the hearing.

(4) Notification of a public reconsideration hearing on a certificate of need application or withdrawal of a certificate of need shall be sent prior to the date of such hearing by the department to the following:

(a) The person ~~((who requested))~~ requesting the reconsideration hearing;

(b) The person ~~((who submitted))~~ submitting the certificate of need application which is under reconsideration or the holder of the certificate of need;

(c) The regional health ~~((systems agency))~~ council for the health service area in which the proposed project is to be offered or developed;

(d) The hospital commission, if the proposed project is a hospital project;

(e) Health care facilities and health maintenance organizations located in the health service area where the project is proposed to be located providing services similar to the services under review;

(f) In the case of a concurrent review, other applicants competing as described in WAC 248-19-270; and to

(g) Other persons ~~((who request))~~ requesting the department to send them such notification.

(5) The department shall, within forty-five days after the conclusion of a reconsideration hearing, make written findings ~~((which state))~~ stating the basis of the decision made after such hearing.

(6) The secretary's designee may, upon the basis of the department's findings on a reconsideration hearing, issue or reissue, amend, revoke, or withdraw a certificate of need or impose or modify conditions on a certificate of need for the project about which the reconsideration hearing was conducted.

NOTE:

¹No fee will be charged for a reconsideration hearing.

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

WAC 248-19-440 ISSUANCE, SUSPENSION, DENIAL, REVOCATION, AND TRANSFER OF A CERTIFICATE. of need. WAC 248-19-440 ISSUANCE, SUSPENSION, DENIAL, REVOCATION, AND TRANSFER OF A CERTIFICATE. (1) Issuance of a certificate of need.

(a) The secretary's designee shall issue a certificate of need to the person ~~((who submitted))~~ submitting the certificate of need application for the proposed project or a separable portion of the proposed project only if the department's findings and decision are ~~((that))~~ the project or the separable portion of the proposed project is consistent with the applicable criteria contained in chapter 248-19 WAC. In issuing a certificate of need, the secretary's designee shall specify the maximum capital expenditure which may be obligated under the certificate and prescribe the cost components to be included in determining the capital expenditure which may be obligated under such certificate.

(b) The secretary's designee may issue a conditional certificate of need for a proposed project if it is justified only under specific circumstances. The conditions specified in a conditional certificate of need must directly relate to the project being reviewed and to criteria contained in chapter 248-19 WAC.

(2) Suspension of a certificate of need.

(a) Grounds for which the secretary's designee may suspend a certificate of need shall include, but not be limited to, suspicion of fraud, misrepresentation, false statements, misleading statements, evasion or suppression of material fact in the application for a certificate of need or any of its supporting materials.

(b) The secretary's designee shall issue an order for any suspension of a certificate of need to the person to whom the certificate of need had been issued.

(i) Such order shall state the reason for the suspension.

(ii) A copy of such order of suspension shall be sent to the appropriate ~~((health systems agency and, if for a hospital project, the hospital commission))~~ advisory review agencies.

(c) A suspension of a certificate of need shall not exceed one hundred twenty calendar days.

(i) The department shall review the facts and circumstances relevant to the suspension and the secretary's designee shall reinstate, amend, or revoke a certificate of need within the one hundred twenty calendar days.

(ii) The secretary's designee shall send written notice of ~~((its))~~ his or her decision on a suspended certificate of need to the person to whom the certificate of need had been issued. A copy of such notice shall be sent to the appropriate ~~((health systems agency and, if a hospital project, to the hospital commission))~~ advisory review agencies.

(3) Denial of a certificate of need.

The secretary's designee shall send written notification of denial of a certificate of need for a proposed project or a separable portion of a

proposed project to the person ~~((who submitted))~~ submitting the certificate of need application for the proposed project for which the certificate of need is not issued.

(a) Such notification shall state the reasons for the denial of a certificate of need.

(b) Copies of such notification shall be sent to the appropriate ~~((health systems agency and, if for a hospital project, to the hospital commission))~~ advisory review agencies.

(4) Continuing effect of a denial.

In any case in which a proposed project or separable portion of the proposed project has been denied a certificate of need, another certificate of need application for such proposed project or separable portion thereof shall not be accepted by the department or reviewed under the provisions of chapter 248-19 WAC following the denial unless the department determines:

(a) There is a substantial change in existing or proposed health facilities or services in the area to be served by the project; or

(b) There is a substantial change in the need for the facilities or services of the type proposed in the area to be served by the project; or

(c) ~~((Three years have))~~ One year has lapsed since the submission of the application for the certificate of need subject to regular review which was denied or the next scheduled concurrent review cycle permits the submission of applications.

(5) Revocation of a certificate of need.

(a) The secretary's designee may revoke a certificate of need for fraud, misrepresentation, false statements, misleading statements, evasion or suppression of material facts in the application of a certificate of need, or in any of its supporting materials.

(b) The secretary's designee shall send written notification of a revocation of a certificate of need to the person to whom the certificate of need had been issued.

(i) The notice of revocation shall include a statement of the reasons for such revocation.

(ii) A copy of a notice of revocation shall be sent to the appropriate ~~((health systems agency and, if a hospital project, to the hospital commission))~~ advisory review agencies.

(6) Transfer or assignment of a certificate of need.

A certificate of need ~~((which has been))~~ issued to one person shall not be transferred or assigned to another person without the written approval of the secretary's designee.

(a) The person to whom the certificate of need was originally issued shall submit to the department a written request that the certificate of need be transferred to another person and give the full name and complete address of the other person.

(b) The person to whom the current holder of the certificate of need wishes to transfer the certificate shall send a written request for such transfer on a form and in such a manner as prescribed and published by the department.

(c) The secretary's designee, after the department's consultation with the appropriate ~~((health systems agency and, for a hospital project, the hospital commission))~~ advisory review agencies, shall:

(i) Transfer the certificate of need;

(ii) Deny the transfer of the certificate of need and send written notice of the denial and the reasons for such denial to the persons ~~((who requested))~~ requesting the transfer; or

(iii) If the person ~~((, who wishes))~~ wishing to receive the certificate of need ~~((;))~~ plans to modify the project for which the certificate was issued, notify such person that an application for a new or amended certificate of need is necessary.

(d) Approval or denial of a request for transfer or assignment of a certificate of need shall be based on the demonstrated ability of the person wishing to acquire the certificate of need to undertake, complete, and operate the project in accordance with review criteria in WAC 248-19-380(1) and (3) and WAC 248-19-390(1), (3), and (5), and on continuing conformance of the project with all other applicable review criteria.

(7) Secretary's designee's failure to act.

If the secretary's designee fails to issue or deny a certificate of need in accordance with the provisions of chapter 248-19 WAC, the applicant for the certificate of need may seek a writ of mandamus from superior court pursuant to chapter 7.16 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.

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 210, filed 4/9/81, effective 5/20/81)

WAC 248-19-450 CIRCUMSTANCES FOR WHICH AN AMENDED CERTIFICATE OF NEED IS REQUIRED. (1) An amended certificate of need shall be required for any of the following modifications of a project for which a certificate of need was issued:

- (a) An addition of a new service;
- (b) An expansion of a service beyond that which was included in the certificate of need application on which the issuance of the certificate of need was based;
- (c) An increase in the inpatient bed capacity; or
- (d) A significant reduction in the scope of a project for which a certificate of need has been issued without a commensurate reduction in the cost of the project, or the project cost increases (as represented in bids on a construction project or final cost ~~((estimate(±))) estimate or estimates~~ acceptable to the person to whom the certificate of need was issued) when the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure specified by the secretary's designee in issuing the certificate of need: **PROVIDED**(;) **HOWEVER**, That the review of such reductions or cost increases shall be restricted to the continued conformance of the project with the criteria contained in WAC 248-19-380 and 248-19-400.

(2) An application for an amended certificate of need shall be submitted in accordance with the provisions of WAC 248-19-280.

(3) An application for an amended certificate of need may be reviewed under the expedited review process set forth in WAC 248-19-340.

(4) The department shall, after consultation with the appropriate advisory review agencies, provide a written determination as to the requirement for an amended certificate of need within twenty-one days after receipt of a request for such determination.

AMENDATORY SECTION (Amending Order 188, filed 11/30/79)

WAC 248-19-460 VALIDITY AND EXTENSIONS. (1) A certificate of need shall be valid for two years: **PROVIDED**, That one six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made.

(2) In the case of a project involving construction, substantial and continuing progress shall include one of the following:

- (a) When review and approval by the department of the final plans for construction is required, the submission of working drawings;
- (b) When plan approval is not required by the department, receipt of copies of the working drawings for construction.

(3) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

~~((±))~~ (4) Applications for extensions of the validity period of certificates of need shall be submitted simultaneously to the department(;) and the appropriate ~~((health systems agency and, if a hospital project, the hospital commission))~~ advisory review agencies, at least one hundred ~~((and))~~ twenty calendar days before the expiration of the certificate of need, and shall contain such information as may be required by the department to determine the extent of progress toward commencement of construction or other action necessary to a project.

~~((±))~~ (5) An application for an extension of a certificate of need ~~((which is))~~ submitted less than one hundred ~~((and))~~ twenty calendar days before the expiration of the certificate of need shall not be reviewed, unless the applicant can demonstrate to the satisfaction of the department ~~((that))~~ unforeseen occurrences during the last one hundred ~~((and))~~ twenty days of the validity period of the certificate of need prevented commencement of construction as previously anticipated by the applicant.

~~((±))~~ (6) Commencement of the project shall not be undertaken after the expiration of the certificate of need unless a new certificate of need application has been reviewed and a new certificate of need has been issued by the secretary's designee.

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 188, filed 11/30/79)

WAC 248-19-470 MONITORING OF APPROVED PROJECTS. (1) The department, in cooperation with the ~~((health systems agencies, and the hospital commission in the case of hospital projects))~~ advisory review agencies, shall monitor the costs and components of approved projects so as to assure conformance with certificates of need that have been issued.

(2) The department shall require periodic progress reports from those applicants to whom certificates of need have been issued.

(a) Progress reports shall be required at least annually and at no greater frequency than quarterly.

(b) Progress reports shall be submitted in the form and manner prescribed and published by the department.

(3) Information required on approved projects may include:

- (a) Actual project costs;
- (b) Changes in the project;
- (c) Financing arrangements, different than approved under the certificate of need;
- (d) Project commencement date;
- (e) Progress toward completion of construction; and
- (f) Project completion date.

(4) The information required on approved projects may vary according to the nature of the projects.

(5) Progress reports on a project for which a particular certificate of need has been issued shall terminate when the project has been completed and the department finds ~~((that))~~ it has received all the information necessary to determine ~~((that))~~ the project has been completed in accordance with the certificate of need which had been issued and the provisions of chapter 248-19 WAC.

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

WAC 248-19-475 WITHDRAWAL OF A CERTIFICATE OF NEED. (1) The secretary's designee may withdraw a certificate of need if the department determines, after consultation with the appropriate ~~((health systems agency and, in the case of a hospital project, the hospital commission))~~ advisory review agencies, that the holder of a certificate is not meeting the timetable specified in the certificate of need application for making services or equipment available or completing the project and is not making a good-faith effort to meet such timetable.

(2) In reviewing a proposed withdrawal of a certificate of need, the department shall adhere to the provisions of WAC 248-19-310, 248-19-320, ~~((248-19-325))~~ 248-19-326, and 248-19-430.

(3) The review period for a proposed withdrawal of a certificate of need shall not exceed ninety days unless extended by the department to allow sufficient time for the conduct of a public hearing pursuant to the provisions of WAC 248-19-320. The review period of the appropriate ~~((health systems agency and, in the case of a hospital project, the hospital commission))~~ advisory review agencies shall not exceed sixty days unless extended by the department at the written request of the regional health ((systems agency)) council to allow sufficient time for the conduct of a public hearing pursuant to the provisions of WAC 248-19-320. Such extension shall not exceed thirty days.

(4) The findings of the department's review of a proposed withdrawal of a certificate of need shall be stated in writing and include the basis for the decision of the secretary's ((decision)) designee as to whether the certificate of need is to be withdrawn for a proposed project. A copy of the department's written findings and statement of the decision of the secretary's ((decision)) designee on the proposed withdrawal of a certificate of need shall be sent to:

- (a) The holder of the certificate of need;
- (b) The regional health ((systems agency)) council for the health service area in which the proposed project is to be located;
- (c) The hospital commission, if the proposed project is for a hospital; and

(d) In the case of a project proposed by a health maintenance organization, the appropriate regional office of the United States Department of Health and Human Services.

(5) The written findings and statement of the decision of the secretary's ~~((decision))~~ designee on the proposed withdrawal of a certificate of need shall be available to others ~~((who request))~~ requesting the certificate of need unit to provide access to a copy of such findings and statement.

(6) The department shall send to the appropriate regional health ((systems agency)) council a detailed, written statement as to the reasons why a decision which the secretary's designee has made is inconsistent with any of the following:

(a) The regional health ((systems agency's)) council's recommendation as to the action to be taken;

(b) The goals of the applicable regional health ((systems)) plan; or

(c) The priorities of the applicable annual implementation plan.

(7) When a certificate of need is for multiple services or multiple components or the proposed project is to be multiphased, the secretary's designee may take individual and different action regarding withdrawal of the certificate of need on separable portions of the certificate of need.

AMENDATORY SECTION (Amending Order 244, filed 9/15/82)

WAC 248-19-480 RIGHT AND NOTICE OF APPEAL. (1) Any affected person may request and shall be afforded the opportunity for an administrative hearing on the decision of the secretary's ((decision)) designee to issue or deny a certificate of need for a project or a separable portion of a project, to grant or deny an exemption requested under WAC 248-19-405, to suspend or revoke a certificate of need, or to withdraw or not withdraw a certificate of need.

(2) To be effective, a request for an administrative hearing shall be in writing and received by the department within thirty days after the person requesting the hearing received the particular decision of the department which is being appealed or, if a reconsideration hearing was requested and denied, thirty days after the denial of the request for the reconsideration hearing.

(3) An administrative hearing shall be conducted in accordance with the provisions of chapter 34.04 RCW.

(4) The decision of the secretary's designee shall be subject to review in an administrative hearing to establish a record of the decision of the secretary's designee. The determination of the official (who conducts) conducting such an administrative hearing shall be made in writing within forty-five days after the conclusion of the hearing. The official (who conducts) conducting such an administrative hearing may make a proposed decision, findings of fact and conclusions of law, pursuant to RCW 34.04.110, or the official may remand the matter to the secretary's designee for further action or consideration.¹ The written determination shall be sent to the applicant, the appropriate (health systems agency, the hospital commission in the case of a hospital project) advisory review agencies, and the department. The department shall make any written determination available to others upon request.

NOTE:

¹Chapter 34.04 RCW provides entitlement to judicial review to any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form.

REPEALER

The following sections of the Washington Administrative Code is repealed:

- WAC 248-19-200 PURPOSE OF CHAPTER 248-19 WAC.
- WAC 248-19-290 CONCURRENT REVIEW OF SELECTED APPLICATIONS.
- WAC 248-19-325 PROHIBITION OF EX PARTE CONTACTS.

WSR 85-08-001
EMERGENCY RULES
DEPARTMENT OF FISHERIES
 [Order 85-21—Filed March 21, 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 surplus of salmon has been taken, and this rule conforms Washington state with recommendations of 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 75.08.070 and 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 March 21, 1985.

By William R. Wilkerson
 Director

NEW SECTION

WAC 220-32-051001 SEASONS—SALMON. *Notwithstanding the provisions of WAC 220-32-051, effective 12:01 p.m. March 21, 1985, until further notice it is unlawful for any fisherman, including treaty Indian fishermen, to fish for or possess salmon taken for commercial purposes from the waters of Columbia River Salmon Management and Catch Reporting Area 1F, 1G, or 1H.*

WSR 85-08-002
EMERGENCY RULES
DEPARTMENT OF
VETERANS AFFAIRS
 [Order 84-04—Filed March 22, 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 March 22, 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 7659, filed 7/28/77)

WAC 484-20-085 MEMBERS' RIGHTS AND ((RESPONSIBILITIES)) RULES OF CONDUCT - NOTIFICATION. ((+)) Each new home member and employee shall be ((advised in writing of the following supplementary rules

(a) His rights and responsibilities,

(b) Acts prohibited in the institution,

(c) Disciplinary action which may be taken in the event of misconduct and of the member's right to request a fair hearing pursuant to WAC 484-20-105.

(2) Each member shall be provided with a copy of the rules in this chapter and of any supplementary rules adopted pursuant to WAC 484-20-090. Copies of all rules shall be conspicuously posted in the home)) furnished with the home's policies regarding member rights and with a copy of chapter 484-20 WAC.

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 pursuant to 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 member's 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 pursuant to chapter 10-08 WAC 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. If the parties cannot satisfactorily agree on informal procedures for discovery, the administrative law judge may issue orders specifying the conditions under which discovery shall proceed.

((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

~~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 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)) (5) The ((department)) administrative law judge shall, within thirty days after the date of the fair hearing, issue a proposed decision and notify the member ((in writing of its decision)) and director. 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)) (6) 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.~~

~~(7) Any party adversely affected by a proposal for decision may file written argument and exception with the director. Written argument and exception must be filed within fifteen days from the date the proposal for decision was mailed to the parties. Such fifteen-day period may be extended by the director or his or her designee upon motion of a party when the motion is filed during the fifteen-day period and good cause for the extension is shown. Good cause includes mistake, inadvertence, and excusable neglect on the part of the moving party or unavoidable casualty or misfortune preventing the moving party from timely filing. Upon a showing of good cause either party may file exception and argument within thirty days of the date the proposed decision was mailed to the parties.~~

~~(8) The director, or his or her designee, shall personally consider the whole record or such portions of the record as are cited by a party or parties in exception and argument. The director or designee shall render the final~~

department decision. The director or designee may accept additional evidence to correct omissions in the record upon his or her own motion or the motion of a party. The director or designee may remand the proceedings to the administrative law judge for the taking of additional evidence or argument.

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 85-08-003

ADOPTED RULES

**PARKS AND RECREATION
COMMISSION**

[Order 88—Filed March 22, 1985—Eff. May 15, 1985]

Be it resolved by the Washington State Parks and Recreation Commission, acting at Westport, Washington, that it does adopt the annexed rules relating to standard fees 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.

This action is taken pursuant to Notice No. WSR 85-04-060 filed with the code reviser on February 6, 1985. These rules shall take effect at a later date, such date being May 15, 1985.

This rule is promulgated pursuant to RCW 43.51.040, 43.51.055 and 43.51.060 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 March 15, 1985.

By Jack R. Gustafson, MD
Chairperson

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 ~~(that)~~ 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 15~~) 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 1~~) 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)) the 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 and 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, (~~(\$5.00)~~) \$5.50 per night;

(b) Vessels under twenty-six feet in length, (~~(\$3.00)~~) \$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 85-08-004
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 85-01]

**IMPOSING A HIRING FREEZE AND
EXPENDITURE CURTAILMENTS**

On March 18, 1985, the Economic and Revenue Forecast Council adopted a revised state General Fund revenue forecast for the current biennium. That forecast was \$47.5 million below the December, 1984 estimate. The lower estimate coupled with essential requirements to be met in the supplemental budget has eliminated the projected state General Fund balance at the end of this biennium.

WHEREAS, prudent fiscal management requires operating revenue balances; and

WHEREAS, it is possible that revenue collections could still be less than the latest projection;

NOW, THEREFORE, I, Booth Gardner, Governor of the state of Washington, by virtue of the power vested in me, do hereby direct each agency whose allotments the Governor has the power to revise under RCW 43.88.110, to implement immediately a freeze on hiring, and to curtail purchasing, use of outside consultants, and travel. This hiring freeze and the expenditure restrictions will apply to all activities supported in whole or in part by the General Fund, and will remain in effect until July 1, 1985. The Office of Financial Management will issue implementing details of this Executive Order and requests for exceptions to this Order are to be made in writing by agency directors to the Director of Financial Management.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed this 21st day of March, A.D., nineteen hundred and eighty-five.

Booth Gardner

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 85-08-005
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 85-22—Filed March 25, 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 these rules are needed to provide interim harvest guidelines until the permanent rules for sport harvest take effect.

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 March 22, 1985.

By William R. Wilkerson
Director

NEW SECTION

WAC 220-16-34000A GENERAL DEFINITIONS—BOTTOMFISH. Notwithstanding the provisions of WAC 220-16-340, Effective April 1, 1985, until further notice, shiner perch are removed from the list of food fish defined as bottomfish.

NEW SECTION

WAC 220-12-02000A SHELLFISH CLASSIFICATION. Notwithstanding the provisions of WAC 220-12-020, effective April 1, 1985 until further notice all macoma clams (*macoma* spp.) are classified as shellfish and are subject to the provisions of this title.

NEW SECTION

WAC 220-20-01000J GENERAL PROVISIONS. Notwithstanding the provisions of WAC 220-20-010, effective April 1, 1985, until further notice, it is unlawful for any person to fish for food fish or shellfish while in possession in the field of food fish or shellfish that are in violation of the harvest regulations for the area being fished.

NEW SECTION

WAC 220-56-10000A DEFINITIONS—PERSONAL USE. Effective immediately, The term "freshwater area" means, for purposes of this chapter:

- (1) Within any freshwater river, lake, stream, or pond.
- (2) On the bank or within 10 yards of any freshwater river, lake, stream, or pond.
- (3) On or within any boat launch, ramp, or parking facility associated with any freshwater river, lake, stream, or pond.

NEW SECTION

WAC 220-56-10500B RIVER MOUTH DEFINITIONS. Notwithstanding the provisions of WAC 220-56-105, effective April 1, 1985, until further notice, the mouth of the Skagit River is defined as a line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.

NEW SECTION

WAC 220-56-11500D ANGLING—LAWFUL AND UNLAWFUL ACTS. Notwithstanding the provisions of WAC 220-56-115, effective April 1, 1985, until further notice, it is lawful for each angler to use one line with two lures or two lines with one lure per line while fishing in all of Punch Card Area 12 and that portion of Punch Card Area 8 lying southeasterly of a line between East Point on Whidbey Island and the flashing light north of Lowell Point on Camano Island.

NEW SECTION

WAC 220-56-11600C SALMON—LAWFUL GEAR. Notwithstanding the provisions of WAC 220-56-116, effective April 1, 1985, until further notice, it is unlawful to use barbed hooks while angling for salmon in all marine waters of Puget Sound, the Pacific Ocean, Grays Harbor, Willapa Bay, and waters at the mouth of the Columbia River westerly of a line drawn north-south through Buoy 10. Barbless hooks are hooks on which the barb has been filed off, removed, pinched down, or deleted when manufactured.

NEW SECTION

WAC 220-56-15600D LANDING CANADIAN ORIGIN FOOD FISH AND SHELLFISH. Effective April 1, 1985, until further notice, it is unlawful to land in any Washington state port shellfish or food fish other than halibut taken for personal use from Canadian waters unless the person landing the shellfish or food fish possess a Canadian sport fishing license and catch record, if one is required, valid for the period when the shellfish or food fish were taken, and provides official documentation of previous landing in Canada in the form of an E 99 written report or the PAC 99 number issued by Canadian customs. Without official documentation of previous landing in Canada, all personal use shellfish or foodfish other than halibut taken from Canadian waters must conform to applicable harvest regulations for the area where first landed in Washington.

NEW SECTION

WAC 220-56-18500A MARINE AREA CODES. Notwithstanding the provisions of WAC 220-56-185, effective immediately, the boundaries of the salmon catch record card areas are adjusted such that the inclusive areas are:

(1) Area 6 (East Juan de Fuca Strait): From Low Point east to the Partridge Point-Point Wilson line north to the line from Trial Island (near Victoria, B.C.) - Navigation Buoy BW "R" - Smith Island - the most northeasterly of the Lawson Reef lighted buoys (RBI QK F1 Bell) - northwest Island - the Initiative 77 marker on Fidalgo Island.

(2) Area 7 (San Juan Islands): All marine waters north of the line described under Area 6 to the United States-Canadian boundary.

(3) Area 8 (Deception Pass, Hope and Camano Islands): A line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island east through Deception Pass, including all waters east of Whidbey Island to the Possession Point - Shipwreck Line.

(4) Area 9 (Admiralty Inlet): All waters inside and south of the Partridge Point-Point Wilson Line and a line projected from the southerly tip of Possession Point 110 degrees true to a shipwreck on the opposite shore and northerly of the Hood Canal Bridge and the Apple Cove Point-Edwards Point Line.

(5) Area 10 (Seattle-Bremerton): From the Apple Cove Point-Edwards Point Line to a line projected true east-west through the northern tip of Vashon Island.

(6) Area 11 (Tacoma-Vashon Island): From the northern tip of Vashon Island to the Tacoma Narrows Bridge.

(7) Area 12 (Hood Canal): All contiguous waters south of the Hood Canal Bridge.

(8) Area 13 (South Puget Sound): All contiguous waters south of the Tacoma Narrows Bridge.

NEW SECTION

WAC 220-56-19500C CLOSED AREAS—SALTWATER SALMON ANGLING. (1) Effective immediately until further notice those waters of Carr Inlet within 1,000 feet of the outer oyster stakes at the mouth of Minter Creek are closed to salmon angling.

(2) Effective April 15, 1985, until further notice, those waters west and north of a line projected true north from Point Whitney to the Bolton Peninsula are closed to salmon angling.

NEW SECTION

WAC 220-56-23500C BOTTOMFISH POSSESSION LIMITS. Notwithstanding the provisions of WAC 220-56-235, effective April 1, 1985, until further notice, the possession limits for bottomfish in Puget Sound east of the mouth of the Sekiu River are:

(a) East of the mouth of the Sekiu River and west and north of a line from Point Partridge to Point Wilson and west of a line between west point on Whidbey Island and Reservation Head on Fidalgo Island. (Punch Card Areas 5 through 7) - 15 fish in the aggregate of all species of bottomfish, no more than 2 of which may be lingcod and no more than 10 of which may be rockfish. It is unlawful to possess lingcod less than 22 inches in length taken by angling. The daily bag limit taken by spear fishing may include no more than one lingcod in the 15 fish aggregate, with no size restriction.

(b) All contiguous marine waters east and south of a line from Point Partridge to Point Wilson and east of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island (Punch Card Areas 8 through 13) - 15 fish in the aggregate of all species of bottomfish, no more than 1 of which may be lingcod, and no more than 5 of which may be rockfish. It is unlawful to possess lingcod less than 22 inches in length taken by angling. There is no size restriction on the one lingcod allowed in the daily bag limit if taken by spear fishing.

NEW SECTION

WAC 220-56-24000B POSSESSION LIMITS—STURGEON. Notwithstanding the provisions of WAC 220-56-240, effective April 1, 1985, until further notice, the possession limit of sturgeon taken in the Columbia River and mainstem impoundments upstream from a line perpendicular to the river flow where the river ceases to be the Oregon/Washington boundary approximately 17.3 miles above McNary Dam to the United States/Canada border and those waters of the Snake River from its mouth upstream to the powerline crossing below Highway 12 Bridge at Clarkston is 2 fish not less than 48 inches nor more than 72 inches in length.

NEW SECTION

WAC 220-56-40000A ABALONE. Notwithstanding the provisions of WAC 220-56-400, effective April 1, 1985, until further notice: (1) It is unlawful to remove undersized abalone from the water, and any undersized abalone must be replaced immediately with the shell outward to the site from which it was removed.

(2) The first five legal size abalone taken must be retained, and it is unlawful to detach abalones once the personal possession limit has been taken.

(3) It is unlawful to possess in the field any abalone taken for personal use which has the shell removed.

NEW SECTION

WAC 220-57-17500N COWLITZ RIVER. Notwithstanding the provisions of WAC 220-56-175, effective April 1, 1985, until further notice, salmon angling from boats is prohibited in designated open waters between the barrier dam and a line from the mouth of Mill Creek to a boundary marker on the opposite shore.

NEW SECTION

WAC 220-57-50500I WHITE SALMON RIVER. Notwithstanding the provisions of WAC 220-57-505, effective April 1, 1985, until further notice, Bag limit A - Downstream from a set of markers approximately 1/2 mile north of Highway 14 Bridge.

NEW SECTION

WAC 220-57A-00100B LAKES—SEASONS AND BAG LIMITS. Notwithstanding the provisions of Chapter 220-57A WAC:

(1) The following lakes are closed to salmon angling until opening under bag limit I on the date shown after each lake:

(a) Baker Lake (Whatcom County) - April 21, 1985

(b) Clear Lake (Pierce County) - April 21, 1985

(c) Cushman Lake (Mason County) - April 21, 1985

(d) Goodwin Lake (Snohomish County) - April 21, 1985

(e) McMurray Lake (Skagit County) - April 21, 1985

(f) Shannon Reservoir (Skagit County) - April 21, 1985

(g) Wilderness Lake (King County) - April 21, 1985

(h) Wynoochee Reservoir (Grays Harbor County) - April 21, 1985

(2) Armstrong Lake in Snohomish County is closed to salmon angling until further notice.

REPEALER

Effective April 1, 1985, until further notice, the following section of the Washington Administration Code is repealed:

WAC 220-56-201 MARKING SPORT-CAUGHT SALMON.

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

WSR 85-08-006

NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Memorandum—March 21, 1985]

The Washington State Human Rights Commission will conduct a special meeting to discuss legislation and to discuss a personnel matter in executive session on March 25, 1985. The meeting will be held by telephone conference call which will originate in the Olympia office beginning at 4:00 p.m.

WSR 85-08-007

NOTICE OF PUBLIC MEETINGS HOSPITAL COMMISSION

[Memorandum—March 22, 1985]

The State Hospital Commission will meet in Seattle at the Vance Airport Inn on Thursday, April 11, 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 April 25, 1985, at the Seattle Airport

Hilton, and May 9, 1985, and May 23, 1985, at the Vance Airport Inn, Seattle.

WSR 85-08-008
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed March 25, 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 Medical care—Drugs, amending chapter 388-91 WAC;

that the agency will at 10:00 a.m., Wednesday, May 8, 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 May 15, 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 May 8, 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 April 24, 1985. The meeting site is in a location which is barrier free.

Dated: March 22, 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 chapter 388-91 WAC.

Purpose of the Rule Change: To adopt policy changes of the Division of Medical Assistance.

The Reason These Rules are Necessary: For proper administration of the medical program.

Statutory Authority: RCW 74.08.090.

Summary of the Rule Change: Correct form numbers and names, removes the prohibition on nonformulary drugs, updates terms and adds to the pharmacist's agreement that the sale or transfer of ownership will automatically cancel the agreement.

Person Responsible for the Drafting, Implementation and Enforcement of the Rule: Jim Sparks, Program

Manager, Division of Medical Assistance, phone 3-7326, 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 1402, filed 5/16/79)

WAC 388-91-013 DRUGS—PHYSICIAN'S ~~((NAME))~~ IDENTIFICATION REQUIRED ON PRESCRIPTIONS. The prescription claim, Form ~~((DSHS-6-02))~~ 525-106, must bear the prescribing physician's name or identification (provider) number.

AMENDATORY SECTION (Amending Order 2158, filed 10/3/84)

WAC 388-91-016 DRUGS—LIMITATIONS TO PAYMENT. (1) The department does not provide:

~~((a))~~ ~~((Nonformulary drugs which can be purchased without a prescription such as: Nose drops, cotton, alcohol, vitamins, simple laxatives, advertised antacids such as but not limited to Tums, Roloids, etc.;~~

~~((b))~~ ~~((Any drug regularly supplied as an integral part of program activity by other public agencies such as the U.S. Veterans' Administration, U.S. Department of Health and Human Services ((=)), Division of Indian Health, local health department, etc.;~~

~~((c))~~ ~~((b))~~ Drugs, biologicals, supplies, appliances, and equipment furnished by an extended care facility under Title XVIII of the Social Security Act;

~~((d))~~ ~~((c))~~ Drugs ordered for a hospitalized patient. These are to be furnished by the hospital;

~~((e))~~ ~~((d))~~ Drugs to individuals who have elected to be enrolled in a special group medical coverage contract which includes the provision of drugs as a part of the contract.

~~((f))~~ ~~((e))~~ Drugs listed in the federal register as ~~(("ineffective" or "possibly"))~~ "less than effective." Payment will not be made for such prescriptions under any circumstances.

(2) Prescribed nonformulary drugs will be allowed for unusual conditions only when approved by the local medical consultant.

(3) The physician who provides a drug (oral or by injection) incidental to an office call may include a fee established by the division on the basis of the acquisition cost of the drug in addition to his office call fee. In the event the cost of the drug given the patient exceeds this fee, the physician may include on his invoice for his professional services to the patient the actual cost of the drug indicating name of manufacturer and strength of dosage.

(4) Payment shall not be made for a prescription ordered for an individual recipient and used to replace drugs drawn from the doctor's stock for the treatment of such recipient. Payment shall not be allowed for experimental or controversial medications and those unrelated to the above.

AMENDATORY SECTION (Amending Order 1042 [1402], filed 5/16/79)

WAC 388-91-020 NONFORMULARY PRESCRIPTION DRUGS—MEDICAL CONSULTANT APPROVAL. (1) Normal requests. A request for nonformulary prescription drugs must be submitted by the attending physician to the local medical consultant for prior approval. The request must be to meet a medically mandatory condition supported by proper diagnosis and justification for the nonformulary drug.

(2) Emergency requests. Payment may be made for nonformulary drugs prescribed without prior approval only on an acute emergency, and if the physician can substantiate that a nonformulary drug is mandatory. ~~((Form DSHS-6-02 with))~~ Justification must be in the department's CSO within seventy-two hours for consideration by the medical consultant.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 1402, filed 5/16/79)

WAC 388-91-030 DRUGS—PRESCRIPTION CLAIM, FORM ~~((DSHS-6-02))~~ 525-106 (PHARMACY STATEMENT). (1) The department's official prescription claim, Form ~~((DSHS-6-02))~~ 525-106, must be used by the pharmacist. A supply may be obtained from ~~((the department's local office))~~ Provider Services, Division of Medical Assistance.

(2) Only ~~((one))~~ four prescriptions may be ~~((written))~~ entered on Form ~~((DSHS 6-02))~~ 525-106. Each prescription must bear specified unit and interval dosage.

(3) Prescriptions for formulary drugs only may be refilled at the discretion and choice of the prescribing physician. ~~((Form DSHS 6-02 may be marked by the physician on line B-2 permit 1, 2.))~~ The use of presigned prescription blanks to be filled out by the nursing home operators or pharmacists is prohibited. This practice shall be considered sufficient grounds for cancelling the vendor agreement of participating providers involved.

(4) To assure prompt payment, a coupon from the recipient's medical care identification booklet, Form DSHS ~~((13-05))~~ 13-30, should be attached by the pharmacist to the individual's prescriptions. When a coupon is not available the provider may submit a billing without this coupon although the processing by the department may be somewhat slower. Payment will be made for all appropriate goods and/or services provided to eligible recipients.

(5) Accurate recording of all data on the ~~((prescription))~~ pharmacy statement is essential. Any error or lack of clarity in the prescription national drug code number or number of units dispensed will delay payment. Typed prescriptions are preferred and expedite payment.

AMENDATORY SECTION (Amending Order 1648, filed 4/27/81)

WAC 388-91-035 DRUGS—PHARMACIST'S AGREEMENT.

(1) ~~((Vendor service))~~ Core Provider Agreement, Form DSHS ~~((6-48))~~ 9-48 must be filed with Department of Social and Health Services, Olympia, Washington 98504. Forms may be obtained from the department's Office of Provider Services LG 11, Olympia, WA 98504.

(2) To participate in this program, a licensed pharmacy must agree to furnish goods and services in accordance with the department's rules, regulations and payment procedures. Fees and rates established by the department according to WAC 388-91-020(3) shall constitute the full and complete charge for approved medical care and goods and services provided to recipients by the vendor or providers.

(3) All pharmacists and pharmacies agreeing to render goods and services to eligible persons shall submit such charges as agreed upon between the department and the individual or firm monthly and shall present their final charges not more than one hundred twenty days after the termination of their service or as otherwise provided by state law. Bills presented after the required one hundred twenty-day period shall be a charge against the state only when a written extension has been given by the division of medical assistance before the one hundred twenty-day period ends.

(4) Sale or transfer of ownership will automatically cancel this agreement. New application should indicate whether "High," "Mid," or "Low" volume provider in accordance with previous owner's volume.

WSR 85-08-009

NOTICE OF PUBLIC MEETINGS

WESTERN WASHINGTON UNIVERSITY

[Memorandum—March 20, 1985]

The meeting of the board of trustees of Western Washington University which was scheduled for April 4, 1985, is cancelled.

The next meeting of the board will be on the regularly scheduled date of May 2, 1985.

WSR 85-08-010

ADOPTED RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Order 6-B—Filed March 27, 1985]

Be it resolved by the Washington State Criminal Justice Training Commission, acting at Seattle,

Washington, that it does adopt the annexed rules relating to description of central and field organization, WAC 139-04-010.

This action is taken pursuant to Notice No. WSR 85-03-076 filed with the code reviser on January 18, 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 under the general rule-making authority of the Washington State Criminal Justice Training Commission as authorized in RCW 43.101.080(2).

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 March 7, 1985.

By James C. Scott
Executive Director

AMENDATORY SECTION (Amending Order 6-A, filed 1/17/78)

WAC 139-04-010 DESCRIPTION OF CENTRAL AND FIELD ORGANIZATION. The Washington state criminal justice training commission consists of ~~((the commission and its personnel))~~ staff, twelve commissioners, the board on law enforcement training standards and education, the board on prosecutor training standards and education, and the board on correctional training standards and education ~~((and the board on judicial training standards and education))~~. The primary responsibility of the boards is the recommendation to the commission of training standards, goals, ~~((and))~~ programs, and budget for criminal justice personnel within their specific purview. Recommendations for training pursuant to commission adopted goals and standards may be approved by the executive director of the commission. Other board recommendations will be reviewed by the ~~((commission))~~ commissioners for approval or rejection. Approved recommendations and other matters of the commission necessitating implementation or staff involvement will be assigned by the executive director to appropriate personnel.

The central office of the commission is located on the campus of St. Martin's College, Olympia, Washington. It is maintained by the commission's executive director and staff from 8:00 a.m. to 5:00 p.m., Monday through Friday, and serves as a central repository for the commission's records of administration and operation.

The Criminal Justice Training Center, 2450 So. 142nd, Seattle, Washington, serves as the commission's primary training site. Other training is conducted locally, regionally, or at centralized locations state-wide, as determined by staff.

WSR 85-08-011
ADOPTED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
 [Order 2-A—Filed March 27, 1985]

Be it resolved by the Washington State Criminal Justice Training Commission, acting at Seattle, Washington, that it does adopt the annexed rules relating to practice and procedure rules, chapter 139-08 WAC.

This action is taken pursuant to Notice No. WSR 85-03-077 filed with the code reviser on January 18, 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 under the general rule-making authority of the Washington State Criminal Justice Training Commission as authorized in RCW 43.101.080(2).

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 March 7, 1985.

By James C. Scott
 Executive Director

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-005 "COMMISSION" DEFINED. As used in this chapter "commission" means the Washington state criminal justice training commission and, where applicable, the board on law enforcement training standards and education, the board on prosecutor training standards and education, (~~the board on judicial training standards and education;~~) and the board on correctional training standards and education.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-040 APPEARANCE AND PRACTICE BEFORE COMMISSION—APPEARANCE BY FORMER EMPLOYEE OF BOARD OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. No member of the attorney general's staff assigned to represent the commission or a hearing committee of said commission may at any time after severing (~~his~~) employment with the attorney general appear, except with the written permission of the commission, in a representative capacity on behalf of other parties in a formal proceeding wherein (~~he~~) the staff member previously took an active part in the investigation as a representative of the commission or a hearing committee of said commission.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-090 SERVICE OF PROCESS—SERVICE UPON PARTIES. The final order, and any other paper required to be served by the commission upon a party, shall be served upon such party or upon the agent designated by (~~him~~) the party or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-130 SUBPOENAS—WHERE PROVIDED BY LAW—FORM. Every subpoena shall state the name of the commission and the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under (~~his~~) such person's control at a specified time and place.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-150 SUBPOENAS—SERVICE. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering (~~him~~) on demand the fees for one day's attendance and the mileage allowed by law.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-240 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES—AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify (~~him~~) the person or the particular class or group to which (~~he~~) the person belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-270 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES—RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under (~~his~~) the officer's direction and in (~~his~~) the officer's presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which

record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-280 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES—SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by ~~((him))~~ the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the commission, or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-290 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES—USE AND EFFECT. Subject to ruling by the hearing officer upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness ~~((his))~~ the party's witness by taking ~~((his))~~ the other party's deposition. Any party

may rebut any relevant evidence contained in a deposition whether introduced by ~~((him))~~ the party or any other party.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-320 DEPOSITIONS UPON INTERROGATORIES—INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 139-08-230 the officer taking the same, after duly swearing the deponent, shall read to ~~((him))~~ the deponent seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-330 DEPOSITIONS UPON INTERROGATORIES—ATTESTATION AND RETURN. The officer before whom interrogatories are verified or answered shall (1) certify under ~~((his))~~ official signature and seal that the deponent was duly sworn ~~((by him))~~, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither ~~((he))~~ the officer nor the stenographer ~~((; to his knowledge;))~~ is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with ~~((his))~~ attestation to the commission, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-350 OFFICIAL NOTICE—MATTERS OF LAW. The ~~((hearing officer))~~ commission, upon request made before or during a hearing, will officially notice:

(1) Federal law. The United States Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) State law. The constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) Governmental organization. Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) Commission organization. The commission organization, administration, officers, personnel, official publications, and practitioners before its bar.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-360 OFFICIAL NOTICE—MATERIAL FACTS. (~~In the absence of controverting evidence;~~) The commission (~~and its hearing officers, upon request made before or during a hearing;~~) may officially notice:

(1) Commission proceedings. The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the commission;

(2) Business customs. General customs and practices followed in the transaction of business;

(3) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) Technical knowledge. Matters within the technical knowledge of the commission as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) Request or suggestion. Any party may request, or the hearing officer or the commission may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) Statement. Where an initial or final decision of the commission rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer (~~of~~) or the commission may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) Controversion. Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) Evaluation of evidence. Nothing herein shall be construed to preclude the commission or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-370 PRESUMPTIONS. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the commission, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) Continuity. That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) Identity. That persons and objects of the same name and description are identical;

(3) Delivery. Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) Ordinary course. That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) Acceptance of benefit. That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly (~~in his own~~) a matter of self-interest so to do;

(6) Interference with remedy. That evidence, with respect to a material fact which in bad faith is destroyed, eligned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-570 FORMS. Any interested person petitioning the commission for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Washington state criminal justice training commission." On the left side of page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner

seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by commission rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by ((his)) the petitioner's attorney. The original and two legible copies of the petition shall be filed with the commission. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

NEW SECTION

WAC 139-08-600 APPEAL. (1) Any action which directly and adversely effects an individual's interest under this title or chapter 43.101 RCW may be reviewed at the request of such individual, or the head of such individual's employing agency, and shall be considered in accordance with the process hereinafter provided. If such action was taken by a commission employee or representative, the review shall be considered by the board on training standards and education having primary responsibility in the matter as determined by the executive director of the commission. If such responsibility cannot be determined, or if the action for which review is requested was initiated by, or originated with, any board, the review shall be made by the commission only.

(2) An individual requesting review shall submit a request in writing to the executive director and shall therein specify and include, where applicable:

- (a) The action for which review is requested, identified by date and description of action;
- (b) The direct and adverse effects of such action;
- (c) The corrective or remedial action or other relief sought;
- (d) Whether review is to be effected in executive or public session, provided that, approval and/or conduct of any executive session shall be subject to applicable provisions of this state's open public meetings act (chapter 42.30 RCW);
- (e) The name and mailing address of the requesting party, any witness to be called by the requesting party, and any person who will personally appear in support of the requesting party, including legal counsel;
- (f) A statement that the person signing the request for review has read it and that to the best of his or her knowledge or information and belief the contents thereof are true;
- (g) The signature by the requesting party and/or the party's authorized representative; and

(h) A copy of any document or other written material which will be offered by the requesting party.

(3) Upon receipt of a request for review which satisfies the requirements of subsection (2) of this section, the executive director shall schedule the review for full consideration at the next meeting of the responsible board or the commission, as provided in subsection (1) of this section. If the executive director determines that exigent and attendant circumstances exist, such director may, in his/her discretion, schedule a special meeting of a board or, where applicable, of the commission, for the sole purpose of effecting review.

(4) Whenever sitting as a reviewing body, a board or the commission may consider any information or testimony determined by its chairperson to be relevant to full consideration of the matter for which review is requested. At least five days prior to the review proceeding, commission staff shall provide to the individual requesting review, a complete listing of those individuals who are expected to provide testimony, and a copy of any document or other written material which will be offered; provided that additional witnesses and written materials may be offered at the time of the proceeding by staff or the requesting party if there is a showing of good cause for the failure to provide prior notice of such additional evidence and witnesses. Each review proceeding, whether conducted in executive or public session, shall be recorded electronically. Thereafter such recording shall be transcribed in writing if requested by a party or if directed by the commission, board or staff.

(5) After full consideration of the matter, the reviewing body shall affirm, rescind, or modify the action for which review is requested. In any instance wherein a board sits as the reviewing body, appeal of such determination may be taken to the training commission at its next meeting following receipt by the executive director of a written appeal from the involved individual or the head of such individual's employing agency. In considering such appeal, the commission shall not be bound by any previous action or determination and may take any action it deems necessary and appropriate to the matter. The commission may consider only the record of the matter consisting of the transcript of the review proceeding and any written materials considered by the reviewing board, as well as any information requested or deemed relevant by the commission chairperson. A complete copy of such record shall be provided to the appellant at least five days prior to its consideration by the commission. Additional written materials may be submitted at the time of the appeal proceeding by staff or the requesting party if there is a showing of good cause for the failure to provide prior notice of such additional written evidence. Oral arguments by the appellant or the appellant's representative shall be allowed, subject to time limitations set by the chairperson of the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-08-010 APPEARANCE AND PRACTICE BEFORE COMMISSION—WHO MAY APPEAR.

WAC 139-08-020 APPEARANCE AND PRACTICE BEFORE COMMISSION—SOLICITATION OF BUSINESS UNETHICAL.

WAC 139-08-030 APPEARANCE AND PRACTICE BEFORE COMMISSION—STANDARDS OF ETHICAL CONDUCT.

WAC 139-08-060 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES.

WAC 139-08-390 FORM AND CONTENT OF DECISIONS IN CONTESTED CASES.

WAC 139-08-400 DEFINITION OF ISSUES BEFORE HEARING.

WAC 139-08-410 PREHEARING CONFERENCE RULE—AUTHORIZED.

WAC 139-08-420 PREHEARING CONFERENCE RULE—RECORD OF CONFERENCE ACTION.

WAC 139-08-430 SUBMISSION OF DOCUMENTARY EVIDENCE IN ADVANCE.

WAC 139-08-440 EXCERPTS FROM DOCUMENTARY EVIDENCE.

WAC 139-08-450 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA—NUMBER AND QUALIFICATIONS OF WITNESSES.

WAC 139-08-460 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA—WRITTEN SWORN STATEMENTS.

WAC 139-08-470 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA—SUPPORTING DATA.

WAC 139-08-480 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA—EFFECT OF NONCOMPLIANCE WITH WAC 139-08-450 OR 139-08-460.

WAC 139-08-490 CONTINUANCES.

WAC 139-08-510 RULES OF EVIDENCE—TENTATIVE ADMISSION—EXCLUSION—DISCONTINUANCE—OBJECTIONS.

WSR 85-08-012

ADOPTED RULES

STATE TOXICOLOGIST

[Order 85-01—Filed March 27, 1985]

I, Dr. Vidmantas A. Raisys, Washington State Toxicologist, do promulgate and adopt at the Medical Examiners Conference Room, Harborview Medical Center, Seattle, Washington, the annexed rules relating to administration of breath tests, chapter 448-12 WAC.

This action is taken pursuant to Notice No. WSR 85-05-041 filed with the code reviser on February 20, 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 46.61.506 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 March 26, 1985.

By Dr. Vidmantas A. Raisys
State Toxicologist

PROPOSED WAC'S FOR INFRARED BREATH INSTRUMENT

NEW SECTION

WAC 448-12-210 BAC VERIFIER DATA MASTER, INFRARED BREATH TEST INSTRUMENT APPROVED. The BAC Verifier Data Master infrared breath test instrument is approved by the state toxicologist as a device for the measurement of a person's breath for alcohol concentration. A simulator will be attached to each instrument and will provide a known external standard for each test. This simulator test will be run automatically between the two breath measurements. The simulator test will ensure the correct operation and calibration of the instrument and thus will certify the instrument with each test.

NEW SECTION

WAC 448-12-220 TEST DEFINED. The test of a person's breath for alcohol concentration by infrared test method shall consist of the person to insufflate deep lung (alveolar) air sample into the instrument no less than two separate times. There will be sufficient time between the provision of each sample by the person to permit the instrument to evaluate each sample individually. The two breath samples supplied by the individual shall constitute one test. This shall be effective March 1, 1985.

NEW SECTION

WAC 448-12-230 ADMINISTRATION OF BREATH TEST ON BAC VERIFIER DATA MASTER INSTRUMENT. Pursuant to RCW 46.61.506, the state toxicologist approves the following method for performing the breath test on the BAC Verifier Data Master infrared breath testing instrument. To obtain a valid breath test, it must be determined (a) that the subject has had nothing to eat or drink for at least fifteen (15) minutes prior to the administration of the test, and (b) that the subject does not have any foreign substances, not to include dental work, fixed or removable, in his/her mouth at the beginning of the fifteen (15) minute observation period. Such determination shall be made by either an examination of the mouth or a denial by the subject that he/she has any foreign substances in his/her mouth.

In conducting the test, the operator must be sure the temperature of the solution in the simulator is 34° Centigrade, plus or minus .2° Centigrade, prior to the time the test is given. The reading from the simulator test

must be between .090 and .110 inclusive. The operator must follow the instructions displayed by the instrument or the instrument will not complete the test.

NEW SECTION

WAC 448-12-240 INSTRUCTORS. The state toxicologist shall certify persons found by him to be competent and qualified as instructors and those persons are authorized to administer breath tests using the BAC Verifier Data Master infrared breath testing instrument, and to train and certify as operators, on behalf of the toxicologist, those persons the instructor finds qualified to administer the breath test utilizing the BAC Verifier Data Master breath test instrument.

NEW SECTION

WAC 448-12-250 OPERATORS. The state toxicologist or instructors on his behalf shall certify as "operators" persons found by them to be competent and qualified to administer breath tests for alcohol concentration, utilizing the BAC Verifier Data Master infrared breath test instrument. A list of persons so certified shall be maintained in the office of the state toxicologist.

NEW SECTION

WAC 448-12-260 REVIEW OF QUALIFICATIONS. The qualifications of operators shall be subject to review by field representatives of the state toxicologist, who shall also have the authority to evaluate periodically the operational condition of any breath testing equipment in the state of Washington. If an operator fails or refuses to demonstrate that he or she has the ability to adequately perform his or her responsibilities as an operator, then the field representative shall have the ability to suspend or revoke the permit on behalf of the state toxicologist.

NEW SECTION

WAC 448-12-270 PERMIT CARDS. The state toxicologist shall authorize the issuance to persons deemed qualified for the respective designation "operator" or "instructor" of a wallet-sized card bearing his or her name and designation. Permit cards shall bear the signature or facsimile signature of the state toxicologist and be dated and may bear the instructor's signature. Such permits shall expire three years after the date on the card or June 30, 1986, whichever date is later in time.

NEW SECTION

WAC 448-12-280 COURSE APPROVAL. Instructors prior to the conducting of a course for the training or retraining of operators for use of the infrared BAC Verifier Data Master breath test instrument shall submit to the state toxicologist for his approval the curriculum to be used in the course. If the curriculum is approved, subsequent courses embodying the same curriculum may be conducted without individual approval of each course.

NEW SECTION

WAC 448-12-290 MINIMUM COURSE REQUIREMENTS. A minimum course of training for an operator shall include the following: (a) Theory of operation; (b) detailed procedure of operation; (c) practical experience; (d) written examination; and (e) practical examination.

NEW SECTION

WAC 448-12-300 INSTRUCTION. Individuals who have attended courses in the operation of the BAC Verifier Data Master infrared breath testing instrument as an operator, provided that such courses were instructed by an instructor qualified by the state toxicologist, shall, upon certification of attendance and qualification, be deemed for the designation "operator."

NEW SECTION

WAC 448-12-310 OPERATORS AND INSTRUCTORS. The operators and instructors certified by the state toxicologist on the BAC Verifier Data Master infrared breath test instrument are not to be considered in any manner medically trained personnel. These persons so certified by the state toxicologist are certified in only the operation and/or theory of operation of the BAC Verifier infrared breath testing instrument.

NEW SECTION

WAC 448-12-320 ADDRESS FOR CORRESPONDENCE. Individuals seeking certification in accordance with these rules or approval of equipment to administer the breath test for alcohol concentration shall direct their request to the State Toxicologist, Department of Laboratory Medicine, Harborview Medical Center ZA-88, 325 - 9th Avenue, Seattle, Washington 98104.

NEW SECTION

WAC 448-12-330 NAMES OF INSTRUCTORS. Pursuant to WAC 448-12-250, the state toxicologist will maintain a list of persons certified as BAC Verifier Data Master instructors. These names shall be made available to interested parties upon request to the state toxicologist at the address set forth in WAC 448-12-320.

NEW SECTION

WAC 448-12-340 EFFECTIVE DATE. WAC's 448-12-210 through 448-12-330 shall become effective as of May 1, 1985, and will remain in full force and effect until otherwise directed by the state toxicologist. The aforementioned WAC's will be in effect concurrently with WAC's 448-12-010 through 448-12-100 until January 1, 1987. On January 1, 1987, WAC's 448-12-010 through 448-12-100 shall be held to be replaced and of no force and effect after that date.

WSR 85-08-013
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
 [Filed March 27, 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 356-14-220 Salary—Wage and hour records.
 Amd WAC 356-18-140 Leave without pay.
 Amd WAC 356-22-210 Examinations—Records and retention;

that the agency will at 10:00 a.m., Thursday, May 9, 1985, in the Board Hearings Room, Department of Personnel, 600 South Franklin Street, 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 May 7, 1985.

Dated: March 26, 1985
 By: Leonard Nord
 Secretary

STATEMENT OF PURPOSE

Amend WAC 356-14-220.

Title: Salary—Wage and hour records.

Purpose: To advise the need for the maintenance of overtime accrual and compensation records to justify expenditures of funds for this purpose.

Statutory Authority: RCW 41.06.150.

Summary: Add paragraph (3). The disposition of these records at the termination of the three year period described in paragraph (2) will be accomplished in accordance with policies established in chapter 40.14 RCW.

Reasons: Authority of the State Records Committee is necessary for the disposal of any Washington state records. These procedures are established in accordance with chapter 40.14 RCW.

Responsibility for Drafting: D. R. Ellenwood, Office of the Secretary of State, State Archives, MS: EA-11, Olympia, Washington 98504, phone 753-2731; Implementation and Enforcement: All agencies.

Proposed by: Office of the Secretary of State, governmental agency.

Amend WAC 356-18-140.

Title: Leave without pay.

Purpose: Paragraph (3) of the existing rule imposes limits on the amount of leave without pay that may be granted to an employee during a consecutive five-year period.

Statutory Authority: RCW 41.06.150.

Summary: The proposed change would provide agencies with a basis for terminating employees who do not

return to work when they reach the 12-month limit on leave without pay.

Reasons: The existing rule, while ostensibly precluding employees from exceeding the 12-month limit on leave without pay, does not provide agencies with an effective means of terminating employees who exceed the limit.

Responsibility for Drafting: John Calhoun/Al Gonzales, Department of Transportation and Department of Social and Health Services, Transportation Building, MS: KF-01, Olympia, Washington 98504, phones 753-7337/753-5184; Implementation: Department of Personnel/Personnel Board; and Enforcement: Personnel Appeals Board.

Proposed by: Department of Transportation and Department of Social and Health Services, governmental agencies.

Amend WAC 356-22-210.

Title: Examinations—Records and retention.

Purpose: To advise as to the number and names of applicants available to fill specific positions. When positions have been filled, those applicants' applications not selected may be destroyed as they serve no useful purpose.

Statutory Authority: RCW 41.06.150.

Summary: Examination records of applicants not appointed shall be destroyed 30 calendar days after the register expires in accordance with policies established in chapter 40.14 RCW.

Reasons: Authority of the State Records Committee is necessary for the disposal of any Washington state record. Procedures to accomplish this have been developed in accordance with chapter 40.14 RCW.

Responsibility for Drafting: D. R. Ellenwood, Office of the Secretary of State, State Archives, MS: EA-11, Olympia, WA 98504, phone 753-2731; Implementation and Enforcement: All agencies.

Proposed by: Office of the Secretary of State, governmental agency.

AMENDATORY SECTION (Amending Order 78, filed 5/19/75)

WAC 356-14-220 SALARY—WAGE AND HOUR RECORDS. (1) Each agency shall maintain records of its employees' overtime accrual and compensation separate from the scheduled work and compensation record. These time records will be subject to review by the director.

(2) For its employees covered by the overtime provisions of the FLSA, each agency shall maintain for at least three years records of the wages, hours, and other conditions and practices of employment that it maintains. Although no official forms are required, records shall include:

Name, home address and birthdate
 Sex and class title
 Hour and day when workweek begins
 Regular hourly pay rate for any week when overtime is worked
 Hours worked each workshift and total hours worked each workweek
 Total daily or weekly or monthly straight time earnings
 Deductions or additions to wages
 Total wages paid each pay period
 Date of payment and pay period covered

These records may be subject to review by the Wage and Hour Division of the U.S. Department of Labor.

(3) Disposal of these records will be accomplished in accordance with the provisions of chapter 40.14 RCW.

AMENDATORY SECTION (Amending Order 211, filed 11/20/84)

WAC 356-18-140 LEAVE WITHOUT PAY. (1) Leave without pay may be allowed when such leave will not operate to the detriment of the state service.

(2) Leave without pay may be authorized for any reasons applicable to:

- (a) Leave with pay.
- (b) Educational leave.
- (c) Newborn or adoptive child care leave as provided in WAC 356-18-150.
- (d) Military and U.S. Public Health Service and Peace Corps leave.
- (e) Specific leaves granted for government service in the public interest upon specific request of an employee, concurred in by the appointing authority and approved by the director of personnel.
- (f) Leave taken voluntarily to reduce the effect of an agency reduction in force, leaving the employee's standing with regard to the RIF register in tact.

(3) Authorized leave without pay shall ((not total)) be limited to not more than 12 months in any consecutive five-year period, except for:

- (a) Leaves without pay for military, U.S. Public Health Service or Peace Corps;
- (b) Authorized government leave not exceeding two years;
- (c) Employees receiving time loss compensation;
- (d) Educational leaves under provisions of WAC 356-39-120;
- (e) Newborn or adoptive child care leave under provisions of WAC 356-18-150; or

(f) Leave taken voluntarily to reduce the effect of an agency reduction in force under the provisions of WAC 356-30-335.

(4) Leave without pay exceeding twelve months in a consecutive five-year period, not covered by the exceptions noted in subsection (3) of this section, shall be treated as unauthorized leave and may be cause for disciplinary action.

AMENDATORY SECTION (Amending Order 36, filed 7/1/71, effective 8/1/71)

WAC 356-22-210 EXAMINATIONS—RECORDS AND RETENTION. Applications and other necessary records shall be kept during the life of the register. Applications or copies of appointees' applications may be transmitted to agency personnel offices or appointing authorities on request. Examination records of applicants not appointed shall be destroyed 30 calendar days after the register expires in accordance with the provisions of chapter 40.14 RCW.

WSR 85-08-014**EMERGENCY RULES****DAIRY PRODUCTS COMMISSION**

[Order 85-1—Filed March 28, 1985]

Be it resolved by the Washington State Dairy Products Commission, acting at 1107 Northeast 45th Street, Seattle, WA 98105, that it does adopt the annexed rules relating to temporary reduction of milk assessment, WAC 142-30-010.

We, the Washington State Dairy Products Commission, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983 establishes a dairy research and promotion order to implement a national program for dairy product promotion, research and nutrition education. The program is funded by a mandatory 15 cent per cwt. assessment.

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

This rule is promulgated pursuant to RCW 15.44.130 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED March 28, 1985.

By Robert M. Hallberg
Secretary-TreasurerAMENDATORY SECTION (Amending Order 83-2, filed 3/29/83)

WAC 142-30-010 DECLARATION OF PURPOSE—EFFECTIVE DATE(~~(=SUBJECT TO REFERENDUM)~~). ~~((+))~~ To effectuate the purposes of RCW 15.44.080 and .130 ~~((as amended by chapter 44, Laws of 1975,))~~ there is hereby levied upon all milk produced in this state ~~((an assessment of 1.0 percent))~~ a temporary assessment of 0.75 percent of the Class I price for 3.5% butterfat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area effective ~~((April 1, 1983))~~ March 28, 1985 through June 25, 1985.

~~((2) The proposed assessment increase shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.))~~

WSR 85-08-015**PROPOSED RULES****UTILITIES AND TRANSPORTATION
COMMISSION**

[Filed March 28, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Utilities and Transportation Commission intends to adopt, amend, or repeal rules relating to availability of information by water companies, WAC 480-110-041. The proposed amendatory section is shown below as Appendix A, Cause No. U-85-11. Written and/or oral submissions may also contain data, views, and arguments concerning the effect of the proposed amendment on economic values, pursuant to chapter 43.21H RCW and WAC 480-08-050(17);

that the agency will at 9:00 a.m., Wednesday, May 8, 1985, in the Commission's Hearing Room, Sixth Floor, Highways-Licenses Building, Olympia, Washington, conduct a public hearing on the proposed rules.

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

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

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 3, 1985.

Dated: March 27, 1985
 By: Paul Curl
 Acting Secretary

STATEMENT OF PURPOSE

In the matter of amending WAC 480-110-041 relating to availability of information by water companies.

The rules proposed by the Washington Utilities and Transportation Commission are to be promulgated pursuant to RCW 80.01.040, which directs that the commission has authority to regulate the rates, services, and practices of water companies operating under chapter 80.28 RCW.

The rules proposed by the Washington Utilities and Transportation Commission are designed to set forth requirements for water companies to designate a business location and telephone number so that customers may have reasonable business and emergency access to the water company.

Paul Curl, Acting Secretary, Seventh Floor, Highways-Licenses Building, Olympia, Washington, telephone number (206) 753-6420, and members of his staff were responsible for the drafting of the proposed rules and will be responsible for implementation and enforcement of the proposed rules.

The proponent of the rules is the Washington Utilities and Transportation Commission.

There are no comments or recommendations being submitted inasmuch as the proposal is pursuant to legislative authorization reflected in RCW 80.01.040.

The rule change is not necessary as the result of federal law, or federal or state court action.

The rule change proposed will affect no economic values. The impact on small businesses has been considered. The designation of a place of business should have no cost impact, since the utility may designate any location at which it can be reached during the day. Should the utility decide to install a recording device to record calls from customers, such devices are available in the marketplace from \$60 - \$180, depending on features. The rule would have no greater or lesser economic impact on large businesses versus small businesses.

This certifies that copies of this statement are on file with the commission, are available for public inspection, and that three copies of this statement are this date being forwarded to the Joint Administrative Rules Review Committee.

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-85, filed 6/30/76)

WAC 480-110-041 AVAILABILITY OF INFORMATION. (1) Each utility shall maintain a business location and a regular telephone number at which it may be contacted directly by customers during regular business hours, and provide a means by which it may be contacted at any hour in the event of a service failure or emergency, or at which a customer may leave a message reporting such failure or emergency. Each utility shall adopt procedures for prompt response to reported service failures or emergencies, whether reported directly or by recorded message. Any change in business location or telephone number shall be communicated to the commission at least ten days prior to the effective date of the change.

(2) Each utility shall make known to applicants for service and to its customers such information as is needed to assist in obtaining adequate and efficient service.

(3) Information relative to the rates, and rules and regulations (filed tariffs) of the utility shall be made available to the public upon request at any of its listed business offices. In addition, each applicant for service shall be provided with a guide detailing the rights and responsibilities of a utility customer. Each present customer shall also be provided with said guide within three months of the effective date of this rule. Thereafter, each customer shall also be provided, on an annual basis, with a bill insert by which to request a guide by return mail. Such guide shall describe processes for establishing credit and determining the need and amount for deposits, the procedure whereby a bill becomes delinquent, the steps which must be taken by the utility to disconnect service, and the right of the customer to pursue any dispute with the utility, first by procedures within the utility and then to the commission by formal or informal complaint.

(4) A copy of these rules (chapter 480-110 WAC) shall also be kept on file in each of the utility's listed business offices and made available to its customers or their representatives upon request.

WSR 85-08-016

ADOPTED RULES

DEPARTMENT OF ECOLOGY

[Order 85-08—Filed March 28, 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 85-05-045 filed with the code reviser on February 20, 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.

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 March 28, 1985.

By Glen H. Fiedler
 Deputy Director

AMENDATORY SECTION (Amending Order DE 85-04 [84-46], filed 2/1/85)

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 November 23, 1981. Revision approved January 31, 1985. Revision approved March 28, 1985.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 85-08-017

PROPOSED RULES

DEPARTMENT OF NATURAL RESOURCES

[Filed March 29, 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.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 29, 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.

This notice is connected to and continues the matter in Notice No. WSR 85-04-062 filed with the code reviser's office on February 6, 1985.

Dated: March 28, 1985
 By: Brian J. Boyle
 Commissioner of Public Lands

WSR 85-08-018
NOTICE OF PUBLIC MEETINGS
COMMUNITY COLLEGE
DISTRICT TWELVE
 [Memorandum—March 27, 1985]

The date, place and time of the regular June meeting of the Community College District Twelve board of trustees has changed.

The June meeting (previously scheduled for 7:00 p.m. on Thursday, June 20, 1985, at Centralia College in Centralia) has been changed to 3:30 p.m., Thursday, June 13, 1985, at South Puget Sound Community College in Olympia.

WSR 85-08-019
NOTICE OF PUBLIC MEETINGS
URBAN ARTERIAL BOARD
 [Memorandum—March 29, 1985]

MEETING NOTICE
 URBAN ARTERIAL BOARD
 TRANSPORTATION BUILDING
 OLYMPIA, WASHINGTON 98504

(Transportation Board Room)

Beginning at 3:00 p.m., Thursday, April 18, 1985

1. Review proposed percentage breakdown of unobligated trust funds between the different types of functional class arterials within urban regions. This proposed formula will determine the level of funding for each functional class throughout the 1985-87 biennium.
2. Review proposed projects from the 1985-87 priority array for urban areas and rural incorporated cities.

Beginning at 9:00 a.m., Friday, April 19, 1985

1. Minutes from the January 17 and 18, 1985, meeting.

2. Status report on the urban arterial trust account ending March 31, 1985.
3. Revenue apportionment between urban regions of fuel tax receipts deposited into the trust account for the first quarter of 1985.
4. Allocation of trust funds to previously authorized projects for the second quarter 1985 expenditures.
5. (9:30 a.m.) UAB hearing on changing the local matching fund ratio.
6. Identification and consideration of urban arterial trust fund underruns on authorized projects.
 - a. Seattle - N. 46th Street
7. Funding consideration for preliminary engineering on proposed projects.
 - a. Seattle - Alaskan Way
 - b. Pasco - 10th Street
8. Funding consideration for construction on projects previously authorized for preliminary engineering.
 - a. Bellevue - 116th Avenue N.E.
 - b. Bellevue - Main Street
 - c. Puyallup - 5th Street S.W. & N.W.
 - d. Tacoma - Ferry Street/Sprague Avenue
 - e. Tacoma - Portland Avenue (64th - 72nd)
 - f. Burlington - Hopper Interchange Road
 - g. Mount Vernon - Riverside Drive
 - h. Walla Walla Co. - Wilbur Avenue S.
 - i. Clark Co. - N.E. Highway 99
 - j. Tumwater - Trospen Road
 - k. Everson - Everson Avenue
 - l. Sequim - 5th Avenue
 - m. Chelan - Navarre Street
 - n. Coulee City - Main Street
 - o. Colville - Birch Street
 - p. Cusick - 1st/Tacoma/Riverside
 - q. Wilbur - Division Street
 - r. Elma - W. Wakefield/11th Street
 - s. Kalama - First Street
 - t. Morton - Westlake Avenue
 - u. Napavine - Second Avenue E.

Note: Persons wishing to testify at this meeting will be required to contact the UAB in writing prior to April 10, 1985. Please identify the agenda item of interest.

WSR 85-08-020
EMERGENCY RULES
DEPARTMENT OF FISHERIES
 [Order 85-25—Filed March 29, 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 interim regulation needed until permanent regulation takes effect.

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 March 28, 1985.

By William R. Wilkerson
Director

NEW SECTION

WAC 220-56-335000A CRAB—UNLAWFUL ACTS. Notwithstanding the provisions of WAC 220-56-335, effective April 1, 1985 until further notice it is unlawful to take or possess any male Dungeness crab which measure less than 6 and 1/4 inches taken for personal use from the waters of Punch Card Area 7. Measurement shall be made horizontally across the back immediately in front of the tips.

WSR 85-08-021
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 85-23—Filed March 29, 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 regulations conform state regulations with the Columbia River compact adopted regulations.

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

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

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

APPROVED AND ADOPTED March 28, 1985.

By William R. Wilkerson
Director

NEW SECTION

WAC 220-32-04000W SEASON AND AREA—STURGEON SETLINE. Notwithstanding the provisions of WAC 220-32-040, effective immediately until further notice it is unlawful to take, fish for, or possess sturgeon taken for commercial purposes with setline gear in Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the seasons, in the areas, at the times and with the gear and under the provisions designated below:

(1) 12:00 noon April 1 until 12:00 noon April 30, 1985, in Areas 1A, 1B, 1C and in that portion of Area 1D downstream from the Interstate 205 Bridge.

(2) Setline gear is limited to 4 lines per fisherman, not more than 300 hooks per line, with buoys which must float visibly at all times attached to each end of each setline on which buoys must be written in a legible manner the fishing license number of the fisherman operating the setline gear.

(3) Minimum hook gap inside shank to point is 1 1/8 inches for standard hooks or 1 inch for circle-type hooks, and only single hooks are permitted.

(4) Gangions must contain an in-line swivel between the groundline and the hook.

(5) Setlines must be attended once every 48 hours, weather permitting.

(6) All sturgeon under 48 inches in length and over 72 inches in length must be released immediately and all sturgeon in transit must not have head or tail removed.

(7) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon on board.

WSR 85-08-022
ADOPTED RULES
DEPARTMENT OF CORRECTIONS
[Order 85-05—Filed April 1, 1985]

I, Amos E. Reed, director of the Department of Corrections, do promulgate and adopt at Olympia, Washington, the annexed rules relating to Supervision—Individual work release placement, repealing WAC 275-92-407.

This action is taken pursuant to Notice No. WSR 85-05-018 filed with the code reviser on February 13, 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 72.65.100 which directs that the Department of Corrections has authority to implement the provisions of chapter 72.65 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 April 1, 1985.

By Amos E. Reed
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 275-92-407 SUPERVISION—INDIVIDUAL WORK RELEASE PLACEMENT.

WSR 85-08-023
ADOPTED RULES
DEPARTMENT OF FISHERIES
[Order 85-24—Filed April 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.

This action is taken pursuant to Notice No. WSR 85-04-065 filed with the code reviser on February 6, 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 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 March 19, 1985.

By William R. Wilkerson
Director

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))~~ while engaged in commercial fishing for sturgeon ~~((for commercial purposes under chapter 75.28 RCW))~~ or bottom fish to:

(a) Keep ~~((any))~~ in excess of three sturgeon ~~((he takes under such license))~~ not less than 48 inches in length nor more than 72 inches in length or more than one limit of sport caught bottom fish for personal use ~~((; or))~~. Any lingcod to be retained for personal use taken 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.

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 BOTTOM-FISH—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 ~~((1/2))~~ 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 Kiapot Point to Gibson Spit (Sequim Bay) are closed the entire year.

(2) It is lawful to take, fish for and possess bottomfish with bottom trawl and beam trawl gear in Marine Fish-

Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 26A, 26B, and 26D from April 15 through February 14 with the following exceptions:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A west of a line from Strawberry Point on Whidbey Island to Brown Point on Camano Island, are closed except from June 15 through February 14.

(b) Elliot Bay inside a line projected from Four Mile Rock to Alki Point is closed the entire year.

(c) Those waters of Area 26D south of lines projected from Dash Point to Point Piner on Maury Island, and from Point Dalco on Vashon Island true west to the Kitsap Peninsula are closed the entire year.

(d) Those waters provided for in WAC 220-20-020(4).

(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 bottom-fish 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.

WSR 85-08-024

**EMERGENCY RULES
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES
(Public Assistance)**

[Order 2219—Filed April 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 special categories eligible for medical assistance, amending WAC 388-82-115.

I, David A. Hogan, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is these rules are necessary to implement chapter 5, Laws of 1985, which carried an emergency clause and has been in effect since March 25, 1985.

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 March 29, 1985.

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

AMENDATORY SECTION (Amending Order 2205, filed 2/13/85)

WAC 388-82-115 SPECIAL CATEGORIES ELIGIBLE FOR MEDICAL ASSISTANCE. (1) Persons who, in August 1972, received OAA, AB, AFDC, or APTD, and also received RSDI benefits, and who became ineligible for OAA, AB, AFDC or APTD solely

because of the twenty percent increase in Social Security benefits under Public Law 92-336, shall be eligible for medicaid as categorically needy. The provision applies to both current cash applicants and recipients.

(2) Applicants for SSI or AFDC who were entitled to RSDI benefits in August 1972, and would have been ineligible solely because of the Social Security benefits under Public Law 92-336 shall have the twenty percent increase disregarded in determining financial eligibility.

(3) An AFDC family unit which becomes ineligible solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided that:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility.

(b) A member of such family continues to be employed, and

(c) The family is otherwise eligible for AFDC except for increased hours or increased income from employment.

(d) Earned income tax credits (EITC) must be considered as income for purposes of this subsection.

(4) Current recipients who become ineligible for SSI benefits and/or state supplementary payments after April 1, 1977, solely because of OASDI cost-of-living benefit increases under Public Law 94-566, section 503, shall remain categorically eligible for medical assistance (MA). Any subsequent OASDI cost-of-living benefit increase shall be disregarded for eligibility. For institutionalized recipients, the amount subsequently is considered in the cost of institutional care. This disregard does not apply to:

(a) New applicants (i.e., who were not receiving SSI/SSP prior to increase).

(b) Persons who were not actually receiving SSI/SSP payments for some other reason.

(c) Persons who would have received SSI/SSP if they had applied.

(d) Persons who would have received SSI/SSP if they were not living in a medical or intermediate care facility.

(5) Certain recipients of SSI, after January 1, 1981, will continue to be eligible for medical assistance (MA) under Public Law 96-265.

(6) Pregnant women, with no other eligible children, ineligible for AFDC cash assistance solely because they have not reached the sixth month of pregnancy shall be eligible for Medicaid as categorically needy.

(7) Individuals who are denied AFDC cash payments solely by reason of recovery of overpayment shall be eligible for Medicaid as categorically needy.

(8) A child under five years of age, born after September 30, 1983, and who meets the income and resource requirements of AFDC financial assistance shall be eligible for Medicaid as categorically needy.

(9) Family units which are terminated from AFDC financial assistance solely because of the loss of the thirty dollars plus one-third or the thirty-dollar income exemptions shall remain categorically eligible for medical assistance for nine calendar months beginning with the month of ineligibility for AFDC provided that:

(a) The family unit was terminated on or after October 1, 1984.

(b) Family units terminated prior to October 1, 1984, may be eligible for nine months of medicaid beginning with the month of application if they meet the following conditions:

(i) The family unit must apply for medical assistance.

(ii) The family unit must demonstrate that, if the income exemptions had been applied, the family unit would have been eligible for each month for AFDC from the time of termination of AFDC to the time of application for medical assistance.

(iii) The family unit must disclose any health insurance coverage in effect for members of the assistance unit.

(10) A child born to a woman eligible for and receiving medical assistance on the date of the child's birth, shall be eligible for medical assistance on the date of birth and shall remain eligible for a period of one year if:

(a) The child remains a member of the mothers household; and

(b) The mother remains eligible for medical assistance; and

(c) The child was born on or after October 1, 1984.

(11) Family units which become ineligible for AFDC financial assistance as a result (wholly or partly) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of such ineligibility, provided that the family unit:

(a) Received AFDC financial assistance in at least three of the six months immediately preceding the month of such ineligibility; and

(b) Became ineligible for AFDC during or after the month of August 1984 and prior to October 1, 1988.

(12) Other pregnant women who meet the income and resource requirements of AFDC financial assistance shall be eligible for medical assistance as categorically needy.

WSR 85-08-025

ADOPTED RULES

GRAYS HARBOR COLLEGE

[Resolution No. 3-85—Filed April 1, 1985]

Be it resolved by the board of trustees of Community College District #2, acting at Grays Harbor College, Aberdeen, Washington 98520, that it does adopt the annexed rules relating to withholding of services for outstanding debts, WAC 132B-122-010.

This action is taken pursuant to Notice No. WSR 85-04-051 filed with the code reviser on February 4, 1985. 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 under the general rule-making authority of Community College District #2 as authorized in RCW 28B.19.110.

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 March 18, 1985.

By Joseph A. Malik

President

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 85-08-026

ADOPTED RULES

DEPARTMENT OF CORRECTIONS

[Order 85-06—Filed April 1, 1985]

I, Amos E. Reed, secretary of the Department of Corrections, do promulgate and adopt at Olympia, Washington, the annexed rules relating to serious infractions, amending WAC 137-28-030.

This action is taken pursuant to Notice No. WSR 85-05-048 filed with the code reviser on February 20, 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 under the general rule-making authority of the Department of Corrections as authorized in RCW 72.01.090.

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 April 1, 1985.

By Robert E. Trimble
Deputy Director
for Amos E. Reed
Secretary

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-030 SERIOUS INFRACTIONS.
Any of the following types of behavior shall constitute a serious infraction:

- 501 - Committing homicide;
- 502 - Assaulting any person;
- 503 - Extortion, blackmail, demanding or receiving money or anything of value in return for protection against others, or under threat of informing;
- 504 - Engaging in sexual acts with others, with the exception of conjugal visits authorized by the superintendent;
- 505 - Fighting with any person except in self-defense;
- 506 - Threatening another with bodily harm or with any offense against his/her person;
- 507 - Committing an act not otherwise proscribed by these regulations which constitutes a felony or misdemeanor under state or federal law;
- 508 - Throwing objects or material at staff members, institution visitors, or other inmates;
- 521 - Holding a person hostage;
- 525 - Violation of conditions of furlough;
- 550 - Escape or attempted escape;
- 551 - Lying to the disciplinary hearing committee or hearing officer;
- 552 - Lying to a staff member with the intention of causing an innocent person to be penalized or proceeded against;
- 553 - Intentionally or recklessly setting a fire;
- 554 - Intentionally or recklessly destroying or damaging state property, or the property of another person in excess of five dollars;
- 555 - Stealing (theft) or knowing possession of stolen property;
- 556 - Refusing to submit to a body search when lawfully ordered to do so by a staff member;
- 557 - Refusing and/or failing to work or attend other regularly scheduled assignments;
- 558 - Intentionally interfering with a staff member in the performance of his/her duties;
- 559 - Gambling;
- 600 - Tampering with or blocking any locking device or seal;
- 601 - Possession or introduction of an explosive, poison, or any ammunition or components thereof;
- 602 - Possession or introduction of any gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool or components thereof;
- 603 - Possession, introduction, transfer, or use of any narcotics, controlled substance, or related paraphernalia; possession, transfer, or use of any intoxicant or drug not prescribed or authorized for the inmate or for the inmate to whom transferred, if applicable, by the medical staff; or being intoxicated, or under the influence of an unauthorized drug, narcotic, controlled substance, or other intoxicant;
- 605 - Unauthorized possession of any officer's or staff's clothing;
- 607 - Refusing to submit to a urinalysis (~~or blood test under medically acceptable conditions;~~) when (~~requested in writing to do so by a supervisory employee of the rank of shift commander or above, by licensed medical staff, or by others designated by the superintendent~~) ordered to do so by an authorized staff member;
- 608 - Refusing to submit to a breathalyzer or other standard sobriety test;
- 650 - Rioting;
- 651 - Inciting others to riot;
- 652 - Engaging in or inciting a prohibited group demonstration;
- 653 - Intentionally interfering with the taking of count;
- 654 - Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper;
- 655 - Making intoxicants, controlled substances, narcotics;
- 656 - Giving or offering any official or staff member or a volunteer a bribe or anything of value for a favor or unauthorized service;
- 657 - Four or more general infractions arising out of separate incidents, all of which occur

- within the previous six-month period, and which have been reported in writing;
- 658 - Intentional failure to perform according to an administrative action taken pursuant to WAC 137-28-050(2), or resisting post-hearing sanctions as provided for in WAC 137-28-105;
- 660 - Unauthorized possession of money or other negotiable instruments of five dollars or more;
- 661 - Performing or taking part in performing a marriage in the institution buildings or on the institutional grounds, except when such marriage was approved by the superintendent of the institution, which may, in appropriate cases, also be deemed a violation of a visiting rule that can subject an inmate to the sanction contained in WAC 137-28-105 (1)(d), as well as other sanctions available for serious infractions;
- 662 - Solicitation of goods and/or services for which the provider would expect payment when the inmate knows or should have known he/she has no funds available to pay for such goods or services;
- 700 - Attempting to commit or aiding another person to commit a serious infraction as enumerated in this rule, and such action shall be considered the same as commission of the offense itself; or
- 701 - Commission of any general infraction as enumerated in WAC 137-28-025 or any local rule denominated as a general infraction in such a manner as likely to result in danger to life or limb or to create a risk to the orderly operation of the institution or the health and safety of its inmates, staff, or visitors shall be considered a serious infraction, provided there is substantial evidence which establishes there was such a danger.

April 25	Ellensburg
May 23	Pullman
June 27	Spokane
July 25	Bellingham
August	No meeting planned
September 26	Pasco
October 24	Walla Walla
November 20	Tacoma
December 18	Seattle

WSR 85-08-028
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed April 2, 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 general food stamp provisions, amending WAC 388-54-605;

that the agency will at 10:00 a.m., Wednesday, May 8, 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 May 15, 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 May 8, 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 April 24, 1985. The meeting site is in a location which is barrier free.

Dated: April 1, 1985
 By: David A. Hogan, Director
 Division of Administration and Personnel

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045. Amending WAC 388-54-605.

Purpose of the Rule Change: To provide access to food stamp records by the United States Comptroller General and local, state or federal law enforcement officials.

WSR 85-08-027
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
 [Memorandum—April 1, 1985]

The commissioners of the State Human Rights Commission, at the adjourned regular commission on March 28, 1985, agreed to change the schedule of its meetings for 1985, in order to facilitate the attendance of all of the commissioners. The meetings will be held on the fourth Thursday of each month, with the exception of the months of November and December, when it will be held on the third Wednesday. Following is the schedule for 1985:

The Reason this Rule is Necessary: To clarify who may have access to client files.

Statutory Authority: RCW 74.04.510.

Summary of the Rule Change: Permits access of records by the United States Comptroller General's Office for audit examination, and local, state and federal law enforcement officials investigating alleged violation of the Food Stamp Act regulations.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: Sjoerd A. Kiers, Program Manager, Division of Income Assistance, mailstop OB 31C, phone 753-4005.

This rule is necessary as a result of federal law, 7 CFR Parts 272 and 273.

AMENDATORY SECTION (Amending Order 1905, filed 11/18/82)

WAC 388-54-605 GENERAL FOOD STAMP PROVISIONS.

(1) The department of social and health services shall administer the food stamp program in accordance with an approved plan with the food and nutrition service (FNS) of the United States Department of Agriculture.

(2) Rules in this chapter are for the purpose of carrying out certain requirements for participation in the program. Unless specifically provided for in this chapter, rules and definitions in other chapters of Title 388 WAC do not apply to provisions of chapter 388-54 WAC.

(3) Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to:

(a) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or the food distribution program, or with other federal or federally aided, means-tested assistance programs, or with general assistance programs that are subject to the joint processing requirements specified in this program((-));

(b) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(c) Local, state, or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, his or her authority to do so, the violation being investigated, and the identity of the person on whom the information is requested.

The material and information contained in the case file shall be made available for inspection during normal working hours if there is a written request by a responsible member of the household, ((its)) the household's currently authorized representative, or a person acting in ((its)) the household's behalf to review materials contained in ((its)) the household's case file. However, the department may withhold confidential information, such as the names of individuals ((who have disclosed)) disclosing information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(4) Information available to the public. Federal regulations, federal procedures embodied in FNS notices and policy memos, and state plans of operation (including specific planning documents such as corrective action plans) shall be available upon request for examination by members of the public during office hours at the state agency headquarters. State agency handbooks shall be available for examination upon request at each local certification office within each project area as well as at the state agency headquarters.

(5) The department shall provide any household, aggrieved by the action of the department or an issuing agency in ((its)) administration of the program ((which affects)) affecting the participation of the household in the program, with a fair hearing upon ((its)) the household's request. Chapter 388-08 WAC shall apply unless otherwise indicated in this chapter.

(6) The department shall not discriminate against any applicant or participant in any aspect of program administration, including but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any program service for reason of age, race, color, sex, handicap, religious creed, political beliefs, or national origin.

(7) During a presidentially declared disaster or a disaster declared by FNS, the department shall certify affected households in accordance with FNS instructions.

(8) An FNS directive to reduce, suspend, or terminate all or any portion of the food stamp program shall require the department to comply in every respect.

(9) A household is not entitled to receive benefits under the food stamp program and the food distribution program administered by an Indian tribal organization during the same calendar month.

WSR 85-08-029
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed April 2, 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 special categories eligible for medical assistance, amending WAC 388-82-115.

It is the intention of the secretary to adopt these rules on an emergency basis on or before April 1, 1985;

that the agency will at 10:00 a.m., Wednesday, May 8, 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 May 15, 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 72.09 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 8, 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 April 24, 1985. The meeting site is in a location which is barrier free.

Dated: March 29, 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 388-82-115.

Purpose of the Rule: To add a new group of individuals eligible for Medicaid effective April 1, 1985.

This Rule is Necessary: To implement chapter 5, Laws of 1985.

Statutory Authority: RCW 74.08.090.

Summary of the Rule Change: Adds as a group eligible for Medicaid as categorically needy other pregnant women, not eligible for AFDC, who meet the AFDC income and resource requirements. This group has been covered on a state only program.

Person Responsible for the Drafting, Implementation and Enforcement of the Rule Change: Jim Sparks, Program Manager, Division of Medical Assistance, mailstop LK-11, phone 753-7316.

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

AMENDATORY SECTION (Amending Order 2205, filed 2/13/85)

WAC 388-82-115 SPECIAL CATEGORIES ELIGIBLE FOR MEDICAL ASSISTANCE. (1) Persons who, in August 1972, received OAA, AB, AFDC, or APTD, and also received RSDI benefits, and who became ineligible for OAA, AB, AFDC or APTD solely because of the twenty percent increase in Social Security benefits under Public Law 92-336, shall be eligible for Medicaid as categorically needy. The provision applies to both current cash applicants and recipients.

(2) Applicants for SSI or AFDC who were entitled to RSDI benefits in August 1972, and would have been ineligible solely because of the Social Security benefits under Public Law 92-336 shall have the twenty percent increase disregarded in determining financial eligibility.

(3) An AFDC family unit which becomes ineligible solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided that:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility.

(b) A member of such family continues to be employed, and

(c) The family is otherwise eligible for AFDC except for increased hours or increased income from employment.

(d) Earned income tax credits (EITC) must be considered as income for purposes of this subsection.

(4) Current recipients who become ineligible for SSI benefits and/or state supplementary payments after April 1, 1977, solely because of OASDI cost-of-living benefit increases under Public Law 94-566, section 503, shall remain categorically eligible for medical assistance (MA). Any subsequent OASDI cost-of-living benefit increase shall be disregarded for eligibility. For institutionalized recipients, the amount subsequently is considered in the cost of institutional care. This disregard does not apply to:

(a) New applicants (i.e., who were not receiving SSI/SSP prior to increase).

(b) Persons who were not actually receiving SSI/SSP payments for some other reason.

(c) Persons who would have received SSI/SSP if they had applied.

(d) Persons who would have received SSI/SSP if they were not living in a medical or intermediate care facility.

(5) Certain recipients of SSI, after January 1, 1981, will continue to be eligible for medical assistance (MA) under Public Law 96-265.

(6) Pregnant women, with no other eligible children, ineligible for AFDC cash assistance solely because they have not reached the sixth month of pregnancy shall be eligible for Medicaid as categorically needy.

(7) Individuals who are denied AFDC cash payments solely by reason of recovery of overpayment shall be eligible for Medicaid as categorically needy.

(8) A child under five years of age, born after September 30, 1983, and who meets the income and resource requirements of AFDC financial assistance shall be eligible for Medicaid as categorically needy.

(9) Family units which are terminated from AFDC financial assistance solely because of the loss of the thirty dollars plus one-third or the thirty-dollar income exemptions shall remain categorically eligible for medical assistance for nine calendar months beginning with the month of ineligibility for AFDC provided that:

(a) The family unit was terminated on or after October 1, 1984.

(b) Family units terminated prior to October 1, 1984, may be eligible for nine months of Medicaid beginning with the month of application if they meet the following conditions:

(i) The family unit must apply for medical assistance.

(ii) The family unit must demonstrate that, if the income exemptions had been applied, the family unit would have been eligible for each month for AFDC from the time of termination of AFDC to the time of application for medical assistance.

(iii) The family unit must disclose any health insurance coverage in effect for members of the assistance unit.

(10) A child born to a woman eligible for and receiving medical assistance on the date of the child's birth, shall be eligible for medical assistance on the date of birth and shall remain eligible for a period of one year if:

(a) The child remains a member of the mothers household; and

(b) The mother remains eligible for medical assistance; and

(c) The child was born on or after October 1, 1984.

(11) Family units which become ineligible for AFDC financial assistance as a result (wholly or partly) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of such ineligibility; provided that the family unit:

(a) Received AFDC financial assistance in at least three of the six months immediately preceding the month of such ineligibility; and

(b) Became ineligible for AFDC during or after the month of August 1984 and prior to October 1, 1988.

(12) Other pregnant women who meet the income and resource requirements of AFDC financial assistance shall be eligible for medical assistance as categorically needy.

WSR 85-08-030

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 2, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Employment Security Department intends to adopt, amend, or repeal rules concerning:

Amd	WAC 192-09-040	Interested parties defined.
Amd	WAC 192-09-060	Appeals—Right to notice of.
Amd	WAC 192-09-063	Appeals—Who may appeal—Time limitation.
Amd	WAC 192-12-040	Contributions by employer.
Amd	WAC 192-12-070	Cash value of certain remunerations.
New	WAC 192-12-072	Predecessor—successor relationship defined.
New	WAC 192-12-074	Predecessor—successor transfers through intermediaries.
New	WAC 192-12-076	Delinquent predecessor contributions;

that the agency will at 10:00 a.m., Wednesday, May 15, 1985, in the Commissioner's Conference Room, 2nd Floor, 212 Maple Park, 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 May 15, 1985, at 2:00 p.m.

The authority under which these rules are proposed is RCW 50.12.010 and 50.12.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 8, 1985.

Dated: April 1, 1985
By: Ernest F. LaPalm
Deputy Commissioner

STATEMENT OF PURPOSE

The following statement has been prepared by the Employment Security Department for the purpose of legislative review of agency rules as provided by chapter 34.04 RCW.

WAC 192-09-040 Interested parties defined. RCW 50.24.150 expressly allows an employer who has paid contributions, interest, or penalties to petition the commissioner for a refund of previous erroneously determined overpayments (section 1, chapter 190, Laws of 1979 ex. sess.). Currently, this regulation defines as an interested party one who has been denied a claim of refund for contributions or interest. It fails to include one denied a refund for penalties erroneously paid. This is inconsistent with the statute's mandate that payments of contributions, interest and penalties give a party the right to enter into the appeals process. It is therefore consistent and necessary to add "penalties" to this regulation.

WAC 192-09-060 Appeals—Right to notice of. This is a technical amendment made under the statutory authority of RCW 50.12.010. The addition of "penalties" with "contributions" and "interest" makes the rule consistent with the applicable governing statutes. In both instances where "penalties" are added, the applicable governing statutes respectively allow for (1) an employer's right to appeal the assessment of any penalty (RCW 50.12.220); and (2) an employer's right to petition for refund for any contribution, interest, or penalties paid (RCW 50.24.150). Because the statutory language is clear as to the inclusion of "penalties" with contributions and interest, it is consistent to add "penalties" to this regulation. This inclusion provides employers with equal protection of our laws and allows for the due process of any disputes which may arise thereunder. The deletion dealing with experience rating credits is merely the removal of obsolete language. Statutory restructuring of chapter [title] 50 RCW has done away with the use of these credits. A "standby" worker is defined in WAC 192-12-150. There is currently no regulation granting an appeal of a denial of this status. This addition to the rule is necessary to ensure that an individual employer is provided with full due process of the law if any dispute should arise over this agency created right. The deletion of "an appeal tribunal" and the corresponding addition are technical corrections resulting from the creation of the Office of Administrative Hearings.

WAC 192-09-063 Appeals—Who may—Time limitation. This is a technical amendatory section removing the obsolete "experience rating credit" language; removing excess verbiage; and putting into regulatory language the statutory right of a party to appeal penalty assessments conferred by section 20, chapter 23, Laws of 1983 1st ex. sess.

WAC 192-12-040 Contributions by employer. This amendatory section is written to bring this rule into conformance with the law change made to RCW 50.24.010. The amendment consists of deleting the previous statutory wording and replacing it with the new statutory language as promulgated by the 1984 legislature in section 2, chapter 205, Laws of 1984.

WAC 192-12-070 Cash value of certain remunerations. The change to this regulation is made to reduce the reporting burden on the affected employers and to create greater equity among the employers. The regulation was originally proposed because of the many agricultural and domestic workers who received a substantial

portion of their earnings through meals and lodging. Since the regulation was first adopted, changes in state and local health restrictions have resulted in a majority of these individuals no longer receiving these type of benefits. Thus, it has become a burden for employers to maintain recordkeeping on this minimum number of eligible workers. This is particularly so as to employers in the agricultural and domestic employment fields. The 25 percent portion of the rule is not changed; therefore, individuals who receive a substantial portion of their earnings in the form of room and board will still have these considered as earnings for unemployment insurance purposes.

WAC 192-12-072 Predecessor—successor relationship redefined. Chapter 205, Laws of 1984, reintroduced the concept of predecessor—successor relationship into the assignment of tax rates. This regulation provides working definitions based on federal FUTA and FICA law that is consistent with related state statutes.

WAC 192-12-074 Predecessor—successor transfers through intermediaries. Historically there have been problems, notably with service stations in which business ownership reverts to a parent company or franchise holder, then subsequently passes to a successor. The strict legal form of these transactions is a business changing hands twice, once in the reversion and again in the subsequent refranchise to another operator. The economic reality of these situations is a single successorship. This regulation will give the department the freedom to consider these cases individually. No attempt is made here to define all types of transactions in which this situation could occur, but to provide the framework for individual determinations.

WAC 192-16-076 Delinquent predecessor contributions. Under RCW 50.29.062 a successor employer will be assigned the rate of a predecessor, or the highest rate of any of the predecessors in the event of simultaneous acquisition of multiple businesses. RCW 50.29.025(6) provides that an employer who does not meet the definition of "qualified employer," because of nonpayment of contributions, will be assigned the highest contribution rate of five and four-tenths percent. An employer assigned this highest rate may become a qualified employer for subsequent rate years by paying the past due contributions by the cut-off date of September 30 prior to the next rate year. There is no specific provision in the law for a successor employer who has taken on this highest rate because of nonpayment to subsequently acquire a lower rate by payment of the taxes due of the predecessor or predecessors. Under our law a successor does not automatically assume the liability for any predecessor taxes due at the time of acquisition. This regulation clarifies that as a matter of equity the same rights the predecessor held to become a qualified employer pass to the successor employer. From a public policy standpoint this means an employer would not be penalized for acquiring an existing business, thereby potentially discouraging the continuing existence of that business and the associated jobs.

WAC 192-09-040, 192-09-060, 192-09-963 and 192-12-040 were drafted by a committee of Tax Field and Central Office staff composed of Kurt Malizio,

Carlos Lenis, Phil Jones, Tom LePique, Don Westfall, and George Mante, Employment Security Department. Their offices are located in the Employment Security Building, 212 Maple Park, Olympia, Washington 98504. Their office telephone number is 753-1314. WAC 192-12-072, 192-12-074 and 192-12-076 were drafted by a committee of Tax Field and Central Office staff composed of Dennis Knopp, Carlos Lenis, George Mante, Phil Jones, Tom LePique, and Lee Jorgenson, Employment Security Department. Their offices are located in the Employment Security Building, 212 Maple Park, Olympia, WA 98504, with the exception of Lee Jorgenson. Their office telephone number is 753-1314. Lee Jorgenson is located in the Vancouver District Tax Office, 601 West Evergreen, Vancouver, WA 98660. His telephone number is 696-6551. WAC 192-12-070 was drafted by Dennis E. Knopp, Chief of Tax Field Operations, Employment Security Building, 212 Maple Park, Olympia, WA 98504. His office telephone number is 753-7166. Gary Christenson, Assistant Commissioner (UI), and Charlotte Beeler, Deputy Assistant Commissioner, are responsible for the implementation and enforcement of these rules. Their office address is Employment Security Department, 212 Maple Park, Olympia, WA 98504. Their office telephone number is 753-5120.

AMENDATORY SECTION (Amending Order 1-78, filed 8/14/78)

WAC 192-09-040 INTERESTED PARTIES DEFINED. As used in this regulation, unless the context clearly indicates otherwise, the term "interested party" means:

(1) In the case of a claim for waiting period credit or benefits, the claimant, and in the event of an issue concerning a separation from work for reasons other than lack of work, the party from whose employ the claimant became separated.

(2) In the case of an assessment for, or denial of a claim for refund of, contributions ((or)), interest, or penalties ((or of denial of adjustment of experience rating credit)), or a denial of a redetermination of benefit charges made to an employer's account or an employer's determined or redetermined rate of contribution, the party whose contributions, experience rating, benefit charges, or rate of contribution is affected by such assessment or denial.

(3) Any other party whom the commissioner shall in writing recognize as an interested party.

AMENDATORY SECTION (Amending Order 1-78, filed 8/14/78)

WAC 192-09-060 APPEALS—RIGHT TO NOTICE OF. Notice of appeal rights shall be set forth on the face of, or as an attachment to, each of the following:

(1) Redetermination of an initial determination.

(2) Determination of allowance or denial of waiting period credit or benefits.

(3) Redetermination of allowance or denial of waiting period credit or benefits.

(4) Notice of assessment of contributions ((or)), interest, or penalties.

(5) Denial of a claim for refund of contributions ((or)), interest, or penalties.

(6) ~~((Denial of adjustment of experience rating credit:~~

~~((7))) Denial of a redetermination of benefit charges made to an employer's account.~~

~~((8))) (7) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.~~

(8) Denial of approval or extension of standby status.

(9) Decisions and orders issued by ~~((an appeal tribunal))~~ the office of administrative hearings other than an order approving a withdrawal of appeal.

(10) Decisions of commissioner.

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 2602, filed 4/24/70)

WAC 192-09-063 APPEALS—WHO MAY APPEAL—TIME LIMITATION. Any interested party may appeal from a redetermination of an initial determination or a determination of allowance or denial of waiting period credit or benefits, or a redetermination thereof, by filing a written notice of appeal, or in the case of an assessment for, or denial of a claim for refund of, contributions, ((or)) interest, or penalties, ((or of denial of adjustment of experience rating credit;)) or denial of a redetermination of benefit charges made to an employer's account, or an employer's ((determined or)) redetermined rate of contribution, by filing a petition for hearing with any office of the employment security department, or the unemployment compensation agency in any other state or territory. Such appeals and petitions for hearing shall be filed within ten days of the date such determination, redetermination, assessment or denial is delivered or mailed, whichever is the earlier. If the appeal and/or petition is mailed, it shall be deemed filed with the department on the postmark date, if said document is properly addressed and has sufficient postage affixed thereto.

On the request of any interested party, the commissioner shall furnish forms for the filing of a notice of appeal or petition for hearing, but the use of such forms shall not be a jurisdictional requirement.

AMENDATORY SECTION (Amending Order 2602, filed 4/24/70)

WAC 192-12-040 CONTRIBUTIONS BY EMPLOYER. RCW 50.24.010 provides in part:

"Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which ((he)) the employer is subject to this title at the rate ((of two and seven-tenths percent of wages paid each employee, except for such rates as determined for qualified employers according to RCW 50.29.010 through 50.29.140: PROVIDED, That if, as of any June 30th, the amount in the unemployment compensation fund is less than three and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, contributions for the following calendar year for all employers shall be payable at the rate of three percent of wages subject to tax)) established pursuant to chapter 50.29 RCW.

"The amount of wages subject to tax for each individual as of January 1, 1971, shall be four thousand two hundred dollars. If the amount in the unemployment compensation fund on any June 30th, after January 1, 1971, is less than four and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, the amount of wages subject to tax shall increase on the January 1st next following by six hundred dollars: PROVIDED, That the amount of wages subject to tax in any calendar year shall not exceed seventy-five percent of the 'average annual wage' for the second preceding calendar year rounded to the next lower multiple of three hundred dollars:))

"In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars: PROVIDED, That the amount of wages subject to tax in any rate year shall not exceed eighty percent of the 'average annual wage for contributions purposes' for the second preceding calendar year rounded to the next lower one hundred dollars: PROVIDED FURTHER, That the amount subject to tax shall be twelve thousand dollars for rate year 1984 and ten thousand dollars for rate year 1985.

* * *

"Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, * * *"

The commissioner accordingly prescribes:

(1) Contributions shall become due and be payable quarterly and shall reach the office of the treasurer not later than the last day of the month following the end of the calendar quarter for which such contributions have accrued; but remittances made by mail shall be deemed to have been received timely in the office of the treasurer if they bear a postmark not later than midnight of the last day of such month. In the event that the last day of such month shall fall on a Sunday or a legal

holiday or on a day which the legislature of the state of Washington has determined to be a nonwork day for the employees of the employment security department, then any contributions reaching the office of the treasurer or any duly constituted agent of the employment security department on the next work day shall be deemed to have been received timely. Each quarterly payment shall include contributions accrued upon all wages paid during such quarter.

(2) Whenever any employer shall cease to do business (or his account with the unemployment compensation division is closed), be adjudicated a bankrupt, make an assignment for the benefit of his creditors, or go into receivership, contributions for employment occurring prior to the date thereof shall become immediately due and payable and if not paid immediately shall be delinquent, but interest shall not accrue thereon until the first day of the second month following the end of the calendar quarter for which such contributions have accrued.

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 4-81, filed 11/10/81)

WAC 192-12-070 CASH VALUE OF CERTAIN REMUNERATIONS. RCW 50.04.320 provides:

"'Remuneration' means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner." The commissioner accordingly prescribes:

(1) Effective January 1, 1982, the value of meals and/or lodging provided for the convenience of the employer is not considered remuneration except ~~((or))~~ when it comprises twenty-five percent or more of the employee's total compensation ~~((or (b) when the employee is in domestic or agricultural employment))~~. "Convenience of the employer" means provided by the employer, on the employer's business premises, or as a condition of employment.

(2) Compensation for personal services paid in kind or in any medium other than cash shall, for all purposes under the act, except as indicated in (1) above, be given its actual cash value to the worker, and such value shall be used in computing contributions due under the law. If any contract of hire shall fix the value of such items, the value so fixed shall be taken as the actual value thereof. If the actual cash value of any item of compensation is not readily determinable, it shall be fixed by the commissioner. In the latter case, until a specific determination is made by the commissioner, board and lodging furnished in addition to, or in lieu of money wages shall be deemed to have not less than the following values:

Full board and room, weekly	\$75.00
Meals, per meal	\$ 2.00
Lodging, per week	\$50.00

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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 192-12-072 PREDECESSOR-SUCCESSOR RELATIONSHIP DEFINED. For the purposes of Title 50 RCW, a predecessor employer is any individual or type of organization defined as an employer under RCW 50.04.080 that transfers, during any calendar year, either substantially all its operating assets, or the operating assets of a separate unit of its trade or business, to another employer, whether by sale, lease, gift, or any legal process.

A successor employer is any individual or type of organization defined as an employer under RCW 50.04.080 that acquires, during any calendar year, either substantially all the operating assets of another

employer, or the operating assets of a separate unit of another employer's trade or business, whether by purchase, lease, gift, or any legal process.

Operating assets are defined as those properties of a business used in the normal course of business operations to generate the operating income of that business.

In no case will a predecessor-successor relationship exist where any four consecutive calendar quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

NEW SECTION

WAC 192-12-074 PREDECESSOR-SUCCESSOR TRANSFERS THROUGH INTERMEDIARIES. RCW 50.04.320 and RCW 50.29.062 describe predecessor-successor transactions. Certain franchise transactions, repossessions, or other economic activities result in the transfer of operating assets from one employer to another through an intermediary whose function is to arrange or facilitate the transfer process.

The presence of such an intermediary will not necessarily negate a predecessor-successor relationship between the original and final user of the operating assets transferred.

In such cases, the presence or absence of a predecessor-successor relationship will be considered on a case-by-case basis. In making a determination the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

NEW SECTION

WAC 192-12-076 DELINQUENT PREDECESSOR CONTRIBUTIONS. RCW 50.29.062 provides that under certain circumstances a successor employer, as defined in WAC 192-12-072, will take on the contribution rate of the predecessor employer. When a successor employer has been assigned the maximum contribution rate due to late payment or nonpayment of contributions by a predecessor, the successor employer shall, upon written application to the department and after payment of those delinquent contributions by the cut-off date, be assigned for the rate year following the cut-off date the contribution rate the predecessor would have transferred to the successor had those contributions been paid in a timely manner. The successor will then retain this rate until eligible under experience rate statutes for a different rate.

WSR 85-08-031
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
 [Memorandum—April 3, 1985]

The Washington Department of Ecology (WDOE), the Washington Department of Social and Health Services (DSHS), the Washington Department of Agriculture (WDA), and U.S. Environmental Protection Agency, Region 10 (EPA) are requesting public review and comment on proposed environmental programs to be included in a formal agreement between these agencies for fiscal year 1986 (July 1, 1985 - June 30, 1986).

The State/EPA agreement (SEA) contains priorities for water quality, drinking water, hazardous waste, air quality, and pesticide programs. The SEA identifies environmental problems and outlines specific program commitments for resolving the problems.

The state and EPA want the public to become familiar with, and comment on, the major environmental problems and the proposed solutions outlined in the SEA. Public comments will be considered in establishing final priorities and carrying out programs.

A public hearing will be held to discuss the SEA and to receive public comments on May 21, 1985, 7:00 p.m.,

Energy Facility Siting Evaluation Council, 4224 6th Avenue S.E., Building 1, Lacey, Washington.

The draft SEA consists of an executive document and individual program documents which outline in more detail the water quality, hazardous waste, drinking water, air quality, and pesticides programs. Copies of all SEA documents will be available to the public after April 15, 1985, at WDOE headquarters (Lacey), WDOE regional offices (Tumwater, Redmond, Yakima, and Spokane), DSHS headquarters (Tumwater), WDA headquarters (Olympia), and EPA offices (Seattle and Lacey).

The draft SEA or other information about the SEA can be obtained by contacting Nina Carter, Department of Ecology, MS PV-11, Olympia, Washington 98504, phone (206) 459-6690. All requests should specify which SEA documents are being requested. Written comments on the SEA should be sent to the same address. All comments should be received by May 28, 1985. Public comments received on the draft SEA will be used in preparing the final SEA as appropriate. The SEA is also being reviewed by the state advisory committees of the programs contained in the SEA.

At the conclusion of the public review process, a summary of comments and state and EPA responses will be included in the SEA executive document and mailed to those who attended the public meeting and/or submitted written comments, to advisory committee members, and to anyone else requesting a copy. This responsiveness summary will also be included in the final SEA to be submitted to EPA by June 15, 1985.

WSR 85-08-032
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Filed April 3, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning protection of withdrawal facilities associated with ground water rights, chapter 173-150 WAC. The policies and procedures to be followed by the Department of Ecology in regard to the protection of the availability of ground water as it pertains to the water withdrawal facilities of holders of ground water rights.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 21, 1985.

The authority under which these rules are proposed is chapters 18.104, 43.21A, 90.44 and 90.54 RCW.

The specific statute these rules are intended to implement is chapter 90.44 RCW.

This notice is connected to and continues the matter in Notice No. WSR 84-22-058 filed with the code reviser's office on November 7, 1984.

Dated: April 1, 1985
 By: Glen H. Fiedler
 Acting Deputy Director

WSR 85-08-033
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Filed April 3, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Ecology intends to adopt, amend, or repeal rules concerning protection of upper aquifer zones, chapter 173-154 WAC. The policies and procedures to be followed by the Department of Ecology in regard to the protection of the occurrence and availability of ground water within the upper aquifers or upper aquifer zones within multiple aquifer systems.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 21, 1985.

The authority under which these rules are proposed is chapters 18.104, 43.21A, 90.44 and 90.54 RCW.

The specific statute these rules are intended to implement is chapters 90.44 and 90.54 RCW.

This notice is connected to and continues the matter in Notice No. WSR 84-22-059 filed with the code reviser's office on November 7, 1984.

Dated: April 1, 1985
 By: Glen H. Fiedler
 Acting Deputy Director

WSR 85-08-034
PROPOSED RULES
DEPARTMENT OF GAME
(Game Commission)
 [Filed April 3, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Game Commission intends to adopt, amend, or repeal rules concerning permits for special hunting seasons, adopting WAC 232-12-131;

that the agency will at 9:00 a.m., Sunday-Monday, May 19-20, 1985, in the Ridpath Motor Inn, West 515 Sprague Avenue, Spokane, WA 99201, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 19-20, 1985.

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

The specific statute these rules are intended to implement is RCW 77.12.040.

This notice is connected to and continues the matter in Notice No. WSR 84-23-067 filed with the code reviser's office on November 21, 1984.

Dated: April 2, 1985
 By: Richard J. Poelker, Administrator
 Wildlife Management Division

WSR 85-08-035
PROPOSED RULES
DEPARTMENT OF GAME
(Game Commission)
 [Filed April 3, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the State Game Commission intends to adopt, amend, or repeal rules concerning steelhead fishing punchcard, amending WAC 232-12-157;

that the agency will at 9:00 a.m., Sunday and Monday, May 19-20, 1985, in the Ridpath Motor Inn, West 515 Sprague, Spokane, WA 99204, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 19-20, 1985.

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

The specific statute these rules are intended to implement is RCW 77.12.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 19-20, 1985.

Dated: April 3, 1985

By: Dave Schultz, Divisional Administrator
 Wildlife Enforcement Division

STATEMENT OF PURPOSE

Title and Number of Rule Section: WAC 232-12-157
 Steelhead fishing punchcard.

Statutory Authority: RCW 77.12.040.

Specific Statute that Rule(s) is Intended to Implement: RCW 77.12.040.

Summary of the Rule: Requires persons fishing for steelhead trout to have a steelhead permit card in their possession, record the date and location of all steelhead trout over 20" retained and return the card to the department by June 1 following its issue.

Reasons Supporting the Proposed Rule(s): To implement a revised card format and procedure.

Agency Personnel Responsible for Drafting: Robert B. Rasmussen, Wildlife Enforcement Division, Department of Game, 600 North Capitol Way, Olympia, WA 98504, phone (206) 753-5740; Implementation: Sam Wright, Divisional Administrator, Fisheries Management Division, Department of Game, 600 North Capitol Way, Olympia, WA 98504, phone (206) 753-5713; and Enforcement: Dave Schultz, Divisional Administrator, Wildlife Enforcement Division, Department of Game, 600 North Capitol Way, Olympia, WA 98504, phone (206) 753-5740.

Name of the Person or Organization Whether Private, Public, or Governmental, that is Proposing the Rule: Department of Game.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule: No comments.

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 Purpose: None.

A small business economic impact statement is not required.

AMENDATORY SECTION (Amending Order 220, filed 1/11/84)

WAC 232-12-157 STEELHEAD (~~(FISHING PUNCHCARD))~~ PERMIT CARD. (1) It is unlawful for a person, except a treaty Indian possessing a valid federal or treaty fishing identification card, to fish for steelhead trout without having in their immediate possession a valid steelhead (~~(fishing punchcard))~~ permit card.

(2) Upon retaining a steelhead trout over twenty inches in length, the holder of a steelhead (~~(fishing punchcard))~~ permit card must immediately (~~(remove from the card one punch and))~~ enter on the (~~(corresponding space))~~ permit card in ink the date of the catch and the river code number as listed on the (~~(punch))~~ card.

(3) Every person possessing a steelhead (~~(fishing punchcard))~~ permit card must, by June 1, following the period for which it was issued, return that (~~(punchcard))~~ permit card to an authorized license dealer or the department.

WSR 85-08-036
PROPOSED RULES
DEPARTMENT OF GAME
(Game Commission)
 [Filed April 3, 1985]

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

New	WAC 232-28-210	1985 Hunting seasons and game bag limits and 1985 Game management units and area legal descriptions.
Rep	WAC 232-28-208	1984 Hunting seasons and game bag limits and 1984 Game management units and area legal descriptions.
Rep	WAC 232-28-20801	Elk Area No. 061; Mt. Tebo (Mason County).
Rep	WAC 232-28-20802	Game management unit 603—Pysht;

that the agency will at 9:00 a.m., Sunday-Monday, May 19-20, 1985, in the Ridpath Motor Inn, West 515 Sprague Avenue, Spokane, WA 99201, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 19-20, 1985.

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

The specific statute these rules are intended to implement is RCW 77.12.040.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 17, 1985.

Dated: April 2, 1985

By: Richard J. Poelker, Administrator
 Wildlife Management Division

STATEMENT OF PURPOSE

Title and Number of Rule Section: WAC 232-28-210
 1985 Hunting seasons and game bag limits and 1985 Game management units and area legal descriptions.

Statutory Authority: RCW 77.12.040.

Specific Statute that Rule is Intended to Implement: RCW 77.12.040.

Summary of the Rule: Seasons and bag limits will be established in the manner outlined in the 1984 pamphlet. Dates, hunting hours, either-sex permit numbers will change dependent upon calendar and regional recommendations. Game management requires the flexibility in establishing season limits in time and amount to properly manage the wildlife resource. Also establishes unit and area legal descriptions.

Reasons Supporting the Proposed Rule: Resource management.

Agency Personnel Responsible for Drafting and Implementation: Richard J. Poelker, Division Administrator, Wildlife Management Division, Department of Game, 600 North Capitol Way, Olympia, Washington 98504, phone (206) 753-5728; and Enforcement: Dave Schultz, Administrator, Wildlife Enforcement Division, Department of Game, 600 North Capitol Way, Olympia, Washington 98504, phone (206) 753-5740.

Name of the Person or Organization Whether Private, Public, or Governmental, that is Proposing the Rule: Department of Game.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule: No comments.

The rule is 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 Rule or its Purpose: None.

A small business economic impact statement is not required.

NEW SECTION

WAC 232-28-210 1985 HUNTING SEASONS AND GAME BAG LIMITS AND 1985 GAME MANAGEMENT UNITS AND AREA LEGAL DESCRIPTIONS.

Reviser's note: The text and accompanying pamphlet comprising the 1985 Hunting seasons and game bag limits and 1985 Game management units and area legal descriptions proposed by the Department of Game have been omitted from publication in the Register under the authority of RCW 34.04.050(3) as being unduly cumbersome to publish. Copies of the rules may be obtained from the main office of the Department of Game, 600 North Capitol Way, Olympia, Washington 98504, and are available in pamphlet form from the department, its six regional offices, and at numerous drug and sporting goods stores throughout the state.

REPEALER

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

WAC 232-28-208 1984 HUNTING SEASONS AND GAME BAG LIMITS AND 1984 GAME MANAGEMENT UNITS AND LEGAL DESCRIPTIONS

WAC 232-28-20801 ELK AREA NO. 061; MT. TEBO (MASON COUNTY)

WAC 232-28-20802 GAME MANAGEMENT UNIT 603—PHYSHT

Reviser's note: Errors of punctuation or spelling in the above repealer occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

WSR 85-08-037
PROPOSED RULES
BOARD OF HEALTH
[Filed April 3, 1985]

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

Amd ch. 248-84 WAC Food service and sanitation.
New WAC 248-84-120 Sulfiting agents;

that the agency will at 9:30 a.m., Wednesday, May 8, 1985, in the Vance Tye Airport Inn, Largest Conference Room, 18220 Pacific Highway South, Seattle, WA, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 43.20.050.

The specific statute these rules are intended to implement is RCW 43.20.050.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 8, 1985, State Board of Health, Olympia, 98504, MS/ET-23.

Dated: April 3, 1985
By: John A. Beare, MD
Director

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Amending chapter 248-84 WAC, Food service and sanitation, and new WAC 248-84-120 Sulfiting agents.

Statement of Purpose: The State Board of Health finds that sulfiting agents, when present in foods prepared in food service establishments cause a substantial risk of serious illness or death to sulfite sensitive individuals. Since alternative chemicals and processes are available to preserve shelf life and appearance of food, this immediate prohibition of sulfiting agents is appropriate to protect the health of sulfite sensitive individuals.

Reasons These are Necessary: There is a substantial risk to the health or life of individuals who are sensitive to foods containing sulfiting agents.

Statutory Authority: RCW 43.20.050.

Summary of the Rule or Rule Change: The State Board of Health adopts a new rule to the food service and sanitation section WAC 248-84-120 governing the use of sulfiting agents and establishing a notification regulation.

Person or Persons Responsible for the Drafting, Implementation and Enforcement of the Rule: Charles A. Bartleson, Food Programs Supervisor, Environmental Health Programs, mailstop LD-11, phone 753-2555.

Rules are proposed by the Environmental Health Services Section, OEHP, Division of Health, DSHS.

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

No economic impact statement is required under the Regulatory Fairness Act, Laws of 1982, since most businesses both large and small are already in substantial

compliance with this rule. There will not be a significant economic impact on these businesses affected by this rule amendment.

NEW SECTION

WAC 248-84-120 SULFITING AGENTS. (1) The following definitions apply only to this section:

(a) "Sulfiting agents" means chemicals used to treat foods to increase shelf life and enhance appearance and include the following:

- (i) Sulfur dioxide,
- (ii) Sodium sulfite,
- (iii) Sodium bisulfite,
- (iv) Potassium bisulfite,
- (v) Sodium metabisulfite, and
- (vi) Potassium metabisulfite.

(b) "Health officer" means the local health officer or designee or the director of the division of health, department of social and health services, or designee.

(2) Sulfiting agents shall not be applied in any food service establishment.

(3) Foods prepared in commercial food processing establishments are not subject to this section provided all food products containing sulfiting agents shall be labeled in accordance with RCW 69.04.394.

(4) Sulfiting agents are prohibited from the premises of any food service establishment unless in package form, clearly labeled, and offered for retail sale.

(5) Consumers shall be notified by any food service establishment purchasing, using, offering for sale or service, or otherwise having on the establishment's premises or in storage, any of the following foods, processed by a commercial food processing establishment, and labeled as containing sulfiting agents:

- (a) Fresh, raw vegetables including salad ingredients;
- (b) Fresh, raw fruits;
- (c) Dried fruits sold in bulk food displays or repackaged from a larger labeled package;
- (d) Dried, powdered, or freeze-dried potato products sold in bulk food displays or repackaged from a larger labeled package.

(6) Consumers shall be notified as required by this section by the food service establishment by one of the following methods:

(a) The following notice conspicuously attached to any and all packages and bulk food display units:

"This food contains sulfiting agents. Persons allergic to sulfiting agents should avoid consumption of this food."

or,

(b) Conspicuous notices on public entrances, or on menus, or on table placards, stating:

"Sulfiting agents are used on some foods served or sold by this establishment. Persons allergic to sulfiting agents should ask which foods have been treated."

WSR 85-08-038

PROPOSED RULES

DEPARTMENT OF FISHERIES

[Filed April 3, 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., Friday, May 10, 1985, in Conference Room C, Holiday Inn, 101 128th S.W., Everett, WA 98204, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 17, 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 May 10, 1985.

Dated: April 3, 1985

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

STATEMENT OF PURPOSE

Title: WAC 220-20-030, 220-22-030 and chapter 220-47 WAC.

Description of Purpose: Modify rules for Puget Sound commercial salmon fishery.

Statutory Authority: RCW 75.08.080.

Summary of Rule: WAC 220-20-030 repealed, provisions do not apply to Puget Sound treaty Indian fisheries and Columbia River fisheries are regulated under chapter 220-32 WAC; 220-22-030, adjust area definitions; and chapter 220-47 WAC, delineates new areas closed to salmon angling; provides adjustment for 1985 Puget Sound salmon fishery schedule and gear restrictions.

Reasons Supporting Proposed Action: WAC 220-20-030, unnecessary; 220-22-030, creation of two new catch areas will allow stock separation; clarification of existing boundaries is needed for better recognition; and chapter 220-47 WAC, selected area closures provide for protection as well as providing for an orderly fishery; adjustments to fishing schedule and gear restrictions are based on 1985 preseason salmon forecast and harvest criteria.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, Washington, 754-2429; Implementation: Edward Manary, 115 General Administration Building, Olympia, Washington, 753-6631; and Enforcement: James W. McKillip, 115 General Administration Building, Olympia, Washington, 753-6585.

These rules are proposed by the Washington State Department of Fisheries.

Comments: None.

These rules are not the result of federal law or court order.

Small Business Economic Impact Statement: No effect, these rules effect resource utilization and conservation.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-20-030 GENERAL PROVISIONS—OFF-RESERVATION TREATY INDIAN CEREMONIAL FISHING. (866)

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-22-030 PUGET SOUND SALMON MANAGEMENT AND CATCH REPORTING AREAS. (1) Area 4B shall include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River.

(2) Area 5 shall include those waters of Puget Sound easterly of a line projected true north from the fishing boundary marker at the

mouth of the Sekiu River and westerly of a line projected true north from Low Point.

(3) Area 6 shall include those waters of Puget Sound easterly of a line projected from the Angeles Point Monument to the William Head light on Vancouver Island, northerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Smith Island light, and southerly of a line projected from the Smith Island light to vessel traffic lane buoy R to the Trial Island light.

(4) Area 6A shall include those waters of Puget Sound easterly of a line projected from the Partridge Point light to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island and westerly of a line projected from Reservation Head on Fidalgo Island to West Point on Whidbey Island.

(5) Area 6B shall include those waters of Puget Sound southerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Point Wilson light and easterly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(6) Area 6C shall include those waters of Puget Sound easterly of a line projected true north from Low Point and westerly of a line projected from the Angeles Point Monument to the William Head light on Vancouver Island.

(7) Area 6D shall include those waters of Puget Sound westerly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(8) Area 7 shall include those waters of Puget Sound southerly of a line projected true west from the Sandy Point light, northerly of a line projected from the Trial Island light to vessel traffic lane buoy R to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island, and westerly of a line projected from Sandy Point to Point Migley, thence along the eastern shore—line of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, excluding those waters of East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

(9) Area 7A shall include those waters of Puget Sound northerly of a line projected true west from the Sandy Point light.

(10) Area 7B shall include those waters of Puget Sound southerly of a line projected from the most westerly point of Gooseberry Point to Sandy Point, easterly of a line projected from Sandy Point to Point Migley, thence along the eastern shoreline of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, northerly of the Burlington Northern railroad bridges at the north entrances to Swinomish Channel and westerly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay.

(11) Area 7C shall include those waters of Puget Sound easterly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay.

(12) Area 7D shall include those waters of Puget Sound easterly of a line projected southeasterly from the Sandy Point light to the most westerly point of Gooseberry Point.

(13) Area 7E shall include those waters of Puget Sound within East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

~~((+3))~~ (14) Area 8 shall include those waters of Puget Sound easterly of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, westerly of a line projected from the light on East Point 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec) southerly of the Burlington Northern railroad bridges at the north entrances to Swinomish Channel and northerly of the state highway 532 bridges between Camano Island and the mainland.

~~((+4))~~ (15) Area 8A shall include those waters of Puget Sound easterly of a line projected from the East Point light on Whidbey Island 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec), northerly of a line projected from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore, ~~((and))~~ southerly of the State Highway 532 bridges between Camano Island and the mainland, and westerly of a line from the fishing

boundary marker at the slide north of Tulalip Bay true west to a fishing boundary buoy approximately 2,000 feet offshore thence south-easterly to another fishing boundary buoy approximately 2,000 feet offshore thence true east to the pilings at old Bower's Resort.

(16) Area 8D shall include those waters of Puget Sound inside and easterly of a line from the fishing boundary marker at the slide north of Tulalip Bay true west to a fishing boundary buoy approximately 2,000 feet offshore thence southeasterly to another fishing boundary buoy approximately 2,000 feet offshore thence true east to the pilings at old Bower's Resort.

~~((+5))~~ (17) Area 9 shall include those waters of Puget Sound southerly and easterly of a line projected from the Partridge Point light to the Point Wilson light, northerly of the site of the Hood Canal Floating Bridge, northerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble, southerly of a line projected from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore and northerly of a line projected from the Apple Cove Point light to the northern tip of the Union oil dock at Edwards Point.

~~((+6))~~ (18) Area 9A shall include those waters of Puget Sound known as Port Gamble Bay southerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble.

~~((+7))~~ (19) Area 10 shall include those waters of Puget Sound southerly of a line projected from the Apple Cove Point light to the northern tip of the Union oil dock at Edwards Point, westerly of a line projected 233° true from the Acapulco restaurant near Shilshole Marina through entrance piling No. 8 to the southern shore of the entrance to the Lake Washington Ship Canal, westerly of a line projected 7° true from a point on Duwamish Head through the Duwamish Head light to Pier 91, northerly of a true east—west line passing through the Point Vashon light, easterly of a line projected from Orchard Point to Beans Point on Bainbridge Island, and northerly and easterly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

~~((+8))~~ (20) Area 10A shall include those waters of Puget Sound easterly of a line projected 7° true from a point on Duwamish Head through the Duwamish Head light to Pier 91.

~~((+9))~~ (21) Area 10C shall include those waters of Lake Washington southerly of the Evergreen Point Floating Bridge.

~~((20))~~ (22) Area 10D shall include those waters of the Sammamish River south of the State Highway 908 Bridge and Lake Sammamish.

~~((21))~~ (23) Area 10E shall include those waters of Puget Sound westerly of a line projected from Orchard Point to Beans Point on Bainbridge Island and southerly and westerly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

~~((22))~~ (24) Area 10F shall include those waters of Puget Sound easterly of a line projected 233° true from the Acapulco restaurant near Shilshole Marina through entrance piling Number 8 to the southern shore of the entrance to the Lake Washington ship canal and those waters of the Lake Washington ship canal westerly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge including the waters of Salmon Bay, the Lake Washington Ship canal, Lake Union and Portage Bay.

~~((23))~~ (25) Area 10G shall include those waters of Lake Washington northerly of the Evergreen Point Floating Bridge, easterly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge and those waters of the Sammamish River north of the State Highway 908 Bridge.

~~((24))~~ (26) Area 11 shall include those waters of Puget Sound southerly of a true east—west line passing through the Point Vashon light, northerly of a line from Browns Point to the Asarco smelter stack on the opposite shore of Commencement Bay, and northerly of the Tacoma Narrows Bridge.

~~((25))~~ (27) Area 11A shall include those waters of Puget Sound southerly of a line from Browns Point to the Asarco smelter stack on the opposite shore of Commencement Bay.

~~((26))~~ (28) Area 12 shall include those waters of Puget Sound southerly of the site of the Hood Canal Floating Bridge and northerly and easterly of a line projected from the Tskutsko Point light to Mistry Point.

~~((27))~~ (29) Area 12A shall include those waters of Puget Sound northerly of a line projected from Pulali Point true east to the mainland.

((28)) (30) Area 12B shall include those waters of Puget Sound southerly of a line projected from Pulali Point true east to the mainland, northerly of a line projected from Ayock Point true east to the mainland, and westerly of a line projected from the Tskutsko Point light to Misery Point.

((29)) (31) Area 12C shall include those waters of Puget Sound southerly of a line projected from Ayock Point true east to the mainland and northerly and westerly of a line projected from Ayres Point to the ~~((fishing boundary marker))~~ public boat ramp at Union.

((30)) (32) Area 12D shall include those waters of Puget Sound easterly of a line projected from Ayres Point to the ~~((fishing boundary marker))~~ public boat ramp at Union.

((31)) (33) Area 13 shall include those waters of Puget Sound southerly of the Tacoma Narrows Bridge and a line projected from Green Point to Penrose Point and northerly and easterly of a line projected from the Devil's Head light to Treble Point, thence through lighted buoy No. 3 to the mainland and westerly of the railroad trestle at the mouth of Chambers Bay.

((32)) (34) Area 13A shall include those waters of Puget Sound northerly of a line projected from Green Point to Penrose Point.

((33)) (35) Area 13C shall include those waters of Puget Sound easterly of the railroad trestle at the mouth of Chambers Bay.

((34)) (36) Area 13D shall include those waters of Puget Sound westerly of a line projected from the Devil's Head Light to Treble Point, thence through lighted buoy Number 3 to the mainland, northerly of a line projected from Johnson Point to Dickenson Point, northerly of a line projected from the light at Dofflemeyer Point to Cooper Point, easterly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor, easterly of a line projected from the northern tip of Steamboat Island to the light at Arcadia to Hungerford Point and southerly of a line projected true east-west through the southern tip of Stretch Island.

((35)) (37) Area 13E shall include those waters of Puget Sound southerly of a line projected from Johnson Point to Dickenson Point.

((36)) (38) Area 13F shall include those waters of Puget Sound southerly of a line projected from the light at Dofflemeyer Point to Cooper Point.

((37)) (39) Area 13G shall include those waters of Puget Sound southerly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor.

((38)) (40) Area 13H shall include those waters of Puget Sound southwesterly of a line projected from the northern tip of Steamboat Island to the light at Arcadia and those waters easterly of a line projected 64° true from Kamilche Point to the opposite shore.

((39)) (41) Area 13I shall include those waters of Puget Sound southwesterly of a line projected 64° true from Kamilche Point to the opposite shore.

((40)) (42) Area 13J shall include those waters of Puget Sound northwesterly of a line projected from the light at Arcadia to Hungerford Point.

((41)) (43) Area 13K shall include those waters of Puget Sound northerly of a line projected true east-west through the southern tip of Stretch Island.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-307 CLOSED AREAS—PUGET SOUND SALMON. It is unlawful to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas:

Area 6D - That portion within 1,000 feet of the mouth of the Dungeness River.

Area 7B - That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

Area 8A - Those waters easterly of a line projected from Mission Point at the south end of Tulalip Bay, thence to Buoy C1, thence to the green light at the entrance jetty of the Snohomish River thence across the mouth of the Snohomish River to the red light at Western Gear Corporation and those waters northerly of a line from Camano

Head to ~~((Hermosa Point on the north end of Tulalip Bay))~~ a fishing boundary buoy approximately 2,000 feet offshore due west of the slide north of Tulalip Bay, thence to a fishing boundary marker at the slide.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point Light to Sierra Echo Buoy thence to Forbes Landing Wharf, east of Hansville.

Area 10 - That portion easterly of a line projected from Meadow Point to West Point and that portion of Port Madison northwest of a line from the Agate Pass entrance light to the light on the end of the Indianola dock.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport Dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton Ferry Terminal.

Area 11 - Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

Area 12A - Those waters north of a line from Fisherman's Point on the Bolton Peninsula to the boat haven at Quilcene.

Area 12B - Those waters within 1/4 mile of the mouths of the Dosewallips, Duckabush, and Hama Hama Rivers.

Area 12C - Those waters within 1,000 feet of the western shore between Glen Ayr trailer park and the Hoodspout marina dock.

Area 13 - All waters except those waters inside and easterly of a line from Gordon Point to the north tip of Ketron Island and from the south tip of Ketron Island to the Nisqually River marker buoy thence to the breakwater near Sequelitchew Creek.

Area 13A - Those waters of Burley Lagoon north of State Route 302, those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay including all waters of Minter Creek Bay, those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove, and those waters within 1/4 mile of Green Point.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-311 PURSE SEINE—SEASONS. It is unlawful to take, fish for or possess salmon taken with purse seine gear for commercial purposes except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective Management and Catch Reporting Area:

Areas 4B, 5, 6, 6A, 6B, 6C, ~~((6D,))~~ 7 and 7A - closed.

Area 6D - September 23 through October 25.

Area 7B - September ~~((10))~~ 9 through ~~((October 30))~~ November 12.

Areas 7C and 7D - closed.

Area 7E - September 10 through September 16.

Area 8 - ~~((closed))~~ October 28 through November 4.

Area 8A - September 10 through October ~~((23))~~ 28.

Areas 8D, 9, and 9A - closed.

Areas 10 and 11 - September 10 through October ~~((23))~~ 28.

Areas 10A, 10C, and 10D ~~((, 10E, 10F, 10G and 11A))~~ - closed.

Area 10E - October 22 through October 29.

Areas 10F, 10G and 11A - closed.

Area ~~((s))~~ 12 ~~((and 12B))~~ - ~~((July 31))~~ September 10 through October ~~((23))~~ 28.

Area 12A - September 10 through September 24.

Areas ~~((12A))~~ 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K and all freshwater areas - closed.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-312 PURSE SEINE—WEEKLY PERIODS. It is unlawful during any open season to take, fish for or possess salmon taken with purse seine gear except during the weekly open periods hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas:

Area 6D - Week of September 22: Monday through Saturday. Weeks beginning September 29, October 6, and October 13: Sunday through Saturday. Week beginning October 20: Sunday through Friday.

Area 7B - Week beginning September ~~((9))~~ 8: Monday through Saturday. Weeks beginning September ~~((16))~~ 15, ~~((23))~~ 22 and ~~((30))~~ 29, and October ~~((7))~~ 6 and 13: Sunday through Saturday. Week beginning October ~~((14))~~ 20: Sunday through Friday. Weeks beginning

October ((2+)) 27 and ((28)) November 3 and 10: Monday and Tuesday.

Area 7E - Week beginning September 8: Tuesday. Week beginning September 15: Monday.

Area 8 - Weeks beginning October 27 and November 3: Monday.

Area 8A - Weeks beginning September ((9)) 8 and October ((14)) 20: ((Monday)) Tuesday. Weeks beginning September ((16)) 15 and 22: Monday and Tuesday. Week beginning October ((2+)) 27: ((Tuesday)) Monday.

Areas 10 and 11 - Weeks beginning September 8 and October 20: Tuesday. Weeks beginning September ((9)) 15 and ((16)) 22: Monday and Tuesday. ((Week beginning October 14: Monday:)) Week beginning October ((2+)) 27: ((Tuesday)) Monday.

Area 10E - Week beginning October 20: Tuesday and Wednesday. Week beginning October 27: Monday and Tuesday.

Area((s)) 12 ((and 12B)) - Weeks beginning ((July 29, August 5)) September 8 and 22 and October ((2+)) 20: Tuesday. Week((s)) beginning September ((9 and 16)) 15: Monday and Tuesday. Week beginning October ((14)) 27: Monday.

Area 12A - Weeks beginning September 8 and 22: Tuesday. Week beginning September 15: Monday and Tuesday.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-313 PURSE SEINE—DAILY HOURS. It is unlawful during any open day to take, fish for or possess salmon taken with purse seine gear in the following Puget Sound Salmon Management and Catch Reporting Areas except during the daily open hours hereinafter designated:

Area 6D from September 23 to October 24 and area 7B from September 9 to October ((18)) 24 - 24 hours per day.

Areas 6D and 7B on October ((19)) 25 - 12:01 a.m. to 4:00 p.m. Pacific Daylight Time.

All other open areas - July ((29)) 28 through October ((27)) 26: 5:00 a.m. to 9:00 p.m. Pacific Daylight Time. October ((28)) 27 through November ((3)) 30: 5:00 a.m. to 8:00 p.m. Pacific Standard Time.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-319 SPECIAL MESH SIZE. It shall be unlawful to take, fish for or possess salmon taken with purse seine gear in Puget Sound Salmon Management and Catch Reporting Areas 6B, 6D, 8, 8A, 8D, 9, 9A, 10, 10A, 10C, 10D, 10E, 10F, 10G, 11, 11A, 12, 12A, 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J and 13K from the second Monday in September through November 30 unless said purse seine gear is constructed so that the first 100 meshes below the corkline that are within 75 fathoms of the bunt, excluding the bunt, are of a size not less than 5 inches stretch measure.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-411 GILL NET—SEASONS. It is unlawful to take, fish for or possess salmon taken with gill net gear for commercial purposes except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective fishing area:

Areas 4B, 5, 6, 6A, 6B, 6C, ((6D:)) 7 and 7A - closed.

Area 6D - September 22 through October 25.

Area 7B - July 30 through ((October 30)) November 12.

Area 7C - July 30 through August ((15)) 14.

Area 7D - closed.

Area 7E - September 9 through September 16.

Area 8 - ((closed)) October 28 through November 3.

Area 8A - September 9 through October ((22)) 28.

Areas 8D, 9, and 9A - closed.

Area 10 - September 9 through October ((22)) 28.

Areas 10A, 10C, 10D((-10E, 10F and 10G)) - closed.

Area 10E - October 21 through October 29.

Areas 10F and 10G - closed.

Area 11 - September 9 through October ((22)) 28.

Area 11A - closed.

Area((s)) 12 ((and 12B)) - ((July 30)) September 9 through October ((22)) 28.

Area 12A - September 9 through September 23.

Areas ((12A)) 12B, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K and all freshwater areas - closed.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-412 GILL NET—WEEKLY PERIODS. It is unlawful during any open season to take, fish for or possess salmon taken with gill net gear except during the weekly open periods hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas:

Area 6D - Weeks beginning September 22, 29, and October 6 and 13: Sunday through Saturday. Week beginning October 20: Sunday through Friday.

Area 7B - Week beginning July ((29)) 28: ((Monday and)) Tuesday and Wednesday nights. ((Week beginning August 5: Tuesday, Wednesday, and Thursday nights:)) Weeks beginning August ((12)) 4 and 11: Monday, Tuesday, and Wednesday nights. Weeks beginning September ((9)) 8, ((16)) 15, ((23)) 22 and ((30)) 29, and October ((7)) 6 and 13: Sunday through Saturday. Week beginning October ((14)) 20: Sunday through Friday. ((Week beginning October 21: Sunday and Monday nights:)) Weeks beginning October ((28)) 27 and November 10: Monday and Tuesday nights. Week beginning November 3: Sunday and Monday nights.

Area 7C - Week beginning July ((29)) 28: ((Monday and)) Tuesday and Wednesday nights. ((Week beginning August 5: Tuesday, Wednesday and Thursday nights:)) Weeks beginning August ((12)) 4 and 11: Monday, Tuesday and Wednesday nights.

Area 7E - Weeks beginning September 8 and 15: Monday night.

Area 8 - Week beginning October 27: Monday night. Week beginning November 3: Sunday night.

Area 8A - Week beginning September ((9)) 8 and October 20 and 27: ((Sunday)) Monday night. Week beginning September ((16)) 15: Monday and Tuesday nights. Week((s)) beginning ((October 14 and 21)) September 22: Sunday and Monday nights.

Areas 10 and 11 - Weeks beginning September ((9)) 8 and October 20 and 27: ((Sunday and)) Monday night((s)). Week beginning September ((16)) 15: Monday and Tuesday nights. Week((s)) beginning ((October 14 and 21)) September 22: Sunday and Monday nights.

Area 10E - Weeks beginning October 20 and 27: Monday and Tuesday nights.

Area((s)) 12 ((and 12B)) - ((Week beginning July 29: Monday night. Week beginning August 5: Tuesday night:)) Weeks beginning September ((9)) 8 and 22 and October 20 and 27: ((Sunday and)) Monday night((s)). Week beginning September ((16)) 15: Monday and Tuesday nights. ((Weeks beginning October 14 and 21: Monday night:))

Area 12A - Weeks beginning September 8 and 22: Monday night. Week beginning September 15: Monday and Tuesday nights.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-413 GILL NET—DAILY HOURS. It is unlawful during any open day to take, fish for or possess salmon taken with gill net gear in the following Puget Sound Salmon Management and Catch Reporting Areas except during the daily open hours hereinafter designated:

July ((29)) 28 through August ((1)) 10 - 7:00 p.m. to 9:30 a.m. Pacific Daylight Time in all open areas.

August ((12)) 11 through September ((15)) 14 - 6:00 p.m. to 9:00 a.m. Pacific Daylight Time in all open areas unless otherwise provided.

September ((9)) 8 through October ((18)) 24 - open 24 hours per day in Area 7B.

September 22 through October 24 - open 24 hours per day in Area 6D.

October ((19)) 25 - 12:01 a.m. to 4:00 p.m. Pacific Daylight Time in Areas 6D and 7B.

September ((16)) 15 through October ((27)) 26 - 5:00 p.m. to 9:00 a.m. Pacific Daylight Time in all open areas unless otherwise provided.

October ((28)) 27 through November ((3)) 16 - 4:00 p.m. to ((8:00)) 9:00 a.m. Pacific Standard Time in all open areas.

November 17 through November 30 - 3:00 p.m. to 9:00 a.m. Pacific Standard Time in all open areas.

AMENDATORY SECTION (Amending Order 84-53, filed 6/21/84)

WAC 220-47-414 GILL NET—MESH SIZES. It is unlawful to take, fish for or possess salmon taken with gill net gear containing mesh smaller than the minimum size stretch measure as hereinafter designated in the following Puget Sound Salmon Management and Catch Reporting Areas during the periods specified:

~~((July 29 through September 8 - All open areas - 7 inch minimum mesh size.~~

~~September 9 through October 20 - Areas 7B and 7C - 5 inch minimum mesh size. October 21 through November 3 - Areas 7B and 7C - 6 inch minimum mesh size.~~

~~September 9 through October 13 - All other open areas - 5 inch minimum mesh size.~~

~~October 14 through November 3 - All other open areas - 6 inch minimum mesh size.)) Area 6D - September 22 through October 25: 5 inch minimum mesh.~~

~~Area 7B - July 28 through September 7: 7 inch minimum mesh; September 8 through October 26: 5 inch minimum mesh; October 27 through November 30: 6 inch minimum mesh.~~

~~Area 7C - July 28 through August 17: 7 inch minimum mesh.~~

~~Area 7E - September 8 through October 5: 5 inch minimum mesh.~~

~~Area 8 - October 27 through November 30: 6 inch minimum mesh.~~

~~Area 8A - September 8 through October 19: 5 inch minimum mesh; October 20 through November 30: 6 inch minimum mesh.~~

~~Areas 10 and 11 - September 8 through October 12: 5 inch minimum mesh; October 13 through November 30: 6 inch minimum mesh.~~

~~Area 10E - October 20 through November 30: 6 inch minimum mesh.~~

~~Area 12 - September 8 through October 19: 5 inch minimum mesh; October 20 through November 30: 6 inch minimum mesh.~~

~~Area 12A - September 8 through September 28: 5 inch minimum mesh.~~

WSR 85-08-039

PROPOSED RULES

DEPARTMENT OF FISHERIES

[Filed April 3, 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 vessel and gear reduction.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 7, 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 April 23, 1985.

Dated: April 3, 1985

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

STATEMENT OF PURPOSE

Title: WAC 220-95-021 Program options; and repealing WAC 220-95-012 Marginal production.

Description of Purpose: Include statement limiting applications; and repeal redundant section.

Statutory Authority: RCW 75.08.080.

Summary of Rule: Requires applicant to have owned vessel for sale on or prior to December 22, 1980.

Reasons Supporting Proposed Action: Requirement under terms of federal contract; all provisions of marginal production are found in WAC 220-95-012.

Agency Personnel Responsible for Drafting: Evan S. Jacoby, 115 General Administration Building, Olympia, Washington, 754-2429; Implementation: Robert A. 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 84-215, filed 12/10/84)

WAC 220-95-021 PROGRAM OPTIONS. (1) The department may purchase either an applicant's license(s) or an applicant's license(s) and a restriction on the vessel prohibiting the vessel's use as a commercial or charter salmon fishing vessel or salmon delivery vessel.

(2) The department may purchase license(s) or vessel restriction if the applicant's vessel is currently licensed to fish for or deliver salmon within the state ((and)), the applicant is qualified pursuant to RCW 75.44.110, and the applicant owned said vessel on or prior to December 22, 1980.

(3) Each vessel use restriction shall be purchased for thirty percent of the fair market value of the vessel not to exceed a total of \$45,000, being thirty percent of \$150,000 limit set by director under RCW 75.44.120. Purchase offers will be made in order of priority ranking established for each category of applicants pursuant to WAC 220-95-016.

(4) The department shall not purchase vessel use restrictions from marginal applicants as defined in WAC 220-95-016.

(5) License and vessel values shall be established as provided in WAC 220-95-026. After the value of the vessel has been established and the applicant has provided paid receipts for the first two surveys, the department may communicate a purchase offer to the applicant. If the applicant accepts the offer, the applicant shall sign and return the offer within ten calendar days of the date of the offer.

(6) The department may not purchase more than one vessel restriction or license from an applicant until all applicants have had an opportunity to sell.

(7) A person who previously sold either a vessel or license to the program may sell only other licenses and restrictions on other vessels owned at the time the person first sold to the program.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-95-012 MARGINAL PRODUCTION.

WSR 85-08-040

PROPOSED RULES

DEPARTMENT OF NATURAL RESOURCES

(Board of Natural Resources)

[Filed April 3, 1985]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Board of Natural Resources/Department of Natural Resources intends to adopt, amend, or repeal rules concerning management of dredge spoil disposal and disposal fees for Puget Sound and the Straits of Juan de Fuca;

that the agency will at 1:30 p.m., Thursday, May 9, 1985, in the First Floor Conference Room, General Administration Building, Olympia, Washington 98504, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on June 4, 1985.

The authority under which these rules are proposed is RCW 79.90.100.

The specific statute these rules are intended to implement is RCW 79.90.100 and 43.30.150.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 8, 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:

David Bortz
Marine Land Management
Mailstop QW-21
Department of Natural Resources
Olympia, WA 98504
Phone 753-5324

Dated: April 3, 1985

By: J. A. Stearns
for Brian J. Boyle
Commissioner of Public Lands
Chairman of the Board

STATEMENT OF PURPOSE

Title and Number of Rule Section(s) or Chapter(s): Chapter 332-30 WAC, Aquatic land management, including WAC 332-30-166 Open water disposal sites.

Statutory Authority: RCW 43.30.150.

Specific Statute that Rule is Intended to Implement: RCW 79.90.100.

Summary of the Rule(s): The open water disposal regulations are revised to include application fees which will cover increased program costs in managing dredge spoil disposal in Puget Sound.

Reasons Supporting the Proposed Rule(s): The department is participating in the development of a joint state/federal dredge spoil disposal plan. Increased staff time and resulting increases in dredge spoil disposal planning, permit costs, and disposal operation monitoring occasion the increased costs.

Agency Personnel Responsible for the Drafting, Implementation and Enforcement of the Rule: David G. Bortz, Division of Marine Land Management, QW-21, Department of Natural Resources, Olympia, WA 98504.

Name of the Person or Organization Whether Private, Public, or Governmental, that is Proposing the Rule: Department of Natural Resources.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to the Rule:

Rules should increase effectiveness of environmental monitoring of dredge spoil disposal.

The rule is 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 Rule or its Purpose: None.

AMENDATORY SECTION (Amending Order 343, filed 7/3/80)

WAC 332-30-166 OPEN WATER DISPOSAL SITES. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the Interagency Open Water Disposal Site Evaluation Committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) Authorization for use of the site will only be issued after certification by the environmental protection agency and the department of ecology that disposal of the material at the site will not have a significant adverse impact on the environment. In addition, all necessary federal, state, and local government permits shall be acquired before DNR grants permission to use the site, and any use authorization granted by DNR shall be subject to the terms and conditions of such permits. DNR may suspend or terminate any authorization to use a site upon the expiration of any required permit.

(5) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

~~((5))~~ (6) Pipeline disposal of material to an established disposal site will require special consideration.

~~((6-A))~~ (7) An application and a lease fee will be charged at a rate sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects are exempt from this fee schedule.

FEES

(a) Application fee

(i) Puget Sound and Strait of Juan De Fuca: \$.15 per cubic yard (c.y.) for the first 200,000 c.y.; Negotiated fee for project volumes exceeding 200,000 c.y.: Minimum fee \$2,000.00

(ii) Grays Harbor/Willapa Harbor: Minimum fee \$300.00

(b) Lease fee - \$100.00 all sites

(c) Penalty fee - \$5.00/cubic yard

~~((7))~~ (8) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

((#)) (m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

((#)) (n) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

WSR 85-08-041
PROPOSED RULES
BOARD OF PHARMACY
 [Filed April 3, 1985]

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

- Amd WAC 360-16-200 Physical standards for pharmacies—Adequate stock.
- Amd WAC 360-16-230 Physical standards for pharmacies—Adequate equipment.
- Amd WAC 360-17-060 Physical requirements.
- Rep WAC 360-16-170 Drug vending machine[s] for over-the-counter drugs;

that the agency will at 10:00 a.m., Wednesday, May 15, 1985, in the SeaTac Towers, 18000 Pacific Highway South, Suite 500, Seattle, WA, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 18.64.005.

The specific statute these rules are intended to implement is RCW 18.64.005.

Dated: April 3, 1985
 By: Donald H. Williams
 Executive Secretary

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Pharmacy.

Purpose: WAC 360-16-200 is to lay out the standards for pharmacies with regard to adequate stock; 360-16-230 is to lay out the standards for pharmacies regarding adequate equipment; and 360-17-060 is to lay out the physical requirements for hospital pharmacies.

Statutory Authority: RCW 18.64.005.

Summary of the Rules: WAC 360-16-200 lists the requirements that pharmacies must meet with regard to

stocks of drugs. The rule also discusses storage of drugs in pharmacies; 360-16-230 describes the equipment that pharmacies must have in their possession; and 360-17-060 describes physical requirements for hospital pharmacies including equipment access to unattended areas and storage of drugs and flammable items.

Reason Proposed: WAC 360-16-200 is to clarify the physical requirements for pharmacies regarding stock; 360-16-230 and 360-17-060 are to delete the specific requirements for reference materials leaving the choice of the materials to the professional judgment of the pharmacist; 360-16-170 is because of the change in RCW 18.64.044 dealing with the number of drugs that an entity must stock in order to be a shopkeeper.

Responsible Personnel: In addition to the members of the board, the following Board of Pharmacy personnel have knowledge of and responsibility for drafting, implementing and enforcing these rules: Donald H. Williams, Executive Secretary, W.E.A. Building, 319 East 7th Avenue, Olympia, WA 98504, (206) 234-6834 scan, (206) 753-6834 comm.

Proponents: These rules are proposed by the Washington State Board of Pharmacy.

Agency Comments: These rules are promulgated pursuant to the authority granted to the board in RCW 69.50.005 [69.50.500].

Small Business Economic Impact Statement: Not required and has not been filed since these rules do not impact small businesses as that term is defined by RCW 43.31.920.

AMENDATORY SECTION (Amending Order PL 131, filed 2/4/77)

WAC 360-16-200 PHYSICAL STANDARDS FOR PHARMACIES—ADEQUATE STOCK. (1) The ~~((place of business))~~ pharmacy must maintain at all times a representative assortment ~~((of FDA-approved preparations, commonly used chemicals, oils, drugs, patent medicines and drug sundries, in such assortments and quantities as will enable the said place of business regularly to supply from stock from day to day the usual immediate medical requirements of physicians and persons in the neighborhood and community in which said business is located, all stock to be clean and of proper quality:))~~ of drugs in order to meet the pharmaceutical needs of its patients.

(2) Dated items—All merchandise which has exceeded its expiration date must be removed from stock.

(3) All stock and materials on shelves or display for sale must be free from contamination, deterioration and adulteration.

(4) All stock and materials must be properly labeled according to federal and state statutes, rules and regulations.

(5) Devices that are not fit or approved by the FDA for use by the ultimate consumer shall not be offered for sale and must be removed from stock.

(6) All drugs shall be ~~((protected from excessive heat (40 degrees centigrade, 104 degrees fahrenheit:))~~ stored in accordance with USP standards and shall be protected from excessive heat or freezing except as those drugs that must be frozen in accordance with the requirements of the label. If drugs are exposed to excessive heat or frozen when not allowed by the requirements of the label, they must be destroyed. ((If such heat is exceeded, all drugs must be destroyed. (USP standards shall be met:))

~~((7) All drugs shall be protected from freezing except those so marked on the label. (USP standards shall be met:))~~

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending Order PL 180, filed 1/9/84)

WAC 360-16-230 PHYSICAL STANDARDS FOR PHARMACIES—ADEQUATE EQUIPMENT. (1) All pharmacies shall have in their possession the equipment and supplies necessary to compound, dispense, label, administer and distribute drugs and devices. The equipment shall be in good repair and shall be available in sufficient quantity to meet the needs of the practice of pharmacy conducted therein.

(2) All pharmacies will have in their possession

(a) one up-to-date copy of the state of Washington statutes, rules and regulations governing the practice of pharmacy, the sale and dispensing of drugs, poisons, controlled substances, and medicines maintained in a ~~((loose leaf))~~ binder.

~~((b) Five standard, acceptable reference sources relating to the practice of pharmacy, three of which must be current, one file or book or other reference on drug hazards or drug interactions which must also be current:))~~

~~((c) All pharmacies shall have in their possession distilled or deionized water (at least one quart:))~~

(3) All pharmacies shall have up-to-date references in order to furnish patients and practitioners with adequate information concerning drugs.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order PL 162, filed 7/29/81)

WAC 360-17-060 PHYSICAL REQUIREMENTS. (1) Area. The pharmacy facilities shall include:

(a) Appropriate transportation and communications systems for the distribution and control of drugs within the hospital.

(b) Sufficient space and equipment for secure, environmentally controlled storage of drugs and other pharmaceutical supplies.

(2) In order to meet the medical services' need for drugs throughout the hospital, the pharmacy facilities should include:

(a) Space for the management and clinical functions of the pharmaceutical service.

(b) Space and equipment for the preparation of parenteral admixtures, radiopharmaceuticals, and other sterile compounding and packaging.

(c) Other equipment necessary.

(3) Access to unattended areas. All areas occupied by the hospital pharmacy shall be locked by key or combination in order to prevent access by unauthorized personnel. The director of pharmacy shall designate in writing, by title and/or position those individuals who shall be authorized access to particular areas within the pharmacy, including authorization of access to keys and/or combinations.

~~((4) Current pharmaceutical reference materials shall be provided in order to furnish the pharmaceutical, medical and nursing staff with adequate information concerning drugs. References related to the following subjects should be available:))~~

~~((a) Drug identification))~~

~~((b) Toxicology))~~

~~((c) Pharmacology))~~

~~((d) Drug interaction))~~

~~((e) Drug compatibility))~~

~~((f) Drug source))~~

~~((g) Pharmacy law))~~

~~((h) Microbiology))~~

~~((i) Sterilization and disinfection))~~

~~((k) Patient counseling))~~

~~((l) Rational therapy))~~

~~((m) Pathology))~~

~~((n) Chemistry))~~

~~((5))~~ (4) Drug storage areas. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(a) It is the joint responsibility of the director of pharmacy and the director of nursing to ensure that drug handling, storage, and preparation are carried out in conformance with established policies, procedures, and accepted standards.

(b) Locked storage or locked medication carts shall be provided for use on each nursing service area or unit.

~~((6))~~ (5) Flammable storage. All flammable material shall be stored and handled in accordance with applicable local and state fire regulations, and there shall be written policy and procedures for the destruction of these flammable materials.

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

REPEALER

The following section of the Washington administrative code is hereby repealed:

WAC 360-16-170 DRUG VENDING MACHINE[S] FOR OVER-THE-COUNTER DRUGS

Reviser's note: The brackets and enclosed material in the above repealer occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

**WSR 85-08-042
PROPOSED RULES
DEPARTMENT OF LICENSING
(Physical Therapy Board)
[Filed April 3, 1985]**

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Physical Therapy Board intends to adopt, amend, or repeal rules concerning the supervision of physical therapy assistants;

that the agency will at 11:00 a.m., Tuesday, May 14, 1985, in the Airport Hilton, 17620 Pacific Highway South, Seattle, WA 98188, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 18.74.023.

The specific statute these rules are intended to implement is RCW 18.74.023.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 10, 1985.

Dated: March 29, 1985
By: John H. Keith
Assistant Attorney General
Board Counsel

STATEMENT OF PURPOSE

Name of Agency: State of Washington Board of Physical Therapy.

Purpose and Reason Proposed: WAC 308-42-136 is proposed to further the protection of the public by setting standards for the number of physical therapy assistants that can be supervised.

Summary: WAC 308-42-136 sets the maximum number of physical therapy assistants that can be supervised.

Statutory Authority: RCW 18.74.023.

Responsible Departmental Personnel: In addition to members of the Physical Therapy Board, the following Department of Licensing personnel have knowledge of

and responsibility for drafting, implementing and enforcing these rules: Barbara Johnson, Executive Secretary, 1300 Quince Street S.E., Olympia, WA 98504, 234-1153 scan, 753-1153 comm.

Proponents: The subject matter of this rule hearing has been proposed by the Washington State Board of Physical Therapy.

Small Business Economic Impact Statement: Not required since these rules do not impact small businesses as that term is defined by RCW 43.31.920.

NEW SECTION

WAC 308-42-136 PHYSICAL THERAPIST ASSISTANT SUPERVISION RATIO. The number of full time equivalent physical therapist assistants utilized in any physical therapy practice shall not exceed twice in number of the full time equivalent licensed physical therapists practicing therein.

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
- RE-AD = Readoption of existing section
- REP = Repeal 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.

WAC # shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # shows the issue of the Washington State Register where the document may be found; the last three digits show the sequence of the document within the issue.

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4-25-040	AMD-P	85-02-066	16-409-065	AMD-P	85-03-090	106-120-006	NEW-P	85-03-086
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4-25-040	AMD-C	85-06-054	16-409-070	AMD-P	85-03-090	106-120-007	NEW-P	85-03-086
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4-25-140	AMD-C	85-06-008	16-409-075	AMD-P	85-03-090	106-120-010	REP-P	85-03-086
4-25-140	AMD-C	85-06-054	16-409-075	AMD	85-07-028	106-120-010	REP	85-07-032
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4-25-260	REP-C	85-06-008	16-409-085	AMD	85-07-028	106-120-011	REP	85-07-032
4-25-260	REP-C	85-06-054	16-409-120	REP-P	85-03-090	106-120-013	REP-P	85-03-086
16-42	AMD-C	85-03-061	16-409-120	REP	85-07-028	106-120-013	REP	85-07-032
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16-231-613	NEW	85-07-029	16-555-050	NEW-P	85-05-038	106-120-022	NEW	85-07-032
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16-231-615	AMD	85-07-029	16-555-070	NEW-P	85-05-038	106-120-023	NEW	85-07-032
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16-316-230	AMD-P	85-06-052	16-750-010	AMD	85-07-003	106-120-025	NEW	85-07-032
16-316-270	AMD-P	85-06-052	51-10	AMD-P	85-02-055	106-120-026	NEW-P	85-03-086
16-316-327	AMD-P	85-06-052	51-10	AMD	85-03-095	106-120-026	NEW	85-07-032
16-316-350	AMD-P	85-06-052	51-10	AMD	85-07-036	106-120-027	NEW-P	85-03-086
16-316-440	AMD-P	85-06-052	67-25-005	AMD-P	85-03-081	106-120-027	NEW	85-07-032
16-316-474	AMD-P	85-06-052	67-25-005	AMD	85-06-030	106-120-028	NEW-P	85-03-086
16-316-660	AMD-P	85-06-052	67-25-257	NEW-P	85-03-081	106-120-028	NEW	85-07-032
16-316-724	AMD-P	85-06-052	67-25-257	NEW	85-06-030	106-120-030	REP-P	85-03-086
16-316-800	AMD-P	85-06-052	67-25-420	AMD-P	85-03-081	106-120-030	REP	85-07-032
16-316-820	AMD-P	85-06-052	67-25-420	AMD	85-06-030	106-120-031	REP-P	85-03-086
16-316-830	AMD-P	85-06-052	100-100-010	NEW	85-03-011	106-120-031	REP	85-07-032
16-316-906	AMD-P	85-07-058	100-100-020	NEW	85-03-011	106-120-032	REP-P	85-03-086
16-316-911	AMD-P	85-07-058	100-100-030	NEW	85-03-011	106-120-032	REP	85-07-032
16-316-921	AMD-P	85-07-058	100-100-040	NEW	85-03-011	106-120-033	NEW-P	85-03-086
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16-316-960	NEW-P	85-07-058	100-100-070	AMD-P	85-04-063	106-120-041	REP-P	85-03-086
16-400-007	NEW-P	85-03-089	100-100-080	NEW	85-03-011	106-120-041	REP	85-07-032
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16-400-020	REP-P	85-03-089	100-100-100	NEW	85-03-011	106-120-042	REP	85-07-032
16-400-020	REP	85-06-029	100-100-100	AMD-P	85-04-063	106-120-043	REP-P	85-03-086
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Table of WAC Sections Affected

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106-120-210	REP-P	85-03-086	132E-116-048	REP	85-04-003	137-52-045	NEW-P	85-03-104
106-120-210	REP	85-07-032	132E-116-052	REP	85-04-003	137-52-045	NEW	85-07-042
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106-120-250	REP-P	85-03-086	132E-116-080	REP	85-04-003	137-54-030	NEW-P	85-02-067
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106-120-800	REP	85-07-032	132E-116-100	REP	85-04-003	137-70-060	AMD-P	85-03-103
106-120-900	REP-P	85-03-086	132E-116-104	REP	85-04-003	137-70-060	AMD	85-07-017
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