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CITATION

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

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 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

STATE MAXIMUM INTEREST RATE

The maximum allowable interest rate applicable for the month of February 1989 pursuant to RCW 19.52.020 is twelve point eight six percent (12.86%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

The maximum allowable retail installment contract service charge applicable for calendar year 1989 pursuant to RCW 63.14.130(1)(a) is thirteen and one-half percent (13.50%).

The maximum allowable retail installment contract service charge for the purchase of a motor vehicle pursuant to RCW 63.14.130(2)(a) is fourteen and one-half percent (14.50%) for the first calendar quarter of 1989.

WASHINGTON STATE REGISTER

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

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

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

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

- (a) **Proposed rules** are those rules pending permanent adoption by an agency and are 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 MATERIAL

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 material is new material;
 - (ii) ~~deleted material 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's office. 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's office 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's office 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.

1988 – 1989

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates ¹			Distribution Date	First Agency Action Date ³
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS ² or 10 p. max. Non-OTS		
For Inclusion in—	File no later than—			Count 20 days from—	For hearing/adoption on or after
88-18	Aug 10	Aug 24	Sep 7	Sep 21	Oct 11
88-19	Aug 24	Sep 7	Sep 21	Oct 5	Oct 25
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88-21	Sep 21	Oct 5	Oct 19	Nov 2	Nov 22
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89-06	Feb 1	Feb 15	Mar 1	Mar 15	Apr 4
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89-08	Mar 8	Mar 22	Apr 5	Apr 19	May 9
89-09	Mar 22	Apr 5	Apr 19	May 3	May 23
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89-24	Nov 8	Nov 22	Dec 6	Dec 20	Jan 9, 1990

¹All documents are due at the code reviser's office by 5:00 p.m. on or before 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 89-03-061
PROPOSED RULES
COMMISSION ON JUDICIAL CONDUCT

[Filed January 17, 1989]

Reviser's note: The following proposal has not been filed in accordance with chapter 34.04 RCW, and its publication in the Register establishes no presumption as to the propriety or impropriety of the procedure being followed by the Commission on Judicial Conduct.

The commission has reviewed its rules and adopted some proposed changes for publication and comment. These rules are promulgated under the rule-making authority of the Commission on Judicial Conduct as authorized in Article 4, Section 31 of the Washington State Constitution.

Pursuant to RCW 34.08.020, please publish them in the next available State Register for comment by April 19, 1989, to be submitted in writing to the Commission on Judicial Conduct, P.O. Box 1817, Mailstop EW-14, Olympia, WA 98507.

Esther Garner
Executive Director

PROPOSED REVISED
COMMISSION ON JUDICIAL CONDUCT RULES
(CJCR)

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RULE 1. SCOPE AND TITLE

(a) **SCOPE.** These rules apply to proceedings before the Commission on Judicial Conduct created by Article IV, Section 31, of the Constitution of the State of Washington, implemented by chapter 2.64 RCW and delegated in part by Discipline Rules for Judges (DRJ). These rules govern the procedure for considering allegations that a judge has violated a rule of judicial conduct, or has a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(b) **TITLE.** These rules shall be known as the Commission on Judicial Conduct Rules and may be abbreviated as CJCR.

(c) **SUPREME COURT RULES.** Supreme Court consideration of Commission on Judicial Conduct recommendations is governed by the Discipline Rules for Judges (DRJ) adopted by the Supreme Court.

RULE 2. DEFINITIONS

In these rules,

(a) "Admonishment", when issued by the commission, means a written informal disposition of an allegation consented to by the judge which cautions the judge not to engage in certain proscribed behavior and may contain agreed corrective action to be taken by the judge. (See DRJ 1(d) and 12.)

(b) "Allegation" or "Complaint" means a statement or communication alleging facts which may upon investigation lead to a finding of judicial misconduct or disability.

(c) "Chairperson" includes the acting chairperson.

(d) "Commission" means the Commission on Judicial Conduct.

(e) ~~((Complaint))~~ "Statement of Charges" means the formal charge of judicial misconduct or disability filed by the commission and forming the basis for a fact-finding hearing.

(f) "Fact-Finder" means the commission, or at the discretion of the commission, a three-member subcommittee consisting of any members or alternates of the commission or a master.

(g) "Hearing" means a meeting for the purpose of taking evidence and conducted by a fact-finder.

(h) "Judge" means a judge or justice and includes justices of the supreme court, judges of the court of appeals, judges of the superior court, judges of any court organized under Titles 3, 35, or 35A RCW, ~~((and))~~ judges pro tempore~~((:)), court commissioners and magistrates.~~ The term includes full-time and part-time judges and judges who have been or have not been admitted to the practice of law in Washington. ~~((Court commissioners and magistrates are not included within this definition unless included by subsequent legislation.))~~

(i) "Master" means a person appointed by the commission to hear and take evidence with respect to charges against a judge.

(j) "Meeting" means a meeting of the commission for any purpose other than the taking of evidence for fact-finding.

(k) "Member" means a member of the commission and includes alternates acting as members.

(l) "Party" means the judge or the commission.

(m) "Reprimand", when issued by the commission, is an informal action of the commission, consented to by the judge, finding that the judge's conduct is unacceptable but correctable and does not require a formal recommendation for discipline to the Supreme Court. (See DRJ 1(d) and 12.)

(n) "Verified Statement" means a sworn statement which includes facts showing that a judge may have violated a rule of judicial conduct or may be suffering a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent.

RULE 3. ORGANIZATION OF THE COMMISSION

(a) OFFICERS. The commission shall elect from its members a chairperson, a vice-chairperson, and secretary, each of whom shall serve a term of two years or until they cease to be members of the commission, whichever period is shorter. The vice-chairperson shall act as chairperson in the absence of the chairperson. In the absence of both the chairperson and the vice-chairperson, the members present may select a temporary chairperson.

(b) EXECUTIVE DIRECTOR AND STAFF. The commission will hire an executive director and such other personnel as necessary for the effective performance of the commission's duties and the exercise of its powers.

(c) MEETINGS.

(1) Meetings of the commission shall be held at the call of the chairperson or the written request of four members of the commission.

(2) The commission may conduct meetings by telephone conference call.

(d) QUORUM. Five members must be present for the transaction of business by the commission. A final decision of the commission, other than a decision recommending discipline or retirement, must be supported by a majority of the members present. A final decision recommending discipline or retirement in any form must be supported by five members of the commission.

(e) ALTERNATES. The chairperson will call upon an alternate member selected by the appropriate appointing authority to serve in the place of a member whenever a member is disabled, disqualified, or unable to serve. The chairperson shall announce when an alternate member is serving in the place of a commission member.

RULE 4. CONFIDENTIALITY OF PROCEEDINGS

(a) GENERALLY. Except as provided in this rule and in Rules 7 and 8, the fact that an allegation has been made, a complaint has been filed, or a statement has been given to the commission and all papers and matters submitted to the commission and proceedings conducted pursuant to these rules, shall be confidential. However, the person filing a complaint or giving a statement to the commission is not prohibited by these rules from informing any third party, or the public generally, of the factual basis upon which an allegation or a complaint is based, or a statement is given.

(b) WAIVER BY JUDGE. After a verified statement is filed with the commission, the initial proceedings remain confidential. ~~((unless))~~ The judge may thereafter waive~~((s))~~ confidentiality of the fact that there is a commission investigation.

(c) PUBLIC PROCEEDINGS. The ~~((formal complaint))~~ statement of charges alleging judicial misconduct shall be available for public inspection. The fact-finding hearing before the commission, a subcommittee of the commission or a master shall be open to the public.

(d) RELEASE OF INFORMATION. The commission may, with due consideration for the interests of the judge, make a public statement regarding allegations concerning the judge which would otherwise be confidential in the following circumstances:

(1) If public statements that charges are pending before the commission are substantially unfair to a judge.

(2) If a judge is publicly associated with violating a rule of judicial conduct or with having a disability, and the commission, after a preliminary investigation has determined there is no basis for further proceedings or for a recommendation of discipline or retirement.

(3) If the commission, after a preliminary investigation has determined to conclude the proceeding with informal, agreed disposition pursuant to CJCR 19.

(e) NOTICE TO COMPLAINANT. After final commission action on an allegation or complaint, the commission will disclose to the person making an allegation that after an investigation of the charges (i) the commission has found no basis for action by the commission against the judge, (ii) the commission has determined that the matter involved legal issues over which it has no jurisdiction, and involves no misconduct or disability, (iii) the commission has taken appropriate corrective action, or (iv) the commission has filed a recommendation with the Supreme Court for the discipline or retirement of the judge. The name of the judge, in the discretion of the commission, shall not be used in written communication to the complainant.

(f) RELEASE OF INFORMATION TO BAR ASSOCIATION, JUDICIAL APPOINTIVE AUTHORITY OR LAW ENFORCEMENT AGENCIES. The commission may, in its discretion, release information to the Washington State Bar Association, American Bar Association, a judicial authority, any judicial appointive, selection or confirmation authority, or to law enforcement agencies when required in the interests of justice, or to maintain confidence in the selection of judges or administration of the judiciary. The person to whom the information relates may, in the commission's discretion, be informed of any information released.

(g) CONTEMPT. Unless otherwise permitted by these rules, no person shall disclose information obtained by that person during commission proceedings or from papers filed with the commission. Any person giving information to the commission or any member or employee of the commission is subject to a proceeding for contempt in superior court for disclosing information in violation of this rule.

RULE 5. PRELIMINARY INVESTIGATION

(a) ALLEGATIONS OF MISCONDUCT OR DISABILITY. Any organization, association, or person, including a member of the commission, may make an allegation of judicial misconduct or disability to the commission. An allegation may be made orally or in writing.

(b) DISTINGUISHED FROM APPEAL. The commission will not recommend the discipline of a judge for the exercise of discretion in making findings of fact, reaching a legal conclusion, or applying the law as the judge understands it.

(c) SCREENING BY EXECUTIVE DIRECTOR. Upon receipt of an allegation not obviously unfounded or frivolous, the executive director shall make a prompt, discreet, preliminary investigation and evaluation. Failure of a person making the allegation to supply requested additional information may result in dismissal of that allegation. On every allegation received, the executive director shall make a recommendation to the commission as to whether to commence initial proceedings.

(d) COMMISSION DETERMINATION. If the commission determines to commence initial proceedings, the person making the allegation may be requested to file a verified statement with the commission. If a verified statement is not filed by the person making the allegation, the executive director shall prepare and file a verified statement. Initial proceedings will begin upon filing of a verified statement.

~~((c))~~ ~~CONTENTS OF VERIFIED STATEMENT. A verified statement must include facts showing that a judge may have violated a rule of judicial conduct or may be suffering a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent.~~

RULE 6. INITIAL PROCEEDINGS

(a) CONDUCT OF INITIAL PROCEEDINGS. The executive director will supervise the investigation.

(b) NOTIFICATION OF INVESTIGATION. The judge who is the subject of initial proceedings will be notified by the commission within 7 days

after the filing of a verified statement. The judge shall also be advised of the nature of the ~~((charge))~~ allegation with sufficient specificity to permit an adequate response which may, in the commission's discretion, include a copy of the verified statement. The judge shall further be advised that these proceedings are confidential~~(:)~~ and that the judge has the right to waive the confidentiality of the fact that an investigation is proceeding. In its discretion, the commission may disclose to the judge the name of the individual making the verified statement.

(c) JUDGE'S RESPONSE. The judge shall be afforded a reasonable opportunity in the course of the initial proceedings to present such matters as he or she may choose.

(d) ORDER FOR MEDICAL EXAMINATION. If the initial proceedings concern a judge who may be suffering a possible physical and/or mental disability which may seriously impair the performance of judicial duties, the commission may order a judge to submit to physical and/or mental examinations at commission expense. The failure or refusal of a judge to submit to physical and/or mental examination ordered by the commission may, in the discretion of the commission, preclude the judge from presenting the results of other physical and/or mental examinations on his or her own behalf. ~~The commission may consider the failure or refusal to submit to physical and/or mental examination as evidence that the judge has a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent.~~

(e) RESULT OF INITIAL PROCEEDINGS. (1) If the commission determines that there are insufficient grounds for further commission proceedings, the judge and the person making the allegation will be so notified.

(2) If the commission determines that probable cause exists that the judge has violated a rule of judicial conduct or may be suffering from a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent, the commission shall order the filing of a ~~((complaint))~~ statement of charges pursuant to Rule 7 or may informally dispose of the matter pursuant to Rule 19.

(f) STIPULATIONS. After initial proceedings and when prior approval is given by the commission, either the executive director or counsel retained by the commission may enter into a proposed stipulation of facts and/or discipline with the respondent judge. Such a stipulation may contain the imposition of terms and conditions and such other provisions as may appear appropriate. If a stipulation is not adopted by the commission, it shall be of no force and effect.

RULE 7. ((FORMAL COMPLAINT)) STATEMENT OF CHARGES

(a) GENERALLY. The commission may file a ~~((formal complaint))~~ statement of charges alleging the violation of a rule of judicial conduct or the disability of a judge that is or is likely to become permanent. The ~~((complaint))~~ statement of charges will be served on the judge within 7 days after filing of the ~~((complaint))~~ statement of charges in the commission's office and shall thereupon be available to the public.

(b) DECISION TO FILE ((COMPLAINT)) STATEMENT OF CHARGES. When a ~~((complaint))~~ statement of charges is filed, no further factual information shall be provided to the commission prior to a fact-finding hearing unless notice is given to both parties. The executive director will continue to assist commission counsel.

(c) FORM OF ((COMPLAINT)) STATEMENT OF CHARGES. The ~~((complaint))~~ statement of charges will state in ordinary and concise language the basis for commission action and the facts supporting the ~~((complaint))~~ statement of charges. The ~~((complaint))~~ statement of charges shall also inform the judge that he or she may file a written answer to the charges as provided in paragraph (d).

(d) ANSWER. The judge may file with the commission an answer to the ~~((complaint))~~ statement of charges. The answer must be filed within 14 days after service of the ~~((complaint))~~ statement of charges on the judge. If the judge does not file a written answer, a general denial will be entered on behalf of the judge. The ~~((complaint))~~ statement of charges and the answer shall be the only pleadings required. Once filed, the answer shall be available to the public.

RULE 8. FACT-FINDING HEARING

(a) PUBLIC HEARING. Upon filing of a ~~((formal complaint))~~ statement of charges, a public hearing will be scheduled at a location selected by the commission. All papers, files and records made part of the record at the hearing shall be public.

(b) SCHEDULING HEARING. The executive director will set a time and place for the public hearing to be held no later than 42 days after the time for answer has expired or after the answer is filed. The judge will

be given at least 14 days notice of the hearing which will include the name or names of the fact-finder and the presiding officer, if any.

RULE 9. DISQUALIFICATION OF FACT-FINDER

(a) DISQUALIFICATION OF MEMBER OR MASTER. A member of the commission or a master must disqualify himself or herself in any proceedings involving his or her own conduct or alleged disability. A member of the commission or a master must disqualify himself or herself if he or she cannot impartially consider the ~~((complaint))~~ statement of charges against a judge.

(b) CHALLENGE FOR CAUSE. A judge may file an affidavit challenging for cause any member or a master who the judge believes will not impartially consider the ~~((complaint))~~ statement of charges. The affidavit must be filed within 7 days after notice of the fact-finding hearing. The commission will decide any challenge for cause if the member or master does not disqualify himself or herself.

(c) PEREMPTORY CHALLENGE. A judge may file one preemptory challenge against one member of the commission. The challenge must be filed within 7 days after notice of a fact-finding hearing. If the judge has unsuccessfully challenged a member for cause, any preemptory challenge against that member must be filed within 3 days after service of notice of the determination of the challenge for cause.

RULE 10. PROCEDURAL RIGHTS OF JUDGE

(a) GENERALLY. The judge has a right to notice of the allegations concerning the judge which have been found by the commission to warrant initial proceedings. The judge shall have the right and reasonable opportunity at a fact-finding hearing to defend against the allegations in the ~~((complaint))~~ statement of charges by the introduction of evidence. The judge has the privilege against self-incrimination. The judge may be represented by counsel and may examine and cross-examine witnesses. The judge has the right to testify or not to testify on his or her own behalf. The judge has the right to issuance of subpoenas for the attendance of witnesses to testify or produce evidentiary matters. The judge has the right to a prompt resolution of the allegations in the ~~((complaint))~~ statement of charges.

(b) COMPLIANCE WITH ETHICS ADVISORY OPINION. A judge's compliance with an opinion by the Ethics Advisory Committee shall be considered by the commission as evidence of good faith.

(c) TRANSCRIPTS. The judge will be provided, without cost, a copy of any report of proceedings prepared by the commission. The judge may, in addition, have all or any portion of the testimony in the proceedings transcribed at his or her own expense.

(d) WITNESS FEES. All witnesses shall receive fees and expenses in the amount allowed by law. Expenses of witnesses shall be borne by the party calling them, unless the commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon the judge and orders that those fees be reimbursed.

RULE 11. GUARDIAN AD LITEM

If it appears to the commission at any time during the proceedings that the judge is not competent to act, or if it has been previously judicially determined that the judge is not competent to act, the commission will appoint a guardian ad litem for the judge unless the judge already has a guardian who will represent the judge's interests. In the appointment of a guardian ad litem, consideration may be given to the wishes of the members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge which the judge could have claimed, exercised, or made if competent. Any notice to be served on the judge will also be served on the guardian or guardian ad litem.

RULE 12. DISCOVERY PROCEDURE BEFORE FACT-FINDING

(a) REQUEST FOR WITNESSES AND DOCUMENTS. Upon written demand, the opposing party will disclose within 7 days thereof, with a continuing obligation thereafter, the following:

(1) names and addresses of all witnesses whose testimony that party expects to offer at the hearing,

(2) a brief summary of the expected testimony of each witness,

(3) copies of signed or recorded statements of anticipated witnesses, and,

(4) copies of documents which may be offered.

Witnesses or documents not disclosed may be excluded.

(b) DISCOVERY. The taking of depositions, the requesting of admissions and all other procedures authorized by Rules 26 through 37 of the Superior Court Civil Rules are available upon stipulation of the

parties or upon prior permission of the master or presiding officer. A request for discovery shall be granted, unless the master or presiding officer determines that the request is frivolous, will create an undue burden on the party, or will result in undue delay.

(c) **DISCLOSURE BY COMMISSION'S COUNSEL.** The commission's counsel shall disclose to the judge any material or information within his or her knowledge which tends to negate the allegations against the judge or mitigate the degree of discipline which may be imposed.

(d) **PREHEARING MOTIONS.** The judge or counsel for either party may make prehearing motions to the designated presiding officer, who may make rulings or defer rulings to the commission. Motions shall be in writing and shall be filed and served on the opposing party. The responding party shall be allowed five days from service to respond, unless the time is shortened by the presiding officer for good cause. Motions will be promptly decided by written order filed in the commission office. Motions will be decided on the written materials submitted unless the presiding officer requests argument, which may be heard by conference telephone call.

RULE 13. AMENDMENTS TO ((COMPLAINT)) STATEMENT OF CHARGES OR ANSWER

The fact-finder, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its decision, may allow or require amendments to the ((complaint)) statement of charges or the answer. The ((complaint)) statement of charges may be amended to conform to the proof or set forth additional facts, whether occurring before or after the commencement of the hearing. Except for amendments to conform to the proof at a fact-finding hearing, if an amendment substantially affects the nature of the charges, the judge will be given reasonable time to answer the amendment and prepare and present a defense against the new matter raised.

RULE 14. PROCEDURE AT FACT-FINDING HEARING

(a) **ORDER OF PRESENTATION.** The order of presentation shall be in the same manner as in civil cases in superior court.

(b) **COMMISSION REPRESENTED BY COUNSEL.** The case for the commission shall be presented by counsel retained by the commission.

(c) **RULES OF EVIDENCE.** The Rules of Evidence (ER) as applicable in civil proceedings shall govern the fact-finding hearing.

(d) **STANDARD OF PROOF.** Any finding that the judge has violated a rule of judicial conduct or that the judge has a disability which is or is likely to become permanent and which seriously interferes with the performance of judicial duties must be supported by clear, cogent and convincing evidence.

(e) **PRESIDING OFFICER.** Unless the fact-finding hearing is before a master, the chairperson may appoint a member to be presiding officer or to rule on motions and objections made during the hearing. If the hearing is before the commission, a member may appeal a ruling to the commission members present. A majority vote will determine the motion.

(f) **FAILURE TO ANSWER OR APPEAR.** The failure of a judge to answer or to appear at the hearing or to submit to a mental or physical examination required by the commission will not prevent the commission from proceeding.

(g) **VERBATIM RECORD.** Unless the judge and the commission stipulate to a different record, a verbatim record will be made and kept of the fact-finding hearing. The commission shall determine whether the verbatim record will be by court reporter or electronic recording device.

(h) **MEDIA COVERAGE.** Canon 3 (A)(7) shall be followed for media participation in public hearings.

RULE 15. REPORT OF FACT-FINDER

(a) **WHEN FACT-FINDER OTHER THAN COMMISSION.** The fact-finder, when other than the entire commission, shall prepare a report containing a brief statement of the procedure followed and the proposed findings of fact, conclusions of law, and a recommendation with respect to the issues presented at the fact-finding hearing. The report and verbatim record shall be filed in the commission office within 35 days after the hearing. The report and record shall be served on the parties within 14 days thereafter. The fact-finder may request the prevailing party to prepare the findings of fact and conclusions of law.

(b) **OBJECTIONS.** A party may file with the commission a statement of objections to the report of the fact-finder. The statement shall set forth all objections to the report and state reasons therefor. The objections must be filed with the commission and served on the opposing party within 14 days after service of the report on the party.

(c) **NO OBJECTIONS FILED.** If no statement of objections to the report of the fact-finder is filed within the time provided in paragraph (b), the report may be adopted without argument.

(d) **OBJECTIONS FILED.** If a statement of objections is timely filed, the commission may schedule oral argument, or consider the matter on the record along with briefs of the parties. The parties shall be given at least 14 days written notice of the time and place for argument.

(e) **COMMISSION MODIFICATION.** If the commission proposes to modify or reject the fact-finder's report, the commission shall schedule a time for oral argument on the record along with briefs of the parties. The parties shall be given at least 14 days written notice of the time and place for argument.

RULE 16. COMMISSION DECISION

(a) **COMMISSION SITTING AS FACT-FINDER.** When the commission serves as fact-finder, it will file a decision including findings of fact, conclusions of law, and a recommendation with respect to the issues presented at the fact-finding hearing. The prevailing party may be requested to prepare the findings of fact and conclusions of law. The commission's decision will be served upon the judge pursuant to CJCR 16(c). Any motions for reconsideration or objections shall be timely filed in accordance with CJCR 16(d).

(b) **DECISION.** Only upon the affirmative vote of at least five members will the commission recommend discipline or retirement of a judge or effect an informal disposition pursuant to CJCR 19. The commission's decision will include written findings of fact, conclusions of law, a recommendation and any record to be filed with the Supreme Court. The commission may adopt the report of the fact-finder, in whole or in part, by reference. To vote on a matter, a nonsitting member must consider the verbatim record and any report of a fact-finder. Any commission member may file a dissent.

(c) **USE OF PRIOR ACTION.** Upon finding misconduct or disability, in determining appropriate disposition, the commission shall consider previous actions taken concerning the judge.

((+)) (d) **NOTICE TO JUDGE.** The commission's decision will be served upon the judge and his or her counsel of record within 14 days after the decision is filed in the commission's office.

((+)) (e) **MOTION FOR RECONSIDERATION AND OBJECTIONS TO RECORD.** A party may file objections to the record or a motion for reconsideration of the commission decision within 14 days after the decision and record have been served. Objections will be determined by the chairperson or, in his or her discretion, by the commission.

((+)) (f) **FINALITY OF DECISION.** The commission decision is final 14 days after service unless a motion for reconsideration or objection is earlier filed. If a motion for reconsideration or objection is denied, the decision is then final. If either the motion for reconsideration or objection is granted, the reconsidered decision is final when filed in the commission's office.

((+)) (g) **NOTICE OF COMMISSION DECISION.** When the decision is final, the commission will notify the person making the allegation of its decision.

RULE 17. ADDITIONAL EVIDENCE

The commission may order a public hearing for the taking of additional evidence at any time before its decision is final. The order will set the time and place of the hearing and will specify the matters on which the additional evidence is to be taken. A copy of the order shall be served upon the judge at least 14 days prior to the date set for hearing. The hearing will be conducted in the manner provided in Rules 8 through 16.

RULE 18. SUPREME COURT PROCEDURES

(a) **CERTIFICATION TO SUPREME COURT.** Within 14 days after the decision is final, a commission decision recommending the discipline or retirement of a judge will be filed in the Supreme Court and served on the judge. The notice of the decision served on the judge shall state the date the decision was filed in the Supreme Court and shall specify the period during which the judge may challenge the commission recommendation as provided in DRJ 2.

(b) **TEMPORARY SUSPENSION.** If the commission recommendation is that the judge be removed, the judge shall be suspended, with salary, from that judicial position effective upon filing the recommendation with the Supreme Court; such suspension with pay to remain in effect until a final determination is made by the Supreme Court.

(c) **RECORD FOR SUPREME COURT REVIEW.** The chairperson shall certify the record of commission proceedings to the Supreme Court,

having transmitted to the judge those portions of the record required by DRJ 4.

(d) REMAND FROM THE SUPREME COURT. If the Supreme Court remands a case, the commission will proceed in accordance with the order on remand.

RULE 19. INFORMAL DISPOSITION

A violation of a rule of judicial conduct which in the view of the commission does not warrant a recommendation to the Supreme Court for discipline, may be disposed of by a proposal to the judge for ~~((an))~~ a public admonishment or reprimand. (See DRJ 1(d) and 12.) The proposal will provide whether acceptance of the proposal may be considered as an admission of misconduct by the judge. ~~((and whether it may be made public.))~~ If the judge accepts the proposal in writing within 14 days after service of the proposal, a letter of admonishment or reprimand will be issued and no further action will be taken by the commission. If the judge accepts the proposal, the person making the allegation shall be notified ~~((that the matter has been resolved, in accordance with Rule 4 (e).))~~ of the action taken by the commission and shall be provided with a copy of the public admonishment or reprimand. If the judge does not accept or fails to respond to the proposal, proceedings will continue.

RULE 20. REINSTATEMENT OF ELIGIBILITY

A former judge whose eligibility for judicial office had been removed by the Supreme Court may file with the commission a petition for reinstatement of eligibility. Rules 4, 8 through 18 and 20 through 22 apply to commission review of a petition for reinstatement ~~((for))~~ of eligibility. The commission will recommend to the Supreme Court in writing that the former judge should or should not be reinstated to eligibility to hold judicial office as provided in DRJ 11.

RULE 21. EXTENSION OF TIME

Upon a showing of good cause the chairperson or fact-finder may extend the time within which an act must be done under these rules.

RULE 22. SERVICE

(a) SERVICE ON JUDGE. A ~~((complaint))~~ statement of charges under Rule 7 shall be served on a judge in person, unless the judge cannot be found within the state. If the judge cannot be found, the ~~((complaint))~~ statement of charges may be served by mail addressed to the judge's last known business and residence addresses. All other papers in commission proceedings may be served on a judge in person or by mail. If counsel has appeared for a judge, papers, other than a ~~((complaint))~~ statement of charges, may be served on counsel in lieu of service upon the judge.

(b) SERVICE ON COMMISSION. Service of papers on the commission shall be given by delivering or mailing the papers to the commission's office.

(c) WHEN SERVICE ACCOMPLISHED. If service is by mail, a paper is timely served if mailed within the time permitted for service. If a paper is served by mail, a time period dependent on the service begins to run 3 days after the paper is mailed.

RULE 23. RULE ADOPTION, AMENDMENT OR REPEAL

(a) GENERALLY. The commission may adopt, amend, or repeal a rule on its own motion or on a petition of any person.

(b) PETITION. The petition must set out the proposed rule, or amendments to any existing rule, in full. The petition must also include reasons in support of the request.

(c) COMMISSION REVIEW. The executive director shall recommend to the commission whether to adopt, amend, or repeal a rule as requested in a petition. The chairperson may order a public hearing for further consideration of the petition.

(d) RULE ADOPTION. The commission will order the publication of any proposed rule modification for written public comment before taking final action to adopt, amend, or repeal a rule in the official advance sheets of the Washington Reports and the Washington State Register. Adopted rules will be submitted to the Code Reviser for publication where other court rules are published in the Revised Code of Washington and to the Reporter of Decisions for publication in the official codification of Washington court rules.

(e) NOTICE TO PETITIONER. The commission will notify the petitioner of its final action within a reasonable time after disposition of the petition.

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

WSR 89-04-001

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 19, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Licensing intends to adopt, amend, or repeal rules concerning new section WAC 308-128E-011 and repealing WAC 308-128E-010;

that the agency will at 9:00 a.m., Tuesday, March 7, 1989, in the Sea-Tac Ramada Inn, 18118 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 18.44.320.

The specific statute these rules are intended to implement is RCW 18.44.320.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1989.

Dated: January 16, 1989

By: Sydney W. Beckett
Program Manager and
Bob Mitchell
Assistant Program Manager

STATEMENT OF PURPOSE

Title and Number of Rule Section and Chapter: WAC 308-128E-011 Administration of funds held in trust; and 308-128E-010 Administration of trust accounts.

Statutory Authority and Specific Statute that the Rules are Intended to Implement: RCW 18.44.320.

Summary of Rules and Reasons Supporting the Rules: The following new section and repeal to an existing rule are housekeeping changes: WAC 308-128E-011 clarifies the requirements for maintaining and administering trust accounts; and the repeal of WAC 308-128E-010 is consistent with the adoption of WAC 308-128E-011 which replaces WAC 308-128E-010.

Agency Personnel Responsible for Drafting, Implementation and Enforcement of the Rule: Mary G. Faulk, Director, Department of Licensing, Fourth Floor, Highways-Licenses Building, Olympia, WA 98504, 234-5029 scan, 753-5029 comm; and Bob Mitchell, Assistant Program Manager, Professional Program Management Division, Fourth Floor, Eastside Plaza Building, 1300 Quince Street, Olympia, WA 98502, 321-4681 scan, 586-4681 comm.

Name of Person or Organization that is Proposing These Rules: Department of Licensing.

Agency Comments or Recommendations, if any, Regarding Statutory Language, Implementation, Enforcement and Fiscal Matters Pertaining to These Rules: None.

These rules are not necessary to comply with a federal law or state court decision.

Any Other Information that may be of Assistance in Identifying the Rule or its Purpose: None.

The department has reviewed the impact that the adoption of these rules would have on escrow agents and escrow officers. Escrow agents and escrow officers are most appropriately classed in SIC Code 6531. They account for less than 10 percent of the firms and individuals in this area. They are less than 20 percent of all firms and individuals in all industries. Cost for small business is estimated to be zero. Any impact that these proposed rules may have in intended to fall equally on all escrow agents and escrow officers.

NEW SECTION

WAC 308-128E-011 ADMINISTRATION OF FUNDS HELD IN TRUST. The escrow agent shall be responsible for all funds received from any principal or any party to an escrow transaction or escrow collection account and shall hold the funds in trust for the purposes of the transaction or agreement and shall not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent shall establish a trust bank account(s) in a recognized Washington state depository. The escrow agent is responsible for depositing, holding, disbursing, and accounting for funds in trust as provided herein.

(1) The trust bank account(s) shall be designated as a trust account in the name of the escrow agent as certified. Trust bank accounts shall be noninterest bearing demand deposit accounts except as follows:

(a) Interest-bearing trust bank accounts or dividend earning investment accounts containing funds pertaining to an individual escrow transaction or escrow collection account may be established by the agent if directed by written agreement signed by the principals to the transaction and specifying the manner of distribution of accumulated interest to the parties to the transaction.

(b) Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections may be established by the agent when directed by written agreement or directive signed by the principals: PROVIDED, That all interest or earnings shall accrue to the principals as directed in the agreement.

(2) The agent shall establish and maintain a system of records and procedures as provided in this section. Any alternative records or procedures proposed for use by the escrow agent shall be approved in advance by the department.

(3) The agent is responsible for the disbursement of all funds received and held in trust, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the agents behalf.

(4) All funds received for any reason pertaining to an escrow transaction or collection account shall be deposited in the escrow agents trust bank account(s) not later than the first banking day following receipt thereof except funds owned exclusively by the agent.

(5) All funds received shall be identified by the day received and by the amount, source, and purpose on either a cash receipts journal or duplicate receipt which shall be retained as a permanent record.

(6) All deposits to the trust bank account(s) shall be documented by a duplicate bank deposit slip, validated by bank imprint or attached deposit receipt which shall bear the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust bank account. Receipt of funds by wire transfer are to be posted in the same manner as other receipts and there shall be a traceable identifying name or number supplied by the financial institution or transferring entity. The agent must also make arrangements for a follow-up "hard copy" receipt for the deposit.

(7) An individual client's ledger sheet shall be established and maintained for each escrow transaction for which funds are received in trust and to which all receipts and disbursements shall be posted.

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check, check number, amount of check, and name of payee.

(8) The reconciled trust bank account(s) must equal at all times the outstanding trust liability to clients. The outstanding trust liability to clients must equal the trial balance of all escrows with undisbursed balances.

(9) The agent shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account receipts and disbursement records. Such reconciliations are to be retained as permanent records.

(10) All disbursement of trust funds shall be made by check, drawn on the trust bank account, and identified on the check as pertaining to a specific escrow transaction or collection account except as provided in (a) through (e) of this subsection. The number of each check, amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal and all data must agree exactly with the check as written.

(a) No disbursement from the trust account shall be made based upon wire transfer receipt until the deposit has been verified.

(b) The escrow agent must make arrangements with the financial institution in which the trust bank account is located to provide a follow-up "hard copy" debit memo when funds are disbursed via wire transfer.

(c) The escrow agent shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(d) Transfers between closing escrows may be made by ledger entries alone provided a transfer form is used containing the date of the transfer, the amount of the funds being transferred, the identity of the escrow accounts being debited and credited, and the signature of the person authorized to sign checks on the escrow bank account. Intra-bank debit memo transfer forms may be used only where the escrow accounts involved in the transfer are closed through the same bank account. The authorization for the transfer must be placed in each escrow file involved.

(e) Transfers between collection escrows of a recurring nature must be authorized by standing instructions on file from the appropriate parties.

(11) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(12)(a) A separate check shall be drawn on the trust bank account payable to the escrow agent as certified, for each escrow fee earned as set forth in the escrow instructions or settlement statement upon the closing of the escrow transaction. Each check for escrow fees shall be identified to the transaction to which it applies.

(b) Collection account fees may be withdrawn by a single check provided such check is supported by a schedule of fees identified to each individual account. Such fees shall be withdrawn at least once monthly or as provided in the collection contract agreement if the fees are payable for a greater term than monthly.

(13) No deposits to the trust bank accounts shall be made of funds that do not pertain to an escrow transaction or not received in connection with an escrow collection account, or that belong to the agent, including fees to "open" the bank account or to keep the account from being closed.

(14) No disbursement from the trust bank account shall be made:

(a) For items not pertaining to a specific escrow transaction or escrow collection account;

(b) In advance of the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions, to any person or for any reason without a written release from all principals of the escrow transaction or collection account, except that if the earnest money agreement terminates according to its own terms prior to closing, disbursement of earnest money funds shall be made as provided by the earnest money agreement without a written release unless the funds are handled as provided in WAC 308-128D-060;

(c) Pertaining to a specific escrow transaction or collection account in excess of the actual amount held in the trust bank account in connection with such account;

(d) In payment of a fee owed to any employee of an agent or in payment of any business expense of the agent. Payment of fees to employees of an agent or of any business expense of the agent shall be paid from the regular business bank account of the agent;

(e) For bank charges of any nature. Arrangements must be made with the bank to have any such charges applicable to the trust bank accounts charged to the regular business bank account, or to provide a separate statement of bank charges so that they may be paid from the agents regular business bank account;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or to any person(s) without the written authority of the lessee. Such funds are to be held until the end of the tenancy when they are to be disbursed to the person(s) entitled to the funds as provided by the terms of the rental or lease agreement and consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(15) The provisions of this section are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back-up all data files;

(b) Receipt and check registers will be printed at least once monthly and retained as a permanent record. Reconciliation and trial balance will be accomplished at least once monthly, printed and retained as a permanent record;

(c) The escrow agent will maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If the program has the ability to write checks, the check number must be preprinted on the check or retained voucher copy by the supplier (printer). The program may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution computer;

(f) All checks written must be included within the computer accounting system.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-128E-010 ADMINISTRATION OF TRUST ACCOUNTS.

WSR 89-04-002

ADOPTED RULES

DEPARTMENT OF LICENSING

(Board of Funeral Directors and Embalmers)

[Order PM 793—Filed January 19, 1989]

Be it resolved by the Board of Funeral Directors and Embalmers, that it does adopt the annexed rules relating to AIDS prevention and information education requirements, new section WAC 308-48-350.

This action is taken pursuant to Notice No. WSR 88-23-105 filed with the code reviser on November 22, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 70.24.270 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 17, 1989.

By Kenneth R. Andrews
Vice Chairman

NEW SECTION

WAC 308-48-350 AIDS PREVENTION AND INFORMATION EDUCATION REQUIREMENTS.

(1) Definitions.

(a) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(b) "Office on AIDS" means that section within the Department of Social and Health Services or any successor department with jurisdiction over public health matters as defined in 70.24 RCW.

(2) Application for licensure or apprenticeship registration. Effective January 1, 1990 persons applying for licensure or apprenticeship registration shall submit evidence to show compliance with the education requirements of subsection (4).

(3) Renewal of licenses or apprenticeship registration. Effective with the renewal period beginning January 1, 1990, ending December 31, 1990, all persons making application for licensure renewal or apprenticeship registration shall submit evidence to show compliance with the education requirements of subsection (4).

(4) AIDS education and training.

(a) Acceptable education and training. The board will accept education and training that is consistent with the model curriculum available from the Office on AIDS. Such education and training shall be a minimum of four and one half (4.5) clock hours and shall include, but is not limited to, the following: prevention, transmission and treatment of AIDS.

(b) Implementation. Effective January 1, 1990, the requirement for licensure, apprenticeship registration, renewal, or reinstatement of any license or apprenticeship registration on lapsed, inactive, or disciplinary status shall include completion of AIDS education and training. All persons affected by this section shall show evidence of completion of an education and training program, which meets the requirements of subsection (a).

(c) Documentation. The applicant shall:

(i) Certify, on forms provided, that the minimum education and training has been completed after January 1, 1987;

(ii) Keep records for two years documenting attendance and description of the learning;

(iii) Be prepared to validate, through submission of these records, that attendance has taken place.

(5) Continuing education. The AIDS education requirement may be counted towards the fulfillment of the continuing education requirement.

WSR 89-04-003
ADOPTED RULES
DEPARTMENT OF LICENSING
 [Order PM 817—Filed January 19, 1989]

I, Mary Faulk, director of the Department of Licensing, do promulgate and adopt at Olympia, Washington, the annexed rules relating to certification of marriage and family therapists under RCW 18.19.130, amending WAC 308-220-010 and 308-220-030.

This action is taken pursuant to Notice No. WSR 88-23-091 filed with the code reviser on November 21, 1988. 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 director of the Department of Licensing as authorized in RCW 18.19.050.

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

APPROVED AND ADOPTED January 17, 1989.

By Mary Faulk
 Director

AMENDATORY SECTION (Amending Order PM 729, filed 5/18/88)

WAC 308-220-010 **DEFINITIONS.** Definitions within the meaning of this chapter as pertains to the certification of marriage and family therapists.

(1) "Shows evidence" is defined as the official transcript sent directly to the department of licensing by the approved college or university to include course catalogs and syllabi if requested by the department.

(2) "Approved school" and "approved graduate school" both mean(s) any regionally accredited college or university.

(3) "Marriage and family assessment" includes the evaluation and diagnosis of individual, marital, family functioning, and psychopathology.

(4) "Treatment" is a process that is derived from a systemic or interactional theoretical orientation where psychotherapy is employed to improve the individual, marital, and family functioning.

~~((5) "Equivalent to a master or doctorate degree in marriage and family therapy" is defined as a masters or doctorate degree in any of the behavioral sciences that shows evidence of equivalent coursework.))~~

AMENDATORY SECTION (Amending Order PM 729, filed 5/18/88)

WAC 308-220-030 ((APPROVED GRADUATE PROGRAMS. Approved graduate programs are marriage and family therapy programs accredited by the commission on accreditation for marriage and family therapy education or an equivalent course of study from a regionally accredited college or university.)) DEGREE

EQUIVALENTS. The following are considered to establish equivalence to a master's or doctoral degree in marriage and family therapy from an approved school or an approved graduate school:

(1) A doctoral or master's degree in any of the behavioral sciences that shows evidence of fulfillment of the coursework requirements set out in WAC 308-220-040;

(2) A doctoral or master's degree in any of the behavioral sciences that shows evidence of partial fulfillment of the equivalent coursework requirements set out in WAC 308-220-040, plus supplemental coursework from either an AAMFT accredited postgraduate institution or from a regionally accredited college or university to satisfy the remaining equivalent coursework requirements set out in WAC 308-220-040; or

(3) A doctoral or master's degree in any of the behavioral sciences and proof of meeting requirements for receiving AAMFT clinical membership.

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

WSR 89-04-004

COLUMBIA RIVER GORGE COMMISSION

[Filed January 19, 1989]

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

NOTICE OF PROPOSED RULEMAKING HEARING

Agency: Columbia River Gorge Commission.

The above named agency gives notice of hearing.

Hearings to be Held: February 28, 1989, 9:30 a.m., Waucoma Center Auditorium, 902 Wasco Avenue, Hood River, OR 97031.

Hearings Officer(s): Stafford Hansell, Chairman.

Pursuant to the statutory authority of RCW 493.97.015 [43.97.015] to 493.97.035 [43.97.035] or Laws of 1987, the following action is proposed: Adopting 350-16-019.

No Prior Notice Given.

Summary: The proposed rule authorizes the executive director to represent the commission under limited circumstances in contested case hearings involving appeals to the commission, revisions of urban area boundaries and enforcement proceedings, in accordance with ORS 183.450.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by February 24, 1989, will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from: Columbia River Gorge Commission, 288 East Jewett Boulevard, P.O. Box 730, White Salmon, WA 98672, Richard P. Benner, Executive Director, (509) 493-3323.

Richard Benner
 January 17, 1989

NOTICE OF PROPOSED RULEMAKING

Agency: Columbia River Gorge Commission.

The above named agency gives notice that pursuant to the statutory authority of: RCW 493.97.015 [43.97.015] to 493.97.035 [43.97.035] or chapter 499, Laws of 1987, the following action is proposed: Adopting 350-16-019.

Summary: The proposed rule authorizes the executive director to represent the commission under limited circumstances in contested case hearings involving appeals to the commission, revisions of urban area boundaries and enforcement proceedings, in accordance with ORS 183.450.

Interested persons may obtain copies or submit data or views concerning the proposed rulemaking by writing to the address below. Written comments, in order to be considered, must be received by not later than February 24, 1989, Columbia River Gorge Commission, 288 East Jewett Boulevard, P.O. Box 730, White Salmon, WA 98672, Richard P. Benner, Executive Director, (509) 493-3323.

If any interested person wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a public hearing and submit this request along with any written comments to the above address. Request for public hearing must be received within 15 days after publication of notice in the Bulletin of the Secretary of State from 10 or more persons or an association having not less than 10 members. If sufficient requests are received to hold a public hearing, notice of the date and time of the hearing will be provided.

Richard Benner
January 17, 1989

Statement of Need: Federal law requires the Gorge Commission to review development proposals in the National Scenic Area until counties bring their ordinances into compliance with the management plan for the scenic area. In order to conduct these reviews and appeals expeditiously, the commission must authorize its executive director to present and prosecute the appeals before the commission, as authorized by ORS 183.450. Failure to adopt this rule will involve substantial cost to the commission and delays in plan preparation.

Statement of Fiscal Impact: Adoption of the proposed rule will have no adverse fiscal effect on other agencies or on business. Because the rule will allow for the most expeditious handling and resolution of appeals to the commission and other matters coming before the commission in contested cases, adoption of the proposed rule will have beneficial fiscal impacts on those affected.

WSR 89-04-005

NOTICE OF PUBLIC MEETINGS

WALLA WALLA COMMUNITY COLLEGE

[Memorandum—January 13, 1989]

The regular meetings of the board of trustees of Washington Community College District No. 20 during calendar year 1989 shall be held at 11:00 a.m. in the

college board room at 500 Tausick Way, Walla Walla, Washington, on the dates listed below.

An exception to this location is the meeting on April 5, 1989, which will be held at the Clarkston Center in Clarkston, Washington.

- Wednesday, January 4, 1989
- Wednesday, February 1, 1989
- Wednesday, March 1, 1989
- Wednesday, April 5, 1989, in Clarkston
- Wednesday, May 3, 1989
- Monday, June 5, 1989
- Wednesday, June 28, 1989
- Wednesday, August 2, 1989, (optional)
- Wednesday, September 6, 1989
- Wednesday, October 4, 1989
- Wednesday, November 1, 1989
- Wednesday, December 6, 1989

WSR 89-04-006

NOTICE OF PUBLIC MEETINGS

CONVENTION AND TRADE CENTER

[Memorandum—January 18, 1989]

The regular meetings of the board of directors of the WSCTC will be held on the first Wednesday of every month, except August, at 3 p.m. at the Washington State Convention and Trade Center; and the chairman of the board, or his designee, shall take the steps necessary to publish notice of the time and place of regular meetings in the State Register as contemplated by the Open Public Meetings Act at RCW 42.30.075.

**1989 Meeting Schedule
WSCTC Board of Directors**

- January 11
- February 1
- March 1
- April 5
- May 3
- June 7
- July 5
- September 6
- October 4
- November 1
- December 6

All meetings will take place at 3 p.m. at the Washington State Convention and Trade Center, unless otherwise notified.

WSR 89-04-007

EMERGENCY RULES

DEPARTMENT OF WILDLIFE

(Wildlife Commission)

[Order 377—Filed January 20, 1989]

Be it resolved by the State Wildlife Commission, acting by a conference call at the Department of Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091,

that it does adopt the annexed rules relating to closure of elk hunting in that part of Game Management Unit 472 (White River) east of Mud Mountain Dam, WAC 232-28-61521.

We, the State Wildlife 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 total mortality of the White River elk herd has now exceeded recruitment and a conservation closure is necessary to prevent a herd reduction.

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

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 20, 1989.

By Curt Smith
Director
for Dr. James M. Walton
Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-61521 CLOSURE OF ELK HUNTING IN THAT PART OF GAME MANAGEMENT UNIT 472 (WHITE RIVER) EAST OF MUD MOUNTAIN DAM. *Effective 12:01 a.m., January 21, 1989, it is unlawful for any person to hunt or take elk in that part of Game Management Unit 472 (White River) east of Mud Mountain Dam. This is an all citizen closure.*

WSR 89-04-008

ADOPTED RULES

EDMONDS COMMUNITY COLLEGE

[Resolution No. 88-12-2—Filed January 20, 1989]

Be it resolved by the board of trustees of Edmonds Community College, Community College District 23, acting at Lynnwood Hall, Room 424, Lynnwood, Washington, that it does adopt the annexed rules relating to grievance procedure for sex discrimination, chapter 132Y-300 WAC.

This action is taken pursuant to Notice No. WSR 88-21-049 filed with the code reviser on October 13, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 28B.19.050(2).

This rule is promulgated pursuant to chapter 28B.19 RCW which directs that Community College District 23

has authority to implement the provisions of chapter 49.60 RCW and Title IX of the Civil Rights Act of 1964.

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 December 15, 1988.

By Barbara Patterson
Director of Human Resources
Assistant to President

Chapter 132Y-300 WAC

GRIEVANCE PROCEDURE FOR SEX DISCRIMINATION

WAC

- 132Y-300-001 Preamble.
- 132Y-300-002 Informal procedure.
- 132Y-300-003 Formal procedure.
- 132Y-300-004 Other remedies.

NEW SECTION

WAC 132Y-300-001 PREAMBLE. Community College District XXIII is covered by Title IX of the Civil Rights Act of 1964 prohibiting sex discrimination in education. Any applicant for admission, enrolled student, applicant for employment or employee of Edmonds Community College who believes she/he has been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below.

NEW SECTION

WAC 132Y-300-002 INFORMAL PROCEDURE. All employees and students should feel free to discuss perceived discrimination with the individual immediately in charge, such as the first-line supervisor or instructor, to see if the situation can be resolved informally. Employees and students may also consult directly with the college affirmative action officer without making a formal written complaint, and this consultation will be considered confidential. Employees and students are not required to use the informal process and may go directly to the formal procedure.

Any college official receiving a discrimination complaint shall contact the affirmative action officer or designee as soon as reasonably convenient. The college official shall arrange for the complainant to receive a copy of the complaint procedure.

NEW SECTION

WAC 132Y-300-003 FORMAL PROCEDURE. Step one: Employees and students must make a written complaint concerning discriminatory behavior to the affirmative action officer or designee.

(1) Complaints will be held in confidence. No action against the person accused will be taken on behalf of the complainant unless the complainant consents to be identified to the one accused in connection with the investigation.

(2) The complainant may bring a person of his or her choice to the initial or subsequent complaint meetings.

(3) The affirmative action officer or designee shall give a copy of these regulations and the board policy to any person making a formal complaint and to the accused.

(4) The result of that consultation and any investigation made will be communicated to the complainant before any further action is taken.

(5) An informal hearing may be substituted for investigation if the complainant and the accused agree. The affirmative action officer or designee will be responsible for investigating the complaint and discussing the complaint with the one accused. The affirmative action officer will make a written recommendation to the president within a reasonable time following the close of the investigation or hearing.

(6) Appropriate corrective measures will be decided by the president of the college upon consultation with the affirmative action officer and the appropriate administrators or supervisors involved. If an accused employee or student disagrees with the determination or appropriateness of the corrective measures, that individual may contest those measures through the formal faculty or classified grievance procedures, if they are covered by an agreement, or the student disciplinary code.

(7) Information will be entered in the personnel or student file only to the extent that a formal reprimand or other disciplinary action has been taken. If no disciplinary action is taken, the affirmative action officer will keep a record of the investigation accessible to the president, the complainant and the accused for a period of three years and then that record will be destroyed. If a formal complaint is filed with an outside state or federal agency, files will be maintained until the complaint is resolved. When such files are used, written notice will be placed in the file indicating the person using the file and the date used.

NEW SECTION

WAC 132Y-300-004 OTHER REMEDIES. These procedures outlined in WAC 132Y-300-001 through 132Y-300-003, are internal college procedures and, as such, serve to resolve complaints within the college's administrative framework. These procedures do not replace an individual's timely complaint with an external agency such as the Office of Civil Rights, Equal Employment Opportunity Commission, or the Washington state human rights commission.

WSR 89-04-009
EMERGENCY RULES
DEPARTMENT OF WILDLIFE
(Wildlife Commission)

[Order 373—Filed January 20, 1989]

Be it resolved by the Washington Wildlife Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to regulation change for the sport fishing on the Puyallup and Carbon rivers, adopting WAC 232-28-61715.

We, the Washington Wildlife 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 the Department of Wildlife and the Puyallup Tribe agree that the wild steelhead runs in the Puyallup River is unknown. However, all available data indicates that the wild run is underescaped. It is estimated the harvestable number of wild steelhead for the Puyallup River system will have been caught by January 31, 1989, and that any harvest of wild steelhead after January 31 will adversely impact escapement. Therefore, any further harvest must be limited to hatchery fish in order to provide adequate spawning escapement of wild steelhead.

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

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 20, 1989.

By Curt Smitch
Director
for James M. Walton
Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-61715 REGULATION CHANGE FOR SPORT FISHING ON THE PUYALLUP AND CARBON RIVERS. Notwithstanding the provisions of WAC 232-28-617 on the Puyallup and Carbon River, only steelhead with missing adipose or ventral fins may be possessed between the dates of February 1 and March 31, 1989, inclusive. There must be a healed scar in the location of the missing fin. All other provisions of WAC 232-28-617 relating to the Puyallup River and Carbon River remain in effect.

WSR 89-04-010
EMERGENCY RULES
DEPARTMENT OF WILDLIFE
(Wildlife Commission)
[Order 375—Filed January 20, 1989]

Be it resolved by the Washington Wildlife Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to Amendment to 1988-90 game fish regulations—Elochoman River, adopting WAC 232-28-61718.

We, the Washington Wildlife 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 hatchery fish released in the Elochoman were fin-clipped, but many unclipped hatchery fish are returning to the river, apparently strays from the Kalama, Lewis, Coweeman and other Columbia River tributaries.

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

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 20, 1989.

By Curt Smitch
Director
for James M. Walton
Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-61718 AMENDMENT TO 1988-90 GAME FISH REGULATIONS — ELOCHOMAN RIVER. Notwithstanding the provisions of WAC 232-28-617, effective January 20, 1989 to March 31, 1989, the following game fish regulation will apply to the Elochoman River:

ELOCHOMAN RIVER, 69, from mouth to West Fork: June 1-Nov. 30 season. TROUT — catch limit —8, min. lgh. 12", no more than 2 over 20". Dec. 1-Mar. 31 season; WILD STEELHEAD RELEASE, see page 3.

Only steelhead with missing adipose or ventral fins or with dorsal fins measuring less than 2 inches in height when fully extended may be possessed. It is unlawful to possess a steelhead with a freshly cut or mutilated dorsal, ventral or adipose fin.

All other provisions of WAC 232-28-617 remain in effect and unchanged.

WSR 89-04-011
EMERGENCY RULES
DEPARTMENT OF WILDLIFE
(Wildlife Commission)
[Order 376—Filed January 20, 1989]

Be it resolved by the Washington Wildlife Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to Amendment to the 1988-90 game fishing regulations—Washougal River, adopting WAC 232-28-61717.

We, the Washington Wildlife 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 due to miswording in the 1988-90 game fish pamphlet, the game fish regulation for the Washougal River does not portray the original intent. To protect wild steelhead and wild cutthroat spawning stocks in the Washougal River from the mouth to the bridge at Salmon Falls wild steelhead and wild cutthroat release regulations are needed.

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

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 20, 1989.

By Curt Smitch
Director
for James M. Walton
Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-61717 AMENDMENT TO THE 1988-90 GAME FISHING REGULATIONS — WASHOUGAL RIVER. Notwithstanding the provisions of WAC 232-28-617, effective January 20, 1989, the following game fish regulation will apply to the Washougal River:

WASHOUGAL RIVER, 197, from mouth to bridge at Salmon Falls: year around season. TROUT — catch limit —2, min. lgh. 12". WILD STEELHEAD RELEASE AND WILD CUTTHROAT RELEASE. NIGHT CLOSURE April 1-Oct. 31, see pg. 3.

All other provisions of WAC 232-28-617 remain in effect and unchanged.

WSR 89-04-012
NOTICE OF PUBLIC MEETINGS
BUILDING CODE COUNCIL
[Memorandum—January 20, 1989]

1989 Meeting Schedule

January 20	9:00 a.m.	Sea-Tac
February 10	9:00 a.m.	Lacey*
March 10	9:00 a.m.	Sea-Tac
April 14	9:00 a.m.	Sea-Tac
May 12	9:00 a.m.	Sea-Tac
June 9	9:00 a.m.	Sea-Tac
July 14	9:00 a.m.	Sea-Tac
August 11	9:00 a.m.	Sea-Tac*
September 8	9:00 a.m.	Spokane*
October 13	9:00 a.m.	Sea-Tac

November 17 9:00 a.m. Sea-Tac
 December 8 9:00 a.m. Sea-Tac

Council committee meetings may be held as part of the regular council meeting.

*Note location changes from original schedule.

WSR 89-04-013
EMERGENCY RULES
DEPARTMENT OF ECOLOGY
 [Order 89-2—Filed January 23, 1989]

I, Fred Olson, deputy director of the Department of Ecology, do promulgate and adopt at Olympia, Washington, the annexed rules relating to delegation of powers, chapter 173-06 WAC.

I, Fred Olson, 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 Department of Ecology is in the process of reorganizing. The verbiage changes shown below are essential for the agency to function until the reorganization is completed.

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 Ecology as authorized in chapter 43.21A RCW.

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

APPROVED AND ADOPTED January 20, 1989.

By Fred Olson

AMENDATORY SECTION (Amending Order 85-25, filed 11/26/85)

WAC 173-06-030 DELEGATION. *The authority delegated hereby includes the authority to issue orders, directives or decisions reviewable before appropriate administrative or judicial bodies. The authority delegated is limited to the power to act for the department in carrying out functions within the power of the department. No delegation made shall be effective or within the authority of any particular person to exercise unless that person has been issued a specific letter of authorization from the director authorizing him or her to act for the department in the specifics set forth in such letter. Subject to the foregoing restriction, the following delegations are made:*

(1) *To the deputy directors, assistant directors, regional managers, regional directors, division supervisors, section supervisors and program managers[,] the authority to:*

(a) *Issue orders relating to emergency episodes;*

(b) *Issue regulatory notices and orders;*
 (c) *Impose civil penalties;*
 (d) *Perform departmental functions relating to grants, gifts, loans, bonds, fees and special funds;*
 (e) *Enter into contracts and appoint personnel;*
 (f) *Initiate requests for review before shorelines hearings board;*
 (g) *Issue determinations relating to tax credits or exemptions for pollution control facilities;*
 (h) *Perform departmental functions relating to adjudication of water rights[:];*
 (i) *Issue licenses, permits, variances, certificates, and certifications;*
 (j) *Approve, modify or deny proposals, and plans and specifications required to be submitted to the department.*

(2) *To the deputy directors, assistant directors, regional managers regional directors, division supervisors, section supervisors and program managers ((and section heads,)) the authority to approve, modify or deny engineering reports, plans and specifications, or amendments thereto, required to be submitted to the department, provided that a registered professional engineer employed by the department shall provide an evaluation and recommendations on such approvals, modifications or denials.*

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 brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

WSR 89-04-014
ADOPTED RULES
DEPARTMENT OF TRANSPORTATION
(Transportation Commission)

[Order 66, Resolution No. 343—Filed January 23, 1989—Eff. July 1, 1989]

Be it resolved by the Washington State Transportation Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to the establishment of tolls for the passenger-only routes and to change the effective date for all fares to July 1, 1989.

This action is taken pursuant to Notice No. WSR 88-24-029 filed with the code reviser on December 2, 1988. These rules shall take effect at a later date, such date being July 1, 1989.

This rule is promulgated pursuant to RCW 47.56.030 and 47.60.326 which directs that the Department of Transportation has authority to implement the provisions of RCW 47.56.030 and 47.60.326.

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

APPROVED AND ADOPTED January 19, 1989.
 By William J. Kamps
 Chairman

AMENDATORY SECTION (Amending Order 61, Resolution No. 298, filed 5/21/87)

WAC 468-300-010 FERRY PASSENGER TOLLS.

Effective 03:00 a.m. (~~June 21, 1987~~) July 1, 1989

ROUTES	Full Fare	Half Fare**	COM-MU-TATION 20 Rides *** ****
<u>Via Passenger-Only Ferry</u>			
Seattle-Vashon	3.30	1.65	19.80
Seattle-Southworth			
Seattle-Bremerton			
<u>Via Auto Ferry</u>			
Fauntleroy-Southworth	3.30	1.65	19.80
Seattle-Bremerton			
Seattle-Winslow			
Edmonds-Kingston			
Pt. Townsend-Keystone	1.65	.85	19.80
Fauntleroy-Vashon	2.15	1.10	12.90
Southworth-Vashon			
Pt. Defiance-Tahlequah Mukilteo-Clinton			
Anacortes to Lopez, Shaw, Orcas or Friday Harbor	4.65	2.35	27.90
Anacortes to Sidney and Sidney to all destinations	6.05	3.05	N/A
Between Lopez, Shaw, Orcas**** and Friday Harbor	N/C	N/C	N/C
From Lopez, Shaw, Orcas and Friday Harbor@ to Sidney	2.25	1.25	N/A

@These fares rounded to the nearest multiple of \$.25.

*These routes operate as a one-point toll collection system.

**Half Fare

Senior Citizens - Passengers and driver, age 65 and over, with proper identification establishing proof of age, may travel at half-fare tolls on any route.

Includes passengers in vehicles licensed as stages and buses unless travelling under annual permit.

NOTE: Half-fare privilege does not include vehicle.

Children - Children under five years of age will be carried free when accompanied by parent or guardian. Children five through eleven years of age will be charged half-fare. Children twelve years of age will be charged full-fare.

Handicapped - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, may travel at half-fare tolls on any route upon presentation of a WSF handicapped travel permit at time of travel. In addition, those handicapped persons who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF handicapped travel permit and such endorsement shall allow the attendant to also travel at half fare.

NOTE: Half-fare privilege does not include vehicle.

***A combination ferry/bus public transit passenger monthly reusable ticket rate may be available for a particular route in conjunction with a public transit operating authority whenever it is determined by the transportation commission that said ticket is a necessary element of a transit operating plan designed to eliminate the necessity for assigning an additional ferry to such particular route; and that the resulting savings in ferry system operating and amortized capital costs exceed the total revenue lost as a result of this reduced rate as projected during the period of time during which such transit operating plan is projected to eliminate the need for an additional ferry. The equivalent ferry fare per ride with this special rate shall be one-half the equivalent fare per ride with the standard commutation book, and

shall assume 40 one-way trips per month. The total cost of the ticket shall be the cost of the ferry portion, calculated as described above plus the cost of the bus portion as determined by the public transit operating authority, subject to the approval of the secretary of transportation. The ticket shall be valid only for passengers on board a bus; or for walk-on passengers on those routes which have connecting bus service as part of the transit operating plan. The assigning of an additional ferry to such particular route may be cause for removal of the special rate. If the conditions of eliminating the assignment of an additional ferry or realizing sufficient resulting savings cannot be met, the ticket may be sold for any route authorized by the secretary of transportation, at the full ferry commutation fare per ride based on forty one-way trips per month plus the cost of the bus portion.

****Commutation tickets shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Washington state ferries shall enter into agreements with banks to sell commutation tickets.

****Inter-island passenger fares included in Anacortes tolls.

PROMOTIONAL TOLLS

A promotional rate may be established at the discretion of the secretary of transportation for a specific discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

AMENDATORY SECTION (Amending Order 61, Resolution No. 298, filed 5/21/87)

WAC 468-300-020 AUTO, MOTORCYCLE, BICYCLE AND STOWAGE FERRY TOLLS.

Effective 03:00 a.m. ((~~June 21, 1987~~)) July 1, 1989

	AUTO** INCL. DRIVER		MOTORCYCLE INCL. DRIVER *****			BICYCLE & RIDER	
	One Way	Commutation 20 Rides ***	One Way	Commutation 20 Rides ***	Full Fare One Way	Half Fare One Way	Commutation 20 Rides ***
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow Pt. Townsend-Keystone Edmonds-Kingston	5.55	88.80	3.05	40.65	2.30	1.50	23.00
Fauntleroy-Vashon Southworth-Vashon Pt. Defiance-Tahlequah	* 7.50	60.00	4.10	27.35	3.20	2.15	16.00
Mukilteo-Clinton	3.75	60.00	2.05	27.35	1.60	1.10	16.00
		10 Rides					
Anacortes to Lopez, Shaw, Orcas or Friday Harbor	11.60 * 13.85 15.85	46.40 55.40 63.40	7.15 8.20 9.50	47.65 54.65 63.35	6.25	3.95	31.25
Anacortes to Sidney and Sidney to all destinations	26.05	N/A	13.15	N/A	8.55	5.55	N/A
Between Lopez, Shaw, Orcas and Friday Harbor **** @	6.50	26.00	2.25	N/A	2.25	2.25	N/A
From Lopez, Shaw, Orcas@ and Friday Harbor to Sidney	13.25	N/A	6.00	N/A	3.25	2.25	N/A

@These fares rounded to the nearest multiple of \$.25.

*These routes operate as a one-point toll collection system.

**Vanpools - A commuter vanpool which carries seven or more persons on a regular and expense-sharing basis for the purpose of travel to or from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$10 fee, a permit valid for a three-month period on Mondays through Fridays only and valid only during the hours shown on the permit. The permit for commuter pool agency vanpools shall be valid for one year. These hours are selectable by the purchaser but shall designate two periods of use each day not to exceed two hours per period. The permit so purchased shall allow passage of the vehicle only during the valid periods. All riders in the van, including the driver, shall pay the applicable passenger fare. Except that the minimum total paid for all riders in the van shall not be less than the amount equal to seven times the applicable passenger fare.

***Commutation tickets shall be valid only for 90-days from date of purchase after which time the ticket shall not be accepted for passage. Washington state ferries shall enter into agreements with banks to sell commutation tickets.

****Tolls collected westbound only.

***** Carry on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

SUMMER SURCHARGE

A 20% surcharge shall be applied to coincide with the summer schedule period to regular, noncommutation auto and noncommercial vehicles with trailers and oversize vehicles.

PENALTY CHARGES

Owner of vehicle without driver will be assessed a \$50.00 penalty charge.

Overhang on passenger vehicles will be assessed a penalty charge of 10¢ per lineal foot of overhang in addition to regular applicable tolls, except that no charge for overhang will be assessed when overall length of vehicle and overhang is less than twenty feet. A fraction of a foot of overhang in excess of six inches will be counted as one foot in assessment of charge for overhang.

SPECIAL SCHOOL RATE

School groups when traveling in authorized school vehicles for institution-sponsored activities shall be assessed a flat fee of \$1.00 per vehicle load of students and/or advisors and staff. The flat fee shall be in addition to regular vehicle and drive toll. Private vehicles need letter of authorization.

NOTE: Special school rate is \$2.00 on routes where one-way only toll systems are in effect. Special student Rate not available on Anacortes-Sidney, B.C. route beginning the third Sunday in June and ending the third Saturday in September due to limited space.

PROMOTIONAL TOLLS

A promotional rate may be established at the discretion of the secretary of transportation for a specified discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

AMENDATORY SECTION (Amending Order 61, Resolution No. 298, filed 5/21/87)

WAC 468-300-040 TRUCKS AND TRUCKS WITH TRAILER FERRY TOLLS.

Effective 03:00 a.m. (~~June 21, 1987~~) July 1, 1989

ROUTES	INCL. DRIVER OVERALL UNIT LENGTH								Cost Per Ft. over 78 Ft.
	Class I *** Under 18'	Class II 18' to Under 28'	Class III 28' to Under 38'	Class IV 38' to Under 48'	Class V 48' to Under 58'	Class VI 58' to Under 68'	Class VII 68' to Under 78'	Class VIII Over 78'	
Fauntleroy-Southworth Seattle-Bremerton Seattle-Winslow Pt. Townsend-Keystone Edmonds-Kingston	5.55	9.40	18.65	27.85	37.10	46.35	55.50	55.50	.80
Fauntleroy-Vashon Southworth-Vashon Pt. Defiance-Tahlequah	* 7.50	13.20	26.20	39.00	51.90	64.90	77.90	77.90	1.10
Mukilteo-Clinton	3.75	6.60	13.10	19.50	25.95	32.45	38.95	38.95	.55
**Anacortes to Lopez, Shaw, Orcas *	11.60 13.85	22.45	44.65	66.80	88.95	111.20	133.35	133.35	1.85
or Friday Harbor Anacortes to Sidney **and Sidney to all destinations	15.85 26.05	34.20	57.70	81.20	104.75	128.40	151.95	151.95	2.10
Between Lopez, Shaw, Orcas **@ and Friday Harbor	6.50	11.00	11.00	11.00	44.00	44.00	44.00	44.00	N/A
**From Lopez, Shaw, Orcas and Friday Harbor to Sidney@	13.25	20.00	34.00	48.00	61.50	75.50	89.25	89.25	1.00

@These fares rounded to the nearest multiple of \$.25.

*These routes operate as a one-point toll collection system.

**Commercial trucks are allowed stop-over at intermediate points upon payment of \$2.50 per stop-over.

***Includes all trucks licensed 8,001 lbs. gross vehicle weight and above, except busses. Trucks under 8,001 lbs. will be classified as automobiles.

Also includes all trucks licensed 8,001 lbs. gross vehicle weight and above pulling trailers, unlicensed vehicles and road machinery on wheels. Vehicles not included in this class cannot be charged under this class.

****Toll collected westbound only.

PENALTY CHARGES

Owner of vehicle without driver will be assessed a \$50.00 penalty charge.

DISCOUNT PERCENTAGES FROM REGULAR TOLL

12 or more, one-way crossings per week (Sunday thru Saturday) will qualify for a 25% discount from the regular ferry tolls.

Emergency trips during nonservice hours - while at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

AMENDATORY SECTION (Amending Order 61, Resolution No. 298, filed 5/21/87)

WAC 468-300-070 NONCOMMERCIAL VEHICLE WITH TRAILER, OVERSIZE VEHICLE, STAGE AND BUS, NEWSPAPER, EXPRESS SHIPMENTS AND MEDICAL SUPPLIES FERRY TOLLS.

Effective 03:00 a.m. (~~June 21, 1987~~) July 1, 1989

Noncommercial Vehicle with Trailer, Oversize Vehicle,
Stage and Bus, Newspaper, Express Shipments and
Medical Supplies Ferry Tolls****

	Under 18'	18' To Under 28'	28' To Under 38'	38' To Under 48'	48' And Over	Stages And Buses Incl. Driver **
Seattle-Winslow Seattle-Bremerton Edmonds-Kingston Pt. Townsend-Keystone Fauntleroy-Southworth	5.55	8.35	11.25	15.90	20.50	12.25
Fauntleroy-Vashon Southworth-Vashon Pt. Defiance-Tahlequah	* 7.50	11.40	15.80	22.20	28.80	15.70
Mukilteo-Clinton Anacortes to Lopez, Shaw, Orcas or Friday Harbor *	3.75 11.60 13.85 15.85	5.70 20.45	7.90 27.05	11.10 38.10	14.40 49.20	7.85 33.30
Anacortes to Sidney and Sidney to all destinations	26.05	33.10	38.85	50.60	62.35	48.50
Between Lopez, Shaw, Orcas and Friday Harbor ****@	6.50	11.00	11.00	11.00	44.00	11.00
From Lopez, Shaw, Orcas and Friday Harbor to Sidney@	13.25	18.25	22.50	29.50	36.50	15.50

(1) BULK NEWSPAPERS per 100 lbs. \$2.20

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

(2) EXPRESS SHIPMENTS per 100 lbs. \$20.90

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight requiring a minimum of handling by carrier's employees. Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled @ \$2.80 per 100 lbs.

(3) MEDICAL SUPPLIES per 100 lbs. \$1.15

@These fares rounded to the nearest multiple of \$.25.

*These routes operate as a one-point toll collection system.

**Stages - A public transportation operator providing regularly scheduled week-day service for public necessity and convenience may pay a \$10 annual fee for each scheduled vehicle. This fee covers the fare for each trip of the vehicle and operator only. All occupants shall be assessed the applicable passenger rate per trip. The \$10 annual fee does not apply to vehicles providing chartered service or vehicles providing service for special events such as trips for recreational purposes.

PENALTY CHARGES

Owner of vehicle without driver will be assessed a \$50.00 penalty charge.

***INCLUDES THE FOLLOWING VEHICLES PULLING TRAILERS:

- Automobiles
- Trucks licensed under 8,001 lbs. (For trucks 8,001 lbs. and over, see WAC 468-300-040)
- Oversize vehicles
- Does not include motorcycles with trailers.

Also includes motor homes, and mobile campers that exceed eight feet in height and 18' in length. Excludes trucks licensed over 8,000 lbs., passenger busses and stages. All oversize vehicles under 18' in length will be considered as regular car and driver.

****Toll collected westbound only.

Senior citizen discounts for the driver of the above vehicles shall apply.

Senior citizen discount is determined by subtracting full fare passenger rate and adding 1/2 passenger fare.

SUMMER SURCHARGE

A 20% surcharge shall be applied to coincide with this summer schedule period to regular, noncommutation auto and noncommercial vehicles with trailers and oversize vehicles.

WSR 89-04-015
ADOPTED RULES
BOARD OF PHARMACY
 [Order 222—Filed January 23, 1989]

Be it resolved by the Washington State Board of Pharmacy, acting at Olympia, Washington, that it does adopt the annexed rules relating to:

- Amd WAC 360-18-020 Fees.
- New WAC 360-52-110 Pharmacy assistant AIDS prevention and information education requirements.

This action is taken pursuant to Notice No. WSR 88-24-046 filed with the code reviser on December 7, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.64.005 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 18, 1989.

By Joseph M. Honda
 Chair

AMENDATORY SECTION (Amending Order 216, filed 6/30/88)

WAC 360-18-020 FEES. The following fees shall be charged by the board of pharmacy:

- (a) PHARMACY LOCATION
 - Original pharmacy fee \$165.00
 - Original pharmacy assistant utilization fee 35.00

Renewal pharmacy fee	85.00
Renewal pharmacy assistant utilization fee	35.00
Penalty pharmacy fee	165.00
 (b) VENDOR	
Original fee	40.00
Renewal fee	40.00
Penalty fee	40.00
 (c) PHARMACIST	
Exam fee (full exam)	175.00
Reexamination fee (jurisprudence portion)	25.00
Original license fee	75.00
Renewal fee, active and inactive license	((60.00))
	61.00
Penalty fee	60.00
Reciprocity fee	250.00
Certification of license status to other states	10.00
 (d) SHOPKEEPER	
(i) SHOPKEEPER - sixteen or more drugs	
Original fee	10.00
Renewal fee	10.00
Penalty fee	5.00
(ii) SHOPKEEPER - with differential hours	
Original fee	10.00
Renewal fee	10.00
Penalty fee	5.00
 (e) DRUG MANUFACTURER	
Original fee	250.00
Renewal fee	250.00
Penalty fee	250.00
 (f) DRUG WHOLESALER - full line	
Original fee	250.00
Renewal fee	250.00
Penalty fee	250.00

(g) DRUG WHOLESALER – OTC only	
Original fee	150.00
Renewal fee	150.00
Penalty fee	150.00
(h) DRUG WHOLESALER – export	
Original fee	250.00
Renewal fee	250.00
Penalty	250.00
(i) PHARMACY ASSISTANT – Level "A"	
Original fee	30.00
Renewal fee	20.00
(j) PHARMACY INTERN	
Original registration fee	15.00
Renewal registration fee	15.00
(k) CONTROLLED SUBSTANCES ACT (CSA) REGISTRATIONS	
Dispensing registration fee (i.e. pharmacies)	35.00
Dispensing renewal fee (i.e. pharmacies)	30.00
Distributors registration fee (i.e. wholesalers)	50.00
Distributors renewal fee (i.e. wholesalers)	50.00
Manufacturers registration fee	50.00
Manufacturers renewal fee	50.00
Physician assistant registration fee	15.00
Physician assistant renewal fee	10.00
ARNP with prescriptive authorization registration fee	15.00
ARNP with prescriptive authorization renewal fee	10.00
Sodium pentobarbital for animal ethanization registration fee	20.00
Sodium pentobarbital for animal ethanization renewal fee	15.00
(l) LEGEND DRUG SAMPLE – distributor registration fees	
Original fee	125.00
Renewal fee	85.00
(m) POISON MANUFACTURER/SELLER – license fees	
Original fee	20.00
Renewal fee	20.00
(n) Facility inspection fee	100.00
(o) PRECURSOR CONTROL PERMIT	
Original fee	40.00
Renewal fee	40.00

NEW SECTION

WAC 360-52-110 PHARMACY ASSISTANT AIDS PREVENTION AND INFORMATION EDUCATION REQUIREMENTS. (1) Definitions.

(a) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of human immunodeficiency virus-related illness as defined by the board of health by rule.

(b) "Office on AIDS" means that section within the department of social and health services or any successor

department with jurisdiction over public health matters as defined in chapter 70.24 RCW.

(2) Application for certification. Effective October 1, 1989, persons applying for certification as a pharmacy assistant shall submit, in addition to the other requirements, evidence to show compliance with the AIDS education requirements of subsection (4) of this section, or shall certify that they will comply with the AIDS education requirement no later than December 31, 1989.

(3) 1989 renewal of certification. Effective with the renewal period beginning October 1, 1989, all persons making application for certification renewal in 1989 shall submit, in addition to the other requirements, evidence to show compliance with the education requirements of subsection (4) of this section. Pharmacy assistants may submit compliance documentation with their renewal or at any time prior to December 31, 1989.

(4) AIDS education and training.

(a) Acceptable education and training. The board will accept education and training that covers the required subjects. Such education and training shall be a minimum of four clock hours and may include, but is not limited to, the following: Etiology and epidemiology; testing; infection control guidelines; clinical manifestations and treatment; legal economic and ethical issues to include confidentiality; and psychosocial issues to include special population considerations.

(b) Implementation. Effective October 1, 1989, the requirement for certification, renewal, or reinstatement of any certificate on lapsed, inactive, or disciplinary status shall include the one-time requirement of completion of AIDS education and training. All persons affected by this section shall show evidence of completion of an education and training program, which meets the requirements of (a) of this subsection.

(c) Documentation. The pharmacy assistant shall:

(i) Certify, on forms provided, that the minimum education and training has been completed after January 1, 1987;

(ii) Keep records for two years documenting attendance and description of the learning;

(iii) Be prepared to validate, through submission of these records, that attendance has taken place.

WSR 89-04-016

ADOPTED RULES

BOARD OF PHARMACY

[Order 223—Filed January 23, 1989]

Be it resolved by the Washington State Board of Pharmacy, acting at Olympia, Washington, that it does adopt the annexed rules relating to:

New WAC 360-16-265 Patient information required.
Rep WAC 360-16-250 Patient information required.

This action is taken pursuant to Notice No. WSR 88-24-046 filed with the code reviser on December 7, 1988. 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 Board of Pharmacy as authorized in RCW 18.64.005.

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

APPROVED AND ADOPTED January 18, 1989.

By Joseph M. Honda
Chair

NEW SECTION

WAC 360-16-265 PATIENT INFORMATION REQUIRED. Except in those cases when the prescriber has advised that the patient is not to receive specified information regarding the medication:

(1) In order to assure the proper utilization of the medication or device prescribed, with each new prescription dispensed by the pharmacist, in addition to labeling the prescription in accordance with the requirements of RCW 18.64.245 and WAC 360-16-255, the pharmacist must:

(a) Orally explain to the patient or the patient's agent the directions for use and any additional information, in writing if necessary, for those prescriptions delivered inside the confines of the pharmacy; or

(b) Explain by telephone or in writing for those prescriptions delivered outside the confines of the pharmacy.

(2) In those instances where it is appropriate, when dispensing refill prescriptions, the pharmacist shall communicate with the patient or the patient's agent, by the procedure outlined in subsection (1)(a) or (b) of this section or the patient's physician regarding adverse effects, over or under utilization, or drug interaction with respect to the use of medications.

(3) Subsections (1) and (2) of this section shall not apply to those prescriptions for inpatients in hospitals or institutions where the medication is to be administered by a nurse or other individual authorized to administer medications.

(4) In the place of written statements regarding medications, the pharmacist may use abstracts of the Patient USP DI 1988 edition, or comparable information.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 360-16-250 PATIENT INFORMATION REQUIRED.

WSR 89-04-017

ADOPTED RULES

COUNCIL ON HEARING AIDS

[Order PM 818—Filed January 23, 1989]

Be it resolved by the Washington State Council on Hearing Aids, acting at the Department of Licensing,

Examination Center, Olympia, WA, that it does adopt the annexed rules relating to:

Amd	WAC 308-50-020	Reexaminations.
Amd	WAC 308-50-035	Examination review and appeal procedures.
Amd	WAC 308-50-130	Minimal standards of practice.
Amd	WAC 308-50-350	Renewal of license.
Amd	WAC 308-50-420	Reasonable cause for recision.

This action is taken pursuant to Notice No. WSR 88-21-078 filed with the code reviser on October 19, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 18.35.161 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 9, 1989.

By Roger K. Stimbort
Chairperson

AMENDATORY SECTION (Amending Order PM 654, filed 6/26/87)

WAC 308-50-020 REEXAMINATIONS. (1) Should ~~((an applicant fail any section, he/she may apply to the department to be reexamined in such section(s): PROVIDED, That effective with the July 1988 examination, should))~~ an applicant fail ~~((either the written part or any portion(s) of the practical))~~ any part of the examination, he/she may apply to the department to re-take the failed ~~((written part and/or failed portion(s) of the practical))~~ part of the examination.

(2) All reexaminations shall be conducted at the next regularly scheduled examination.

(3) Any person who fails to qualify for licensure after three consecutive regularly scheduled examinations shall be required to take the entire examination. A waiver may be granted upon a showing of emergency circumstances.

AMENDATORY SECTION (Amending Order PM 654, filed 6/26/87)

WAC 308-50-035 EXAMINATION REVIEW AND APPEAL PROCEDURES. (1) Each applicant who is administered the examination for licensure and does not pass both parts of the examination will be provided information indicating the area of the examination in which the applicant was deficient with the notice of the examination results.

(2) Any applicant who does not pass a part of the examination may request an informal review by the council of his or her examination results. This request must be in writing and must be received by the department within thirty days of the postmark of the notice of examination results.

(3) The procedure for the informal review is as follows:

(a) An applicant submitting a written request for an informal review by the deadline described in subsection (2) ((above)) of this section will be contacted by the department to arrange an appointment to appear personally in the Olympia office to review the part or parts of the examination failed.

(b) The applicant will be provided a form to complete in the Olympia office in defense of examination answers and/or examination performance.

(c) The applicant will be identified only by applicant number for the purpose of this procedure. Letters of reference or requests for special consideration will not be read or considered by the council.

(d) That applicant may bring textbooks or published material for use in completing the informal review, but such material must be retained by the Olympia office until the council has completed the informal review request submitted by the applicant.

(e) The applicant will not be allowed to take any notes or materials from the office upon leaving.

(f) The information submitted to the council for its consideration in the informal review must state the specific reason or reasons why the results of the examination should be changed. The council will not modify examination results unless the applicant can prove or show conclusive evidence of error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The council will not consider a challenge to the examination unless the total revised score including the questions or sections to be reviewed could result in a passing score in the examination.

(g) The council will schedule a closed session meeting to conduct the informal review of the material submitted by the applicant.

(h) The applicant will be notified in writing of the results of the informal review.

(4) Any applicant who is not satisfied with the result of the examination review may request that a formal hearing be held before the council pursuant to the Administrative Procedures Act. Such a hearing request must be ((prepared)) received by the department within thirty days of postmark of the notification of the result of the council's informal review of the applicant's examination results. The request must be in writing and must state the specific reasons why the results of the examination should be changed. The council will not modify examination results unless the applicant can prove or show conclusive evidence of error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The council will not consider a challenge to the examination unless the total revised score including the questions or sections to be reconsidered could result in a passing score in the examination.

(5) The hearing will not be scheduled until the applicant and the state's attorney have appeared before an administrative law judge for a prehearing conference to consider the following:

(a) The simplification of issues;

(b) The necessity of amendments to the notice of specific reasons for the examination result modification;

(c) The possibility of obtaining stipulations, admission of facts and documents;

(d) The limitation of the number of expert witnesses;

(e) A schedule for completion of all discovery; and,

(f) Such other matters as may aid in the disposition of the proceeding.

(6) The administrative law judge shall enter an order which recites the actions taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.

(7) Applicants will receive at least twenty days notice of the time and place of the formal hearing. The hearing will be restricted to the specific reasons the applicant has identified as the basis for a change in the examination score.

AMENDATORY SECTION (Amending Order PL 478, filed 9/12/84)

WAC 308-50-130 MINIMAL STANDARDS OF PRACTICE. Minimum procedures in the fitting and dispensing of hearing aids shall include:

(1) Obtain case history to include the following:

(a) As required by WAC 308-50-320, documentation of referrals, or as otherwise required by this chapter.

(b) Historical evaluation to include inquiry regarding hearing loss, onset of loss, and any associated symptoms including significant noise in the ears, vertigo, acute or chronic dizziness, nausea, earaches, or other such discomfort which may indicate the presence of medical illness. Specific inquiry should be made to determine if hearing loss has been sudden or rapidly progressive in the past ninety days, if there has been any active drainage or infection in ears during the past ninety days, and if there are any specific physical problems which may relate to the use of a hearing aid.

(2) Examination of the ears should be done to reasonably determine if any of the following conditions exist:

(a) Impacted ear wax.

(b) Foreign body within the ear canal.

(c) Discharge in the ear canal.

(d) Presence of inflammation or irritation of the ear canal.

(e) Perforation of the ear drum.

(f) Any other abnormality.

(3) Hearing testing shall be performed to include the following:

(a) Hearing loss, or residual hearing, shall be established for each ear using puretone threshold audiometry by air and bone conduction with effective masking as required.

(b) Appropriate live voice or recorded speech audiometry by ear phones to determine the following: Speech reception threshold, most comfortable level, uncomfortable level, and the speech discrimination percent.

(c) Hearing testing shall be conducted in the appropriate environment as required by WAC 308-50-110,

minimum standards of equipment, or as otherwise required by this chapter.

(d) When puretone audiometry indicates an air-bone gap of 15db or more, 500, 1000, and 2000 Hz, the presence of unilateral hearing loss, or any inconsistent audiometric findings, the client shall be advised of the potential help available through medical treatment. Should the client decline to consider such methods, or if the client has previously been appropriately treated or has been advised against such procedures, an appropriate notation shall be made in the client's record.

(e) In the event a client is referred to a licensee by an M.A. audiologist, otologist, otolaryngologist, or by a fitter/dispenser duly licensed under chapter 18.35 RCW, and the audiometric results obtained within the previous six months are provided to the licensee as a part of this referral, the applicable provisions of WAC 308-50-130 shall not be required. However, a confirmatory audiometric examination is recommended.

(4) Medical evaluation requirements:

(a) If the prospective hearing aid user is eighteen years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirements of (b) of this subsection provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; ~~((and))~~

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by (hearing aid fitter/dispenser name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation before purchasing a hearing aid; and

(iv) Provides the prospective user with a copy of the signed waiver statement.

(b) Except as provided in (a) of this subsection, a hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

(5) Selection and fitting of the hearing aid shall include the following:

(a) Provide information regarding the selection of the most appropriate method and model for amplification for the needs of the client.

(b) Provide the user with the cost of the recommended aids and services.

(c) Provide for or have available an appropriate custom made ear mold.

(d) Provide final fitting of the hearing aid to ensure physical and operational comfort.

(e) Provide adequate instructions and appropriate post-fitting adjustments to ensure the most successful use of the hearing aid.

(6) Keeping records on every client to whom the licensee renders service in connection with the dispensing

of a hearing aid. Such records shall be preserved for at least three years after the dispensing of the first hearing aid to the client. If other hearing aids are subsequently dispensed to that client, cumulative records must be maintained for at least three years after the latest dispensing of an aid to that client. The records must be available for the department inspection and will include:

(a) Client's case history.

(b) Source of referral and appropriate documents.

(c) Medical clearance for the hearing aid user or the waiver set forth in subsection (4)(a)(iii) of this section which has been signed after being fully informed that it is in the best health interest to seek medical evaluation.

(d) Copies of any contracts and receipts executed in connection with the fitting and dispensing of each hearing aid provided.

(e) A complete record of tests, test results, and services provided except for minor services.

(f) All correspondence specifically related to the service given the client or the hearing aid or aids dispensed to the client.

AMENDATORY SECTION (Amending Order PL 447, filed 11/15/83)

WAC 308-50-350 RENEWAL OF LICENSE. ~~((+))~~ The annual license renewal date for hearing aid fitters and dispensers is ~~((hereby changed to coincide with))~~ the licensee's birthdate. Individuals making application for examination and initial license, provided they meet all such requirements, will be issued a license to expire on their next birth anniversary date.

~~((2) Current licensees as of December 31, 1983. Licensed hearing aid fitters and dispensers desiring to renew their licenses will be required to pay a fee of eighty dollars, plus one-twelfth of that amount for each month or fraction thereof, in order to extend their license to expire on their birth anniversary date next following December 31, 1983.~~

~~((c) After the initial conversion to a staggered system, licensees may renew their licenses at the annual fee rate, for one year from birth anniversary date to the next birth anniversary date.))~~

AMENDATORY SECTION (Amending Order PL 586, filed 4/17/86)

WAC 308-50-420 REASONABLE CAUSE FOR RESCISSION. The purchaser of the hearing aid(s) may rescind the purchase and recover ~~((monies))~~ moneys in accordance with RCW 18.35.190 ~~((+))~~ (2) for reasonable cause. The term "reasonable cause" is defined to include the following:

(1) Any material misstatement of fact or misrepresentation by the licensee regarding the hearing aid(s) or fitting and dispensing services to be provided which the purchaser relied on or which induced the purchaser into making the agreement;

(2) Failure by the licensee to provide the purchaser with the hearing aid(s) and fitting and dispensing services which conform to those specified in the purchase agreement between the parties;

(3) Diagnosis of a medical condition unknown to the purchaser at the time of purchase, which precludes the purchaser from using the hearing aid(s);

(4) Failure by the licensee to remedy a significant material defect of the hearing aid(s) within a reasonable period of time in accordance with RCW 18.35.190 ((~~(3)~~)) (2)(c);

(5) The hearing aid(s) and/or fitting and dispensing services would not be in accordance with accepted practices of the industry; and

(6) The licensee fails to meet any standard of conduct prescribed in the laws regarding the fitting and dispensing of hearing aids and this failure adversely affects in any way the transaction which the purchaser seeks to rescind.

WSR 89-04-018

PROPOSED RULES

SPOKANE COMMUNITY COLLEGES

[Filed January 23, 1989]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that the Washington Community College District 17 intends to adopt, amend, or repeal rules concerning smoking;

that the institution will at 1:30 p.m., Tuesday, February 14, 1989, in the Board Room, North 2000 Greene Street, Spokane, WA 99207, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 28B.50.140.

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before February 7, 1989.

This notice is connected to and continues the matter in Notice No. WSR 88-23-050 filed with the code reviser's office on November 14, 1988.

Dated: January 18, 1989

By: Terrance R. Brown
Chief Executive Officer

WSR 89-04-019

NOTICE OF PUBLIC MEETINGS

TRANSPORTATION COMMISSION

[Memorandum—January 23, 1989]

The Washington State Transportation Commission has changed their regular meeting dates as follows:

March 16, 1989 to March 15, 1989

April 20, 1989 to April 13, 1989

These meetings will begin at 9:30 a.m., and will be held in Room 1D2, Transportation Building, Olympia, Washington.

WSR 89-04-020

NOTICE OF PUBLIC MEETINGS

WASHINGTON STATE UNIVERSITY

[Memorandum—January 19, 1989]

It has become necessary for the board of regents of Washington State University to make a change in its meeting schedule for this spring. The February 20, 1989, meeting set for Seattle has been cancelled.

The schedule for the board of regents for the rest of this academic year is as follows:

March 31, 1989	Pullman
May 5, 1989	Pullman
June 23, 1989	Irrigated Agriculture Research and Extension Center, Prosser

WSR 89-04-021

NOTICE OF PUBLIC MEETINGS

SOUTH PUGET SOUND

COMMUNITY COLLEGE

[Memorandum—January 20, 1989]

This shall serve as notification of a special meeting of the South Puget Sound Community College board of trustees. The meeting is scheduled for 9:00 a.m., Saturday, January 28, 1989, in Building 22, Boardroom, South Puget Sound Community College Campus, 2011 Mottman Road S.W.

WSR 89-04-022

NOTICE OF PUBLIC MEETINGS

WASHINGTON INSTITUTE

OF APPLIED TECHNOLOGY

[Memorandum—January 24, 1989]

WIAT BOARD OF DIRECTORS MEETING

January 25, 1989, 7:30 a.m.
WIAT Sixth Floor Board Room

WSR 89-04-023

PROPOSED RULES

BOARD OF PHARMACY

[Filed January 24, 1989]

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 the practice of pharmacy, amending WAC 360-17-055 Emergency outpatient medications;

that the agency will at 9:30 a.m., Wednesday, February 15, 1989, in the Executive Inn, 200 Taylor North, 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.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before February 15, 1989.

This notice is connected to and continues the matter in Notice No. WSR 88-24-046 filed with the code reviser's office on December 7, 1988.

Dated: January 23, 1989
By: John H. Keith
Assistant Attorney General
Board Counsel

WSR 89-04-024
PROPOSED RULES
DEPARTMENT OF PERSONNEL
(Personnel Board)
[Filed January 25, 1989]

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 school year contracts for nonteaching staff, new section WAC 356-15-140;

that the agency will at 10:00 a.m., Thursday, March 9, 1989, in the Board Hearings Room, Department of Personnel, 521 South Capitol Way, Olympia, WA, conduct a public hearing on the proposed rules.

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

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

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

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1989.

Dated: January 23, 1989
By: Robert Boysen
Acting Director

STATEMENT OF PURPOSE

New WAC 356-15-140, School year contracts for nonteaching staff.

Purpose: This chapter deals with premium pay, special pay arrangements, and similar items. WAC 356-15-140 is new, and generally unrelated to other items in the chapter.

Statutory Authority: RCW 41.06.150(9).

Summary: This proposal allows the schools for the deaf and for the blind to enter contracts with noncertificated staff to withhold part of their 9-month school-year earnings so that even monthly payments may be made throughout the entire calendar year. Similar to the practice in most school districts for payment of teachers.

Reasons: Some of these employees have been ineffective in self-management of these earnings; have been unable to find gainful summer employment to provide for family expenses; and have suffered severe financial hardship during the summer months when the school is

closed. The employees are presently put on leave without pay during the summer, but are permanent employees, who retain their insurance benefits through the summer. The school directors are very desirous of making this option available to them.

Responsibility for Drafting: Gail Salisbury, Department of Personnel, 521 South Capitol Way, FE-11, Olympia, WA 98504, phone (206) 753-5383; **Implementation and Enforcement:** Department of Personnel.

Agency or Organization Submitting Proposal: Washington State Schools for the Deaf and Blind, governmental agency.

Comments or Recommendations: None.

Rule Proposal a Result of Federal Law, or Federal or State Court Action: No.

NEW SECTION

WAC 356-15-140 SCHOOL YEAR CONTRACTS FOR NONTEACHING STAFF. (1) The school for the deaf and the school for the blind may contract with full-time, permanent (as opposed to temporary), non-certificated staff to retain them in pay status only during the school year, to grant them leave without pay during the student-vacation periods, and to spread the school-year base salary earnings evenly over a 12-month period. For employees who so contract, the following rules shall apply:

(a) Twelve-month, prorated pay will be calculated by the following steps:

(i) The total annual salary for scheduled work during the school year will be calculated for each employee, beginning with the first day of employment, for the new school year.

This calculation will include:

(a) scheduled holidays which will occur between the beginning and the end of the school year.

(b) any increment increases which will occur while the employee is in pay status.

It will not include:

(a) sick leave or annual leave, or holidays which occur after the close of the school year.

(b) anticipated general increases; but these will be included in a recalculation when they occur. The recalculation will affect only the remaining time in the 12-month contract.

(ii) The total annual salary will be divided by 24 to obtain 24 equal payments for a 12-month period. These equal payments are referred to hereafter as the "prorated salary".

(iii) General increases, when granted during the school year, shall be accommodated by recalculation of the prorated salary as it will be affected forward from the effective date of the increase.

(b)(i) Annual leave, compensatory time, paid holidays, and sick leave taken during scheduled days of work will be treated as hours worked.

(ii) Annual leave, sick leave, and paid holidays taken in lieu of leave without pay during periods of school closure, such as Christmas vacation, spring vacation, and summer months, will be paid at the full (not prorated) hourly rate.

The "full hourly rate" is determined by dividing the total annual salary by the number of contract work days in that school year, and dividing that by eight hours.

(iii) For each hour of leave-without-pay taken during a scheduled work day, an hour of pay at the full (not prorated) hourly rate will be deducted from the prorated salary for that pay period.

(c) The "regular rate" for overtime work shall be calculated in the manner described in WAC 356-05-053, except that the "basic salary" and any other components of the "regular rate" shall be the "full hourly rate" (not 12-month prorated salary). Shift premium will not be prorated.

(d) Compensatory time may be credited and utilized as described in WAC 356-14-240. If accrued compensatory time is liquidated as provided in WAC 356-14-265, the liquidation rate shall be based on the full hourly rate (not the prorated salary).

(e) Vacation leave and an employee's personal holiday which is unused at the end of the school year may be paid as extended employment beyond the contract period. Each hour of accumulated vacation thus taken will be compensated at the full hourly rate (rather than the

prorated salary level) in addition to the continuing 12-month prorated salary. It will be paid at the end of the pay period in which it is taken. Hours for which vacation time is paid will be considered as hours worked for the purpose of accruing additional vacation and sick leave.

(f) Use of accrued sick leave may not commence between school years or during periods of leave without pay, even though accrued vacation may be being utilized during that period. Accrued sick leave which can be converted to monetary compensation as provided in WAC 356-18-050(3) shall be compensated at the employee's current actual salary rate, rather than the prorated salary rate.

(g) An employee's movement within and among the pay ranges shall be based on the actual salary (not the prorated salary).

(h) A 12-month pay agreement as described in this section may be terminated at the request of the employee only if the agency determines that a bona fide hardship is being created by its continuation, or by termination of employment. Accrued (withheld) salary, vacation, and compensatory time under the 12-month agreement is immediately payable on termination of employment.

(i) Nothing in this section shall result in an employee receiving more compensation for the same work performed than would an employee who did not have such a 12-month contract.

(2) (WAC 356-15-140 describes the effect of leave without pay on seniority and periodic increment dates for these employees.)

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

WSR 89-04-025
PROPOSED RULES
LIQUOR CONTROL BOARD
(Filed January 25, 1989)

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Liquor Control Board intends to adopt, amend, or repeal rules concerning musicians, disc jockeys, sound or lighting technicians, persons performing janitorial services, employees of amusement device companies, security officers, fire fighters and law enforcement officers employment, WAC 314-16-075;

that the agency will at 9:30 a.m., Wednesday, March 15, 1989, in the Office of the Liquor Control Board, 5th Floor, Capital Plaza Building, 1025 East Union Avenue, Olympia, WA 98504-2531, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 66.08.030 and 66.28.120.

The specific statute these rules are intended to implement is RCW 66.44.316, 66.44.310 and 66.44.350.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1989.

Dated: January 23, 1989

By: Paula O'Connor
Chairman

STATEMENT OF PURPOSE

Title: WAC 314-16-075 musicians, disc jockeys, sound or lighting technicians, persons performing janitorial services, employees of amusement device companies, security officers, fire fighters and law enforcement officers employment.

Description of Purpose: Deletes recordkeeping requirements for minor musicians.

Statutory Authority: RCW 66.08.030 and 66.28.120.

Statutes Implemented by the Rule: RCW 66.44.316, 66.44.310 and 66.44.350.

Summary of Rule: The rule presently states the conditions under which minors may remain in liquor licensed establishments in the course of their employment.

Reasons Supporting Proposed Action: The board has determined that it is unduly burdensome to licensees to require that they retain the items of information listed in (4)(a) for a period of 30 days after termination of the employees's employment; and WAC 314-16-075 does not require licensees to retain the items of information listed in (4)(a) for minors who are permitted to enter and remain in liquor licensed establishments in the course of their employment if they are engaged in an occupation other than musician. The board has now determined that it serves no useful purpose to require licensees to retain this information for their minor musician employees.

Agency Personnel Involved: In addition to the board the following agency personnel have responsibility for drafting, implementing and enforcing this rule amendment: Gary W. Gilbert, Chief, Enforcement Division, Capital Plaza Building, Olympia, Washington 98504, phone (206) 586-3052.

Person or Organization Proposing the Rule: The Washington State Liquor Control Board.

Agency Comments: None.

Necessity of Rule: Not made necessary as a result of federal law or federal or state court action.

Small Business Economic Impact Statement: There will be no negative cost impact for this rule.

AMENDATORY SECTION (Amending Order 197, Resolution No. 206, filed 8/26/86)

WAC 314-16-075 MUSICIANS, DISC JOCKEYS, SOUND OR LIGHTING TECHNICIANS, PERSONS PERFORMING JANITORIAL SERVICES, EMPLOYEES OF AMUSEMENT DEVICE COMPANIES, SECURITY OFFICERS, FIRE FIGHTERS AND LAW ENFORCEMENT OFFICERS EMPLOYMENT. Pursuant to the provisions of (~~chapter 250, Laws of 1969 ex. sess. f~~) RCW 66.44.316(~~(3)~~), professional musicians (~~(18)~~) eighteen years of age and older are permitted to enter and to remain in liquor licensed establishments during and in the course of their employment as musicians. The following definitions and requirements shall be applicable.

(1) Definitions:

(a) The term "professional minor musician" shall be construed as a person between (~~(18 and 21)~~) eighteen and twenty-one years of age who is employed to perform in his or her capacity as a musician at a retail liquor licensed establishment.

(b) The term "professional minor musician" shall include a person who plays a musical instrument and/or is a vocalist, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys.

(c) To assure that the professional minor musician employed is engaged for that purpose, he or she shall be compensated at a rate not less than the minimum wage provided for by state law.

(2) Areas in licensed establishments where professional minor musicians may perform:

(a) Professional minor musicians during their performance shall, except as provided in (b) and (c) of this subsection, remain on the stage or bandstand of the licensed premises.

(b) The style of a "strolling musician" or a group of "strolling musicians" may be utilized in licensed establishments.

(c) Disc jockeys and sound and lighting technicians may enter and remain on the licensed premises, in such locations as required, during and in the course of their employment.

(3) Areas where professional minor musicians may remain when not performing:

(a) Prior to commencing a performance; at breaks or intermissions during the performance; and after concluding a performance, professional minor musicians shall be permitted only: On the stage or bandstand; in a private room or separate area on the premises in which no liquor is served; or in areas where minors are permitted under the licensee's minor classification ((f)) (for example, in the restaurant section of a Class H licensed premises((f))).

(b) Professional minor musicians are permitted to enter and remain on the licensed premises not more than one hour prior to the start of their performance, in order to set up their equipment and tune their musical instruments, and to remain not more than one hour after concluding their performance in order to properly secure their equipment.

(4) ((Responsibilities of licensees:

~~(a) Licensees having board authorization for live music and wishing to employ professional minor musicians shall have available for inspection by the board, or any peace officer, at all reasonable times, a current list of professional minor musicians employed at the licensed premises. Such list shall be retained for a period of 30 days after termination of employment and shall designate the following information with respect to each minor:~~

~~(i) True name and professional or stage name, if any.~~

~~(ii) Permanent resident address and temporary address, if any.~~

~~(iii) Date and place of birth.~~

~~(iv) Mother's maiden name; father's name.~~

~~(v) Social Security number.~~

~~(vi) Terms of the agreement of employment.~~

~~(b)) Licensees shall at all times provide adequate supervision in order to insure that there will be neither the sale of nor the supplying of any alcoholic beverages to professional minor musicians, and that professional minor musicians will not be permitted to consume alcoholic beverages at any place on the premises.~~

(5) Responsibilities of professional minor musician:

(a) Professional minor musicians shall at all times during the course of their employment on licensed retail premises have with them documents available for inspection which disclose their true age and date of birth.

(6) Practice sessions — "jam sessions":

(a) Practice sessions involving professional minor musicians shall not be permitted on licensed premises.

(b) "Jam sessions" involving professional minor musicians shall not be permitted on any licensed premises unless the participants are being paid for such "jam sessions" in accordance with subsection (1)(c) of this ((regulation)) section.

(7) Persons eighteen years of age and older performing janitorial services may enter and remain on premises licensed under the provisions of Title 66 RCW during the hours when there is no sale, service, or consumption of liquor on the premises (or in the area being cleaned), but only during and in the course of their performance of janitorial services.

(8) Employees of amusement device companies or companies which are in the business of installing, maintaining, and repairing amusement devices, which employees are eighteen years of age or older, may enter and remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices.

(9) Security officers, fire fighters and law enforcement officers eighteen years and over are permitted to enter and remain on premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment or official duties and only if they are not the direct employees of the licensee. Provided, however, that security officers access to classified portions of liquor licensed premises is limited to only isolated incidents arising in the course of their duties.

WSR 89-04-026

ADOPTED RULES HORSE RACING COMMISSION

[Order 88-06—Filed January 25, 1989]

Be it resolved by the Washington Horse Racing Commission, acting at the Washington Thoroughbred Association Pavilion, 2600 S.W. Oaksdale, Renton, WA, that it does adopt the annexed rules relating to:

Amd WAC 260-70-010 Relating to definitions applicable to chapter 260-70 WAC.

Amd WAC 260-70-090 Relating to permitted levels of NSAIDS.

This action is taken pursuant to Notice No. WSR 89-01-112 filed with the code reviser on December 21, 1988. 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 Horse Racing Commission as authorized in RCW 67.16.020 and 67.16.040.

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

APPROVED AND ADOPTED January 24, 1989.

By Warren Chinn
Chairman

AMENDATORY SECTION (Amending Resolution No. 87-03, filed 7/8/87)

WAC 260-70-010 DEFINITIONS APPLICABLE TO CHAPTER 260-70 WAC. As used in this chapter, unless the context clearly requires a different meaning, the following terms shall have the following meanings:

(1) "Permitted medication" or "medication" means and includes any substance used to treat or prevent disease, relieve pain, or improve health with the exception of prohibited drugs.

(2) "Prohibited drugs" means (a) any medication or metabolic derivatives thereof which is an analgesic, including narcotics or which could serve as a local anesthetic, or tranquilizer, or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, or bronchial dilators; or (b) any interfering substance.

(3) "Interfering substance" or "interfere" means and refers to any medication which might mask or screen the presence of prohibited drugs or prevent or delay testing procedures. Such terms include permitted medication when used in quantities which might mask or screen the presence of prohibited drugs or prevent or delay testing procedures.

(4) "Approved nonsteroidal anti-inflammatory drug (NSAID)" includes and is limited to phenylbutazone or oxyphenylbutazone; ((flunixin;)) naproxen and meclufenamic acid used in the manner described in WAC 260-70-090.

(5) "Bleeder" means a horse which hemorrhages from a nostril or into its trachea during a race or during exercise or within one hour of the race or exercise.

(6) "Bleeder list" means a tabulation of all bleeders to be maintained by the commission veterinarian.

AMENDATORY SECTION (Amending Resolution No. 87-03, filed 7/8/87)

WAC 260-70-090 PERMITTED LEVEL OF APPROVED NSAIDS. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Those using approved NSAIDS are also subject to these additional rules:

(1) PHENYLBUTAZONE OR OXYPHENYLBUTAZONE shall be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of phenylbutazone or 5 micrograms of oxyphenylbutazone per milliliter of blood plasma or more than 165 micrograms of the drug substance, its metabolites and analogs per milliliter of urine.

(2) NAPROXEN shall be administered in such dosage amount that the test sample shall contain not more than 5 micrograms of the drug substance, its metabolites or analogs per milliliter of blood plasma or more than 165 micrograms of the drug substance, its metabolites or analogs per milliliter of urine.

(3) ~~FLUNIXIN shall be administered in such dosage amount that the test sample shall not contain more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma.~~

(4)) MECLOFENAMIC ACID shall be administered in such dosage amount that the test sample shall contain not more than 1 microgram of the drug substance, its metabolites or analogs per milliliter of blood plasma.

((5)) (4) No horse on a program of permitted medication shall be permitted to race without such medication.

WSR 89-04-027

ADOPTED RULES

DEPARTMENT OF PERSONNEL

(Personnel Board)

[Order 313—Filed January 25, 1989—Eff. March 1, 1989]

Be it resolved by the State Personnel Board, acting at 521 South Capitol Way, Board Hearings Room, Olympia, WA, that it does adopt the annexed rules relating to:

- Amd WAC 356-30-025 Nonpermanent appointments—Duration.
- Amd WAC 356-30-067 Temporary appointments from within classified service.
- Amd WAC 356-30-140 Intermittent employment—Rules—Regulations.

This action is taken pursuant to Notice No. WSR 88-24-041 filed with the code reviser on December 6, 1988. These rules shall take effect at a later date, such date being March 1, 1989.

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

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

APPROVED AND ADOPTED January 12, 1989.

By Robert H. Boysen
Acting Director

AMENDATORY SECTION (Amending Order 309, filed 10/11/88)

WAC 356-30-025 NONPERMANENT APPOINTMENTS—DURATION. No consecutive nonpermanent appointment of an employee who has worked for the agency for nine months or 1560 nonovertime hours within the last twelve months may be made with out a three-month break in service except as provided by WAC 356-30-065(4), 356-30-067(6), and 356-30-140(6). All time spent in nonpermanent appointments counts toward the 1560 hour limit.

AMENDATORY SECTION (Amending Order 308, filed 9/7/88, effective 11/1/88)

WAC 356-30-067 TEMPORARY APPOINTMENTS FROM WITHIN CLASSIFIED SERVICE.

(1) Temporary appointments may be made to classified positions during the absence of a permanent employee or during a workload peak when there is a need to fill a position for not more than nine months or 1560 nonovertime hours or while recruitment is being conducted to establish a complete register.

(2) Temporary appointments may be made at a lower level than the allocation of the position being filled provided the class falls within the same or a related class series.

(3) All temporary appointments to supervisory or managerial positions must be made from within state service unless the director determines that such action is not practicable.

(4) Established registers, certification, and referral services are available and may be used when making temporary appointments. An employee certified from the register to fill a position in the absence of a permanent employee may enter a probationary or trial service period and subsequently gain permanent status when the permanent employee does not return to the position and the agency needs to fill the position permanently. The director of personnel must approve the change in status before it occurs. Time served in a temporary appointment will not be counted as part of the probationary or trial service period.

(5) ~~((Permanent or probationary classified employees may accept a temporary appointment to a class for which they meet the minimum qualifications.))~~ Temporary appointees must meet the minimum qualifications of the class to which they are appointed unless the director of personnel determines that program needs demand

otherwise. Upon termination of such temporary appointment, permanent or probationary employees shall have the right to resume a permanent position within their permanent agency at their former status. The employee's salary upon return will be determined as if the employee had remained in the permanent position.

(6) Temporary appointments made from within classified service will normally last no more than nine months or 1560 nonovertime hours for single or multiple appointments. An extension may be approved by the director when a temporary appointment is made to replace a permanent employee who has been granted a leave of absence ((or)), when temporarily filling a supervisory or managerial position when there is reorganization pending, or as otherwise approved by the director. ~~(In such cases, the)~~ Temporary appointments may extend to thirty days after the date the permanent employee returns or the position is filled permanently. Time spent in emergency appointments will be counted in the 1560 hours.

(7) Compensation for temporary appointees shall be made in accordance with the rules governing promotions, demotions, or transfers.

(8) The director of personnel shall monitor temporary appointments made pursuant to this section and may revoke delegated authority where abuse is found.

AMENDATORY SECTION (Amending Order 308, filed 9/7/88, effective 11/1/88)

WAC 356-30-140 INTERMITTENT EMPLOYMENT—RULES—REGULATIONS. (1) Intermittent appointments may be made by the director of personnel or designee. An intermittent appointment ((may be made)) shall be approved when the nature of the work is intermittent in character fitting no particular pattern. An employee may not work more than 1560 nonovertime hours within any twelve-month period in an intermittent appointment. A position which is filled beyond the 1560 nonovertime hours within a twelve-month period shall be vacated for a minimum of three months. Time spent in emergency appointments will be counted in the 1560 hours.

(2) Intermittent appointments may be made at a lower level than the allocation of the position being filled provided the class falls within the same or a related class series.

(3) Intermittent appointees must meet the minimum qualifications for the class in which they are hired unless the director of personnel determines that program needs demand otherwise. Established registers ((are available and)) may be used when making intermittent appointments.

((3)) (4) Consecutive appointments of the same person in the same agency may be made as long as the employee does not work more than 1560 nonovertime hours in a twelve-month period.

((4)) (5) No person can become a permanent employee because of time served as an intermittent employee.

((5)) (6) Intermittent employees who accept temporary appointments may return to intermittent employment and resume intermittent status without approval of

the director of personnel if they have not exceeded 1560 nonovertime hours in all nonpermanent appointments within the last twelve months. If the employee reaches 1560 nonovertime hours in the last twelve months, a mandatory three-month break must be made, unless the director of personnel determines otherwise.

((6)) (7) Agencies must review intermittent appointments on a quarterly basis to ensure that intermittent employees are employed in accordance with these rules.

((7)) (8) The director of personnel shall monitor intermittent appointments made pursuant to this section and may revoke delegated authority where abuse is found.

WSR 89-04-028
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 89-02]

ESTABLISHING THE GOVERNOR'S COUNCIL ON SUBSTANCE ABUSE

WHEREAS, the abuse of alcohol and other drugs is a serious problem in Washington State for which there is no simple solution; and

WHEREAS, there is a need to continue and expand upon the work of the Governor's Alliance Against Drugs through a more broadly focused group to be known as the Governor's Council on Substance Abuse. The primary thrust of the Council's efforts will be to emphasize Washington communities working in partnership with government, private industry, schools and law enforcement, so that each can identify their roles and complement the roles of others, in working to minimize the causes and impacts of substance abuse through coordinated and innovative strategies;

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, by virtue of the authority vested in me, do hereby establish the Governor's Council on Substance Abuse as follows:

A. The Council will have three primary responsibilities:

1. Advise the Governor on issues and programs relating to substance abuse.

2. Advise and assist the Governor with implementation of strategies to support community efforts to reduce substance abuse.

3. Promote public awareness and education regarding substance abuse, and actions, individuals can use in response to substance abuse.

B. Members of the Council shall represent private industry, local government, treatment providers, community groups, law enforcement and students. The membership shall also include four legislators – two members from the Senate and two members from the House. Legislative members shall be appointed by the respective Caucuses.

C. The Governor shall serve as the Chair and appoint a Vice-Chair.

D. A majority of the Council shall constitute a quorum and a majority of those present can approve Council action.

E. This Executive Order shall take effect immediately.

IN WITNESS WHERE-
OF, I have hereunto set my
hand and caused the Seal of
the state of Washington to
be affixed at Olympia this
24th day of January, A.D.,
nineteen hundred and
eighty-nine.

Booth Gardner

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 89-04-029

EMERGENCY RULES

HORSE RACING COMMISSION

[Order 89-01—Filed January 27, 1989]

Be it resolved by the Washington Horse Racing Commission, acting at Renton, Washington, that it does adopt the annexed rules relating to Washington Horse Racing Commission rules regarding licensing, specifically duration and fee.

We, the Washington Horse Racing 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 this rule is passed as an emergency rule pursuant to RCW 34.04-.030. The commission does hereby find that it is necessary for the preservation of the public health, safety, and general welfare to pass this rule and that observance of the requirements of notice and opportunity to present further views on the proposed action would be contrary to the public interest. The commission further finds that if this rule is not passed that the office of the Washington Horse Racing Commission will incur serious budgetary problems, that it would be difficult to cooperate with the Department of Labor and Industries with regard to the new regulations on labor and industry accounts, that it would be difficult to police the ownership of horses on the back-stretch of all the race tracks; and a substantial amount of time and finances would be lost by the failure to maintain updated residence addresses of the licensees. The commission further finds that the necessary measures of security would be impaired unless this measure is passed. This regulation

shall be in effect upon filing with the code reviser for ninety days or until it is reenacted after formal notice as provided for in RCW 34.04.027.

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 Washington Horse Racing Commission as authorized in chapter 67.16 RCW.

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

APPROVED AND ADOPTED January 26, 1989.

By John Crowley
Executive Secretary

AMENDATORY SECTION (Amending Order 86-02, filed 4/21/86)

WAC 260-36-020 LICENSES REQUIRED OF JOCKEYS, APPRENTICES, OWNERS, TRAINERS. All jockeys and apprentice jockeys must first secure occupational license before accepting a mount; no trial ride will be permitted without such occupational license, except as provided in WAC 260-32-020(1). Each owner and trainer must secure occupational license before entering a horse and the racing secretary shall be required to secure such occupational license number of owner and trainer making such entry. The license fee for jockeys, apprentices, owners, and trainers shall be for ~~((three years))~~ one year and shall be ~~((~~\$45.00~~))~~ \$15.00.

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 86-02, filed 4/21/86)

WAC 260-36-030 VETERINARIANS AND PLATERS AND DENTISTS—LICENSE REQUIRED—INELIGIBLE AS TRAINERS. The license fee for veterinarians, platers and dentists shall be for ~~((three years))~~ one year and shall be ~~((~~\$45.00~~))~~ \$15.00. They must be approved by the commission before practicing their professions on the grounds of an association. They shall not be eligible to hold a license to train horses while holding said occupational license.

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 86-02 [Resolution No. 87-02], filed 4/21/86 [7/8/87])

WAC 260-36-040 REGISTRATION OF PERSONNEL OTHER THAN OWNERS, TRAINERS AND JOCKEYS—FEE. (1) Any person acting in an official capacity or any person employed on a race track ~~((other than a groom or concession employee))~~ shall be licensed by the Washington horse racing commission for

~~((three years))~~ one year and the fee shall be ~~(((\$15.00))~~ \$5.00.

~~((2))~~ All grooms and concession employees shall be licensed by the Washington horse racing commission for one year and the fee shall be \$5.00.

~~((3))~~ Any person who serves as a volunteer and is not an owner, trainer, or jockey shall be licensed by the Washington horse racing commission for one year and the fee shall be \$5.00)

~~((4))~~ (2) All employees of the Washington horse racing commission shall be exempt from any license fees but shall be issued a photo identification badge which shall be displayed in the same manner as all other licensees while in the performance of their duties at the track.

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

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

WSR 89-04-030

ADOPTED RULES

HOSPITAL COMMISSION

[Order 89-01, Resolution No. 89-01—Filed January 27, 1989]

Be it resolved by the Washington State Hospital Commission, acting at the West Coast Sea-Tac Hotel, Seattle, Washington, that it does adopt the annexed rules relating to:

- Amd WAC 261-40-150 Methodology and criteria for approval, modification, or disapproval of annual budget submittal and rates, rate schedules, other charges and changes therein.
- Amd WAC 261-40-170 Negotiated rates.

This action is taken pursuant to Notice No. WSR 89-01-009 filed with the code reviser on December 9, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 70.39.180 which directs that the Washington State Hospital Commission has authority to implement the provisions of RCW 70.39.140, 70.39.150 and 70.39.160.

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

APPROVED AND ADOPTED January 26, 1989.

By Maurice A. Click
Executive Director

AMENDATORY SECTION (Amending Order 88-07, Resolution No. 88-07, filed 10/28/88)

WAC 261-40-150 METHODOLOGY AND CRITERIA FOR APPROVAL, MODIFICATION, OR DISAPPROVAL OF ANNUAL BUDGET SUBMITTAL AND RATES, RATE SCHEDULES, OTHER

CHARGES, AND CHANGES THEREIN. The following methodology and criteria shall be utilized by the commission in reviewing and acting on annual budget submittals. The relative importance of each criterion, and the extent to which justification for variance from the methodology and criteria is accepted, is a matter of commission discretion:

(1) Whether the hospital's annual budget submittal and the rates, rate schedules, other charges, and changes therein:

(a) Are such that the commission can assure all purchasers of that hospital's health care services that the total costs of the hospital are reasonably related to the total services offered by that hospital;

(b) Are such that the hospital's costs do not exceed those that are necessary for a prudently and reasonably managed hospital;

(c) Are such that the hospital's aggregate revenues as expressed by rates are reasonably related to the hospital's aggregate costs; and

(d) Are such that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference.

(2) Whether the commission action will permit the hospital to render necessary, effective and efficient service in the public interest.

(3) Whether the commission action will assure access to necessary, effective, economically viable and efficient hospital health care capability throughout the state, rather than the solvency or profitability of any individual hospital except where the insolvency of a hospital would seriously threaten the access of the rural public to basic health care services.

(a) Rural includes all areas of the state with the following exceptions:

(i) The entire counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark, and Spokane;

(ii) Areas within a twenty-mile radius of an urban area exceeding thirty thousand population; and

(iii) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla.

(b) The commission may, at its discretion, determine that individual hospitals located in areas meeting the aforementioned criteria should not be considered rural for purposes of conducting comparative budget reviews between hospitals. In such cases, the affected hospitals will be compared against those hospitals classified as either Peer Group B or Peer Group D for comparative purposes.

(4) Whether the appropriate area-wide and state comprehensive health planning agencies have recommended approval, modification, or disapproval of the annual budget submittal, or the rates, rate schedules, other charges, or changes therein.

(5) Whether the proposed budget and the projected revenues and expenses would result in the rate structure most reasonable under the circumstances. The following

shall be considered by the commission in making that determination:

(a) For purposes of conducting comparative budget review, the commission shall assign each hospital to a peer group, as follows:

(i) Peer Group A – those hospitals designated as rural in accordance with WAC 261-40-150 (3)(a);

(ii) Peer Group B – those hospitals not designated within Peer Groups A, C, or D;

(iii) Peer Group C – those hospitals with accredited graduate medical education programs, except those that are classified within Peer Group D; and

(iv) Peer Group D – those hospitals which the commission has determined exhibit unique characteristics that make comparative analysis inappropriate.

(b) The commission shall determine whether the hospital's requested utilization statistics are reasonably attainable, based upon:

(i) The adjusted case mix value units for each hospital which were used to develop the individual hospital's operating expense component of the target dollar amount of total state-wide hospital revenue; and

(ii) Maintaining a reasonable relationship between the volumes of each hospital department with the adjusted case mix value units which were used to develop the individual hospital's operating expense component of the target dollar amount of total state-wide hospital revenue.

(A) Deviations from the volume levels determined through these procedures will be taken into account in the computation of year-end conformance, as described in WAC 261-40-150(6).

(c) The commission shall utilize a principal screen to compare the hospital's requested net patient services revenue (total rate setting revenue less deductions from revenue) per adjusted case mix value unit to the hospital's baseline net patient services revenue per adjusted case mix value unit as calculated in item (i) below and applied by items (ii), (iii), and (iv) below:

(i) Each hospital's baseline net patient services revenue per adjusted case mix value unit shall be calculated as follows:

(A) Baseline adjusted case mix value units shall be equal to the current year approved level;

(B) Baseline net patient services revenue shall be determined as an allocated amount of the net patient services revenue component of the target dollar amount of total state-wide hospital revenue.

(ii) If, after volume adjusting the revised baseline and the budget request to reasonably attainable levels of adjusted case mix value units, the requested net patient services revenue does not exceed the revised baseline, the operating expense and capital allowance sections of the hospital's annual budget submittal will not be subject to further review provided that the resulting rates meet the criteria of subsections (5)(g), (6), and (7) of this section.

(iii) If, after volume adjusting the revised baseline and the budget request to reasonably attainable levels of adjusted case mix value units, the requested net patient services revenue exceeds the revised baseline, further review of the components of operating expense and capital allowance will be conducted.

(iv) Peer Group A hospitals with requested net patient services revenue((s)) per adjusted case mix value unit which are at or below the 70th percentile for their peer group, and which are increasing from the current year approved level at a percentage change which is at or below the 70th percentile rate of change for the peer group, shall be exempted from the principal screen review and the review of operating expenses and capital allowance, so long as the budgeted adjusted case mix value units appear to be reasonably attainable.

(d) The commission shall determine whether the hospital's requested operating expenses are such that the commission can assure all purchasers of that hospital's health care services that the total costs of the services are reasonably related to the total services offered by that hospital and are such that the hospital's costs do not exceed those that are necessary for a reasonably and prudently managed hospital, based upon:

(i) Adjusting the requested level of operating expenses to reflect the adjusted case mix value units as determined according to (5)(b) of this section, utilizing the variable cost factors described in subsection (6) of this section;

(ii) Applying national hospital market basket inflation forecasts to operating expenses by natural classification. National inflation forecasts will be modified to reflect regional or state-wide economic conditions, as appropriate; and

(iii) Such other information as the commission may determine is appropriate as a basis for deviating from the standard variable cost ratios specified in subsection (6) of this section or inflation forecasts. This information shall include but not be limited to:

(A) Revisions necessary to comply with the commission's Accounting and Reporting Manual for Hospitals pursuant to WAC 261-20-030;

(B) Reasonable operating expenses related to implementation or deletion of services or programs for which certificate of need approval has been obtained, if requested;

(C) Reasonable operating expenses related to expansion or contraction of hospital capacity for which certificate of need approval has been obtained, if required;

(D) Volume adjustments of a magnitude which render the standard variable cost factors described in subsection (6) of this section inappropriate; and

(E) Reasonable operating expenses related to malpractice tail liability expense accruals, if requested, under the following conditions:

(I) The expense will be recognized in the year-end conformance calculations at the lesser of the approved or funded level;

(II) This expense will be subject to the statutory requirement that expenses be necessary for prudently and reasonably managed hospitals, including any determinations by the commission that risk sharing among multiple hospitals may result in lower costs to the consumers and purchasers of hospital health care services;

(III) If requested and approved in rates, this expense must be placed into a fund, restricted by the commission and reviewed annually, with interest earnings accruing to that fund;

(IV) Malpractice claims which are not otherwise covered by malpractice insurance which are in excess of the malpractice tail liability restricted fund should be included in rates in the year in which an actual award, resulting from litigation or negotiation, is made to the claimant: PROVIDED, That only that portion of any such awards that exceeds the restricted funds held for this purpose will be included in commission approved total rate setting revenue;

(V) In the event that a hospital changes insurance carriers, does not obtain insurance in a subsequent year, is sold, or discontinues services as a hospital as defined in RCW 70.39.020(3), the premium for malpractice tail coverage insurance must be paid out of the restricted fund: PROVIDED, That such malpractice tail coverage insurance is not otherwise made available to the hospital as a condition of previous or existing malpractice insurance policies;

(VI) Annual requests for malpractice tail liability expense accrual funding must be documented by actuarial studies or reasonable estimates, subject to verification, of the total of such liabilities and documentation of the amount of such restricted funds, with the difference between the two amounts equalling the amount that the commission will consider including in rates for that budget period: PROVIDED, That if the commission determines that full funding of the malpractice liability restricted fund within any one budget period may result in unreasonable rates or excessive rates of increase in rates, the approval of rates to achieve full funding of the restricted fund may be spread over additional years;

(VII) Once a hospital has received approval from the commission to increase patient rates to include the malpractice tail liability expense accrual, the hospital must provide an annual report to the commission from a licensed actuary or reasonable estimate, subject to verification, showing the total estimate of such liabilities as of the end of the budget year, and any excesses which may have been expensed and funded in previous years will be deducted from that year's approved total rate setting revenue;

(VIII) As a condition of approving the inclusion of malpractice tail liability expense accruals in total rate setting revenue, the commission will require that each hospital for which this expense is approved file financial statements which have been audited by an independent certified public accountant.

(F) Other consideration presented by the hospital or other concerned persons and determined to be appropriate by the commission, including the impact that the acceptance of operating expense increases above the baseline level would have on the commission's ability to achieve total state-wide revenue that are within the target dollar amount of total state-wide hospital revenue as adopted by the commission in accordance with RCW 70.39.150(6), and comparative analysis of the hospital's operating expenses with hospitals within the same peer group.

(e) The commission shall determine whether the hospital's requested capital allowance is appropriate based upon the following:

(i) Capital allowance includes a return on net property, plant and equipment (property, plant and equipment less accumulated depreciation) used in hospital operations, an allowance for working capital, and other considerations as determined to be appropriate by the commission.

(A) The value for net property, plant and equipment shall be derived from the balances at the end of the hospital's current year, as approved by the commission, and the projected balances at the end of the budget year. An average shall be calculated. The average of the net property, plant and equipment shall be the base upon which the return shall be calculated.

(I) Any capital expenditures contained in the projected balances at the end of the budget year which are subject to certificate of need approval will be excluded from the base until such time as the certificate of need has been issued by the department of social and health services.

(II) Any assets contained in net property, plant and equipment that do not relate to hospital operations, as defined in the commission's Accounting and Reporting Manual for Hospitals, pursuant to WAC 261-20-030, will be excluded from the base.

(B) A return on net property, plant and equipment as determined in (I), (II), and (III) below shall be presumed appropriate; however, the commission may vary from that return, higher or lower, where appropriate.

(I) The rate of return on equity financed net property, plant and equipment shall be calculated by averaging the reported interest rates on twenty-five year "A" rated tax-exempt bonds as reported in each issue of Rate Controls from the three months ending on August 31, of the year preceding the budget year.

(II) The rate of return on debt financed net property, plant and equipment shall be a blended average of each hospital's average interest rate on long-term debt and the rate of return on equity financed net property, plant and equipment. The blending schedule is as follows:

(aa) For hospital fiscal years beginning in 1988: Fifty percent - each hospital's average interest rate on long-term debt, fifty percent - rate of return on equity financed net property, plant and equipment;

(bb) For hospital fiscal years beginning in 1989: Twenty-five percent - each hospital's average interest rate on long-term debt, seventy-five percent - rate of return on equity financed net property, plant and equipment;

(cc) For hospital fiscal years beginning in 1990 and each year thereafter: Zero percent - each hospital's average interest rate on long-term debt, one hundred percent - rate of return on equity financed net property, plant and equipment.

(III) After computation of the return on net property, plant and equipment, allowable interest expense on long-term debt shall be deducted from the computed return.

(C) Working capital increases, if requested, shall be added to the return on net property, plant and equipment for determination of the total capital allowance. Working capital increases up to thirteen and one-half percent of the increase in net patient services revenue

from the approved budget in the current year to the approved budget as determined by the commission in the requested year shall be presumed appropriate; however, the commission may vary from that allowance, higher or lower, where appropriate.

(I) The commission may determine that a hospital which is found essential to assure access of the rural public to basic health care services is experiencing financial distress and may determine to vary from the allowance for working capital.

(II) The commission may determine to allow additional working capital where the hospital can demonstrate to the commission's satisfaction that its payer mix would require additional funding of accounts receivable. In the event that increased working capital is determined by the commission to be necessary, but the amount of working capital is found by the commission to cause an excessive impact on total revenues or rates, the commission may choose to allow the hospital to borrow the necessary cash and to allow interest on borrowed cash as an operating expense in the budget year.

(D) The commission may consider other elements in the determination of appropriate capital allowance for inclusion in total rate setting revenue. These considerations include, but are not limited to, the following elements:

(I) Rural hospitals that have been under-capitalized as determined by an average accounting age of property, plant and equipment which exceeds one hundred fifty percent of the state-wide average; and a total turnover rate of assets which exceeds the upper quartile of far west hospitals of the same size category as defined in the latest "Hospital Industry Financial Report" of the healthcare financial management association or a fixed asset turnover rate which exceeds the upper quartile of far west hospitals of the same bed size category as defined in the latest "Hospital Industry Financial Report" of the healthcare financial management association, provided that:

(aa) The total level of capital allowance for under-capitalized hospitals should not exceed one hundred twenty-five percent of the baseline level; and

(bb) The requested rate per adjusted admission, as revised to reflect the hospital's case mix index, does not exceed the peer group median; and

(cc) The resulting increase in the rate per adjusted case mix value unit does not exceed one hundred twenty-five percent of the budgeted peer group median rate of increase.

(II) Whether that portion of debt principal payments which exceeds the total depreciation expense in the budget year should be allowed;

(III) Whether the capital allowance should include equity funding or accumulation of funds for a project in the future, if the hospital's net patient services revenue per adjusted case mix value unit is at or below the median of its peer group and which is increasing from the current year approved level at a percentage change which is at or below the median rate of change of its peer group, the proposed project is consistent with the hospital's long-range plan and financing plan which have been approved by the hospital's governing body, and any

equity funding allowed in total rate setting revenue is maintained in a separate subaccount within board designated assets and cannot be used for any other purpose without prior approval of the commission;

(IV) If the hospital has an approved certificate of need and related financing consistent with the approved certificate of need and the impact on rates of the additional funding is determined not to be excessive by the commission; and

(V) Other considerations proposed by the hospital or other interested persons and determined to be appropriate by the commission, including the impact that any deviation from the baseline capital allowance will have on the commission's ability to achieve total state-wide hospital revenue that do not exceed the target dollar amount of total state-wide hospital revenue as adopted by the commission in accordance with RCW 70.39.150(6).

(f) Whether the budgeted deductions from revenue are appropriate:

(i) Contractual adjustments related to governmental programs, such as Titles V, XVIII, XIX of the Social Security Act, Department of Labor and Industries, self-insured workers' compensation, Veteran's Administration, and Indian Health Service are allowable as deductions from revenue for rate setting purposes when the hospital payment rates are established unilaterally by the program.

(ii) Contractual adjustments related to bank card discounts, negotiated rates and all other nongovernmental-sponsored patients are not allowable as deductions from revenue for rate setting purposes, except as provided for by WAC 261-40-170(4);

(iii) Contractual adjustments relating to contracts executed with the department of social and health services, under the Medicaid selective contracting program, are allowable as deductions from revenue for rate setting purposes;

(iv) Bad debts and charity will be trended as a percentage of total rate setting revenue over time and any significant changes will require justification;

(v) Administrative adjustments exceeding one-tenth of one percent of total rate setting revenue will require justification; and

(vi) Deductions from revenue may be recomputed based on determinations in all other areas of the budget.

(g) Whether the reviews performed in accordance with (a), (b), (c), (d), (e) and (f) of this subsection result in rates, rate schedules, other charges, and changes therein which are the most reasonable under the circumstances.

(i) Net patient services revenue per adjusted case mix value unit should not exceed the 70th percentile of the peer group revenue screens as adjusted for each hospital's case mix index unless the hospital demonstrates to the commission's satisfaction that the relatively high rates are acceptable;

(ii) After allocating deductions from revenue and capital allowance to the various hospital revenue centers as a constant percentage of operating expenses, cross subsidization shall not exceed plus or minus five percent

of expenses for rate setting, unless the commission concurs with a specific hospital request for larger levels of cross subsidization or the hospital is a basic service hospital as defined by the commission.

(iii) The commission may consider any other information it determines is appropriate as the basis for deviating from these criteria including the relative level of deductions from revenue experienced by the hospitals;

(iv) If the rates are not approved as requested, including the disapproval of requested cross-subsidization levels, the hospital must submit revised rates to the commission within twenty days of the date of service of the decision and order. Upon notification that the rates are in accordance with the decision and order, the approved rates are the maximum revenue that a hospital may receive for each unit of service, except for such rate changes as may be necessary to reflect differences between approved and actual volumes and deductions from revenue. Variable costs associated with changes in volumes will be determined in accordance with the variable cost ratios as described in (6)(d) below.

The following is effective for hospital fiscal years beginning on or after January 1, 1987.

(6) Whether the rates implemented and revenues collected by the hospital in the previous budget year conformed to the applicable commission determination for that year.

(a) Conformance will be determined by comparing, at the end of the budget year, actual revenues for the budget year to commission-approved revenues, on the basis of the aggregate rate per adjusted case mix value unit. The revenues may be modified, where appropriate, for volume variance between budgeted and actual levels of adjusted case mix value units.

(b) Actual allowable, rather than budgeted, deductions from revenue will be used in the conformance calculation, except that deductions from revenue related to differential resource use, as provided for by WAC 261-40-170(4), shall be considered a fixed cost when considering year-end conformance.

(c) The approved capital allowance shall be considered a fixed cost when considering year-end conformance.

(d) Only that portion of total operating costs designated as variable according to the following schedule will be adjusted for volume variance:

(i) Peer Group A and specialty hospitals having fewer than fifty beds; fixed costs - eighty percent, variable costs - twenty percent;

(ii) Peer Group B and specialty hospital having from fifty to one hundred seventy-five beds; fixed costs - sixty-five percent, variable costs - thirty-five percent; and

(iii) Peer Group C and specialty hospitals having more than one hundred seventy-five beds; fixed costs - fifty percent, variable costs - fifty percent.

(e) Alternatively, the hospital may submit suggested ratios of fixed costs to variable costs by natural classification of expense. Upon approval by the commission, such approved ratios will be used only prospectively to determine allowable operating expense variance due to volume changes.

(f) The hospital may submit any proposed justifying information to explain deviations/variances from approved revenues.

(i) Any proposed justifying information must include at least the following supporting information:

(A) The exact nature and extent of the factors contributing to excess revenue;

(B) The date at which hospital management became aware of the factors contributing to excess revenue;

(C) The date at which hospital management increased rates above the allowable level taking into account volume changes and actual deductions from revenue;

(D) An explanation of efforts to reduce other components of the budget to offset the factors contributing to the excess revenues; and

(E) An explanation of why the hospital did not seek a budget amendment.

(ii) In no event will increased operating expenses be accepted as justification if the volume adjusted allowable operating expenses equal or exceed the actual level.

(iii) In no event will proposed justifying information be accepted if the commission determines that the factors contributing to excess revenues could have been controlled by hospital management.

(iv) In no event will proposed justifying information be accepted if the commission determines that the factors contributing to excess revenues could have been anticipated by the hospital or could have been identified by the hospital in sufficient time to submit a budget amendment in accordance with WAC 261-20-045.

(v) In no event will capital allowance in excess of the approved level be accepted as justification.

(vi) Hospitals will be allowed to retain any actual capital allowance in excess of the approved level that results from cost effective practices as defined as, and measured by, actual operating expenses that are below the volume adjusted approved operating expenses.

(g) Staff shall notify each hospital found to be out of conformance within sixty days of receiving all applicable information necessary to compute the hospital's year-end conformance calculation. If the commission determines that a hospital's revenues have not conformed to the applicable determinations for that year, a decision and order will be issued reducing the hospital's current budget and rates by the amount that actual revenues exceed allowable revenues.

(7) Whether the hospital or its medical staff either adopts or maintains admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage or who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is or is likely to be less than the anticipated charges for or costs of such services; and

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

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 86-01, Resolution No. 86-01, filed 5/16/86)

WAC 261-40-170 NEGOTIATED RATES. (1) After July 1, 1985, any hospital may negotiate with and charge any particular payer or purchaser rates that are less than those approved by the commission, if:

- (a) The rates are cost justified; and
- (b) The rates do not result in any shifting of costs to other payers or purchasers in the current or any subsequent year; and
- (c) The rates do not result in any policies which limit access to individuals who are unable to pay or for whom the hospital receives less than anticipated charges for or costs of necessary health care services; and
- (d) All the terms of such negotiated rates are filed with the commission within ten working days and made available for public inspection.

(2) Within ten working days after the contract is signed, the hospital must submit full disclosure of each negotiated rate, including:

- (a) The names of the parties to the negotiation;
- (b) The period of time covered by the agreement;
- (c) The negotiated rate or the amount of the reduction from the rate approved by the commission; and
- (d) Any other terms or conditions related to the negotiated rates.

(3) Following publication of a negotiated rate as required by WAC 261-40-170(8), each hospital shall make the information reported in WAC 261-40-170(2) for that negotiated rate available to the public upon request.

(4) The differential between billed charges, based on the hospital's full established rates, and the payment received, based on the negotiated rate, must be separately identified for each negotiated contract and reported on lines 23-31, Form SS-8 deductions from revenue. These amounts are "memo" only and may not be allocated to other payers or purchasers in the current or any subsequent year; provided that, the commission may, upon request from a hospital, approve a deduction from revenue as necessary to reflect differential resource use of General Services, account codes 8310 through 8490, Fiscal Services, account codes 8510 through 8570, Medical Records, account code 8690, and Health Care Review, account code 8710. Upon approval of the deduction from revenue, rates shall be set accordingly. Any hospital requesting such a deduction from revenue shall submit documentation sufficient to demonstrate the differences in resource use among payers or groups of payers. Rates reflecting such deductions from revenue shall only be applicable to the current budget period.

(5) The commission shall review a negotiated rate upon the request of any concerned party. Such a request shall include the following:

- (a) Identification of the party requesting the review;
- (b) Identification of the particular negotiated rate involved;
- (c) A clear statement of the violation alleged, e.g., it is not cost justified; it results in a cost shift to other

payers or purchasers; or it does not otherwise conform with the provisions of RCW 70.39.140;

(d) A statement of how the party is affected by the negotiated rate;

(e) Evidence supporting the party's claim; and

(f) The action requested of the commission.

(6) If upon review the negotiated rate is found to contravene any provision of RCW 70.39.140, the commission may disapprove such rate. Such disapproval shall be effective as of the date of the commission's order disapproving the negotiated rate. Once a negotiated rate is disapproved by the commission, the hospital may no longer charge such rate.

(7) The commission will publish on meeting agendas a list of all negotiated rates filed by hospitals, including the names of the parties to the negotiation, within thirty days after filing.

(8) The provisions of WAC 261-40-170 apply to all negotiated rates in effect on or after July 1, 1985.

WSR 89-04-031

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 27, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Corrections intends to adopt, amend, or repeal rules concerning regional jail camp, adopting chapter 137-25 WAC:

New	WAC 137-25-010	Establishment of regional jail camp.
New	WAC 137-25-020	Eligibility for transfer.
New	WAC 137-25-030	Rules and regulations.
New	WAC 137-25-040	Waiver.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 14, 1989.

The authority under which these rules are proposed is RCW 72.64.100.

The specific statute these rules are intended to implement is RCW 72.64.110.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1989.

Dated: January 27, 1989

By: Chase Riveland
Secretary

STATEMENT OF PURPOSE

Title and Purpose of Rule: Adopting chapter 137-25 WAC, Regional jail camp; new sections WAC 137-25-010 Establishment of regional jail camp; 137-25-020 Eligibility for transfer; 137-25-030 Rules and regulations; and 137-25-040 Waiver.

Statutory Authority: RCW 72.64.100.

Statute Implemented: RCW 72.64.110.

Summary of Rule and Reason for Proposed Rule: Sets forth the process for transferring county inmates to the Department of Corrections. Establishes McNeil Island Corrections Center Annex as a regional jail camp.

Person Responsible for Drafting: Gary L. Banning, Administrator, Office of Contracts and Regulations, P.O. Box 9699, Mailstop FN-61, Olympia, Washington 98504, (206) 753-5770; Implementing and Enforcing: Larry Kincheloe, Director, Division of Prisons, Department of Corrections, P.O. Box 9699, Mailstop FN-61, Olympia, Washington 98504, (206) 753-1508.

Person or Organization Proposing the Rule: Department of Corrections.

Agency Comments and Recommendations: None.

This rule is not necessitated by federal law or federal or state court action.

This rule will have no economic impact on small businesses.

Chapter 137-25 WAC
REGIONAL JAIL CAMP

WAC

- 137-25-010 Establishment of regional jail camp.
- 137-25-020 Eligibility for transfer.
- 137-25-030 Rules and regulations.
- 137-25-040 Waiver.

NEW SECTION

WAC 137-25-010 ESTABLISHMENT OF REGIONAL JAIL CAMP. (1) The secretary hereby declares the McNeil Island Corrections Center Annex to be a regional jail camp, as provided by RCW 72.64.100.

(2) All transfers of county offenders to the regional jail camp shall be made pursuant to a contract between the county and the department, in accordance with RCW 72.64.110.

(3) The department shall not accept direct commitments to its regional jail camp from the courts.

NEW SECTION

WAC 137-25-020 ELIGIBILITY FOR TRANSFER. (1) Offenders referred for transfer by the county to a regional jail camp shall meet the following criteria:

- (a) Sentenced felons only;
- (b) Three months or longer to serve on jail term;
- (c) No major management/disciplinary problems;
- (d) Able-bodied, no medical or mental health problems necessitating care beyond that which can be provided at the annex;
- (e) No contagious diseases; and
- (f) No high escape risks.

(2) The county shall be responsible to screen the offenders it refers to ensure that these criteria are met.

NEW SECTION

WAC 137-25-030 RULES AND REGULATIONS. All rules, regulations, and departmental and institutional policies which govern the confinement, care, treatment, and employment of offenders shall apply to county offenders transferred to a regional jail camp.

NEW SECTION

WAC 137-25-040 WAIVER. The secretary may waive any provisions of this chapter if he or she deems such waiver to be in the best interests of the department.

WSR 89-04-032

ADOPTED RULES

DEPARTMENT OF CORRECTIONS

[Order 88-02—Filed January 27, 1989—Eff. March 1, 1989]

I, Chase Riveland, director of the Department of Corrections, do promulgate and adopt at Olympia,

Washington, the annexed rules relating to Prisons—Discipline, chapter 137-28 WAC:

- Amd WAC 137-28-006 Definitions.
- Amd WAC 137-28-025 General infractions.
- Amd WAC 137-28-030 Serious infractions.
- Amd WAC 137-28-035 Reporting to law enforcement authorities.
- Amd WAC 137-28-080 Temporary prehearing confinement.
- Amd WAC 137-28-090 Conduct of hearing.
- New WAC 137-28-094 Lesser included and related infractions.
- Amd WAC 137-28-097 Staff advisors.
- New WAC 137-28-107 Sanctions and mental status.

This action is taken pursuant to Notice No. WSR 89-01-104 filed with the code reviser on December 21, 1988. These rules shall take effect at a later date, such date being March 1, 1989.

This rule is promulgated pursuant to RCW 72.09.010 [72.01.010] and 72.09.010 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 27, 1989.

By Chase Riveland
Secretary

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-006 DEFINITIONS. For the purposes of this chapter the following words shall have the following meanings:

(1) "Promptly" means to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

(2) "Working days" means normal Monday through Friday work days, excluding weekends and holidays.

(3) "Director" means the director of the division of prisons of the Washington state department of corrections or his/her designee.

(4) "Superintendent" means a superintendent of an adult correctional institution or his/her designee.

(5) (~~"Directors review committee"~~) means a committee appointed by the director.

(~~6~~) "Earned time" means that portion of the inmate's available sentence reduction which, by department of corrections' policy is earned specifically for program participation.

(~~7~~) (6) "Good-conduct time credits" means that portion of an inmate's potential reduction to his/her minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which is gained by not receiving serious infractions as listed in WAC 137-28-030.

(~~8~~) (7) "Earned-early release" means that combined earned time and good-conduct time credits which, together, allow an inmate to earn up to one-third reduction off the minimum term established by the board of prison terms and paroles or sentencing court.

(~~9~~) (8) "Adult correctional institution" and "institution" mean a facility identified in RCW 72.01.050(2) and any similar facility hereafter established.

~~((10))~~ (9) "Hearing officer" means a ~~((trained))~~ correctional staff member designated by a superintendent to conduct disciplinary hearings.

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-025 GENERAL INFRACTIONS. Any of the following types of behavior shall constitute a general infraction:

- 051 - Unauthorized possession of money or other negotiable instruments totaling less than five dollars;
- 052 - Loaning of property for profit;
- 053 - Possession of anything not authorized for retention or receipt by an inmate and/or not issued to him/her by regular institutional channels;
- 055 - ~~((Intentionally))~~ Mutilating, altering, defacing or destroying items issued by the state the value of which is less than five dollars;
- 103 - Refusing to obey a lawful order of any staff member;
- 104 - Unexcused absence from work or any assignment;
- 110 - Theft of food;
- 202 - Abusive language directed to a staff member;
- 203 - Lying ~~((or knowingly providing a false statement))~~ to a staff member;
- 205 - Participating in a meeting or gathering that has been disapproved in advance, in writing, by the institution administrative staff;
- 210 - Being in an area identified by an institution as an area where the presence of inmates is unauthorized;
- 211 - ~~((Intentional))~~ Failure to follow published safety or sanitary regulations;
- 212 - Using any equipment or machinery which is not specifically authorized;
- 213 - Using any equipment or machinery contrary to instructions or posted safety standards;
- 214 - ~~((Intentional))~~ Failure to stand count;
- 251 - Smoking where prohibited;
- 301 - Failure to keep one's person and one's quarters in accordance with published and posted standards, rules, or regulations;
- 302 - Tattooing or self-mutilation;
- 303 - Unauthorized use of mail or telephone;
- 305 - Correspondence or conduct with a visitor in violation of published and posted regulations;
- 351 - Giving, selling, or trading money or anything of value to, or accepting or purchasing money or anything of value from another inmate, a member of his/her family, or his/her friend, except when authorized;

- 400 - Attempting to commit any of the above offenses, or aiding another person to commit any of the above offenses shall be considered the same as the commission of the offense itself.

AMENDATORY SECTION (Amending Order 85-06, filed 4/1/85)

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 which results in the hospitalization of the person assaulted;
- 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))~~ Atttempting or causing an innocent person to be penalized or proceeded against by lying to a staff member;
- 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, fire-arm, weapon, sharpened instrument, knife, or ~~((unauthorized tool))~~ poison or components thereof;
- 603 – Possession, introduction, transfer, or use of any narcotics, controlled substance~~((, or related paraphernalia))~~; possession of more than 15 grams of marijuana; 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 when 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 or developing an unauthorized club or organization;
- 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 posthearing 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;
- 663 – Strongarming; use of physical force or coercion for personal gain against any inmate or staff member;
- 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;
- 702 – Possession of an unauthorized tool;
- 703 – Being under the influence of intoxicants, or possession of less than 15 grams of marijuana, or under the influence of an unauthorized drug, narcotic, controlled substance, or other intoxicant; or
- 704 – Assaulting any person which does not result in the hospitalization of the person assaulted.

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-035 REPORTING TO LAW ENFORCEMENT AUTHORITIES. (1) It shall be the duty of the superintendent to report any violation of a federal, state, or local law to law enforcement authorities.

(2) If a violation has been reported to law enforcement authorities, ~~((the))~~ an inmate who has been charged with an infraction shall not be questioned about the incident, outside of a formal disciplinary hearing or an administrative segregation hearing, held pursuant to this chapter, until after it has been determined that no prosecution will occur or until a finding of guilt is made.

(3) The provisions in this rule shall not preclude the reasonable segregation of the inmate in accordance with administrative segregation rules appearing in this chapter.

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-080 ~~((PREHEARING PROCEDURES—RESTRICTION OF INMATE))~~ TEMPORARY PREHEARING CONFINEMENT. ~~((+))~~ Prior to and during a hearing on a serious infraction:

~~(a) An inmate in minimum security status may be restricted to a security area without loss of his/her classification status when there is a reasonable belief that he/she is a substantial security risk; or~~

~~(b) An inmate who is reasonably believed to be of danger to himself/herself or to others, in serious danger from others, or a danger to the order and security of the institution may, upon written verification by the shift commander that such danger is reasonable believed to exist, be restricted to his/her own room or cell or placed in segregation. Such restriction must be approved by the superintendent within twenty-four hours after the confinement;~~

~~(c) An inmate shall not be confined or segregated for more than three working days unless there is an intervening hearing on the incident involved or the inmate or the institution, for good cause, require additional time not to exceed seventy-two hours to prepare its or his/her case for the hearing, or there is an administrative segregation hearing in accordance with the provisions of this chapter.~~

~~(2) Confinement or restriction as authorized in this rule shall not limit the right of an inmate to prepare an adequate defense to the charge(s) against him/her.~~

~~(3) An inmate confined or restricted as authorized in this section shall be entitled to the same rights as those committed to segregation by the hearing officer following the hearing, as set forth in WAC 137-28-110.~~

~~(4) An inmate confined or restricted as authorized in this section shall receive credit for time served in such manner if he/she is subsequently found guilty of the offense by the hearing officer.)~~ (1) Prior to and during a hearing, an inmate may be temporarily confined to his/her cell or room or moved to a higher custody level, including segregation, when it is reasonably believed that the inmate presents a risk to the security of the institution, an escape, a danger to himself/herself or to others, or is in danger from others.

(2) Restricts made under this rule shall be made by the shift commander who shall in writing verify the grounds for temporary prehearing confinement exist and the nature of such grounds. All restricts to a segregation unit must also be approved by the superintendent/acting superintendent within one working day of the confinement.

(3) Confinement imposed under this rule shall not be for more than three working days unless either the inmate or the institution, for good cause, requires additional time not to exceed three working days to prepare for the disciplinary hearing, or there is an administrative segregation hearing in accordance with the requirements of chapter 137-32 WAC.

(4) While confinement under this rule is temporary and only suspends an inmate's previous custody status, inmates confined shall be subject to the same rules and restrictions as other persons in the unit or status under which the inmate is temporarily confined.

(5) An inmate confined under this rule shall be afforded reasonable opportunities to adequately prepare defenses to the charge(s) against him/her.

(6) An inmate confined or restricted as authorized under this rule shall receive credit for time served in such manner if subsequently found guilty.

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-090 CONDUCT OF HEARING.

(1) The hearing officer shall assure that the inmate is ((competent to understand)) capable of understanding the charge against him/her ((and)), the nature of the proceedings, and ((to participate therein)) is able to adequately take part in the hearing. ((He/she)) If there is reason to doubt the inmate's understanding or ability, the hearing officer may order a postponement of the hearing ((to secure a report on the competence of the inmate, or take such other action as will assure the fairness and orderliness of the hearing)) in order to obtain additional information on the inmate's mental status. If the report indicates the inmate is not able to understand and/or take part in the proceedings, the hearing officer may proceed with the hearing with the inmate being fully assisted by a staff advisor appointed under WAC 137-28-097.

(2) The inmate shall be present at all stages of the hearing except during the decisional deliberations and any inquiry the hearing officer may wish to make concerning the identity of unidentified witnesses. An inmate may waive his/her presence at a hearing.

(3) The inmate shall be informed that if he/she chooses not to testify in the hearing, his/her silence may be used against him/her.

(4) The clerk shall be responsible for presenting all appropriate paperwork to the hearing officer, but shall not be responsible for orally presenting facts and circumstances surrounding the incident.

(5) The hearing officer shall divide the hearing into two stages consisting of:

(a) Determination of the guilt or innocence of the inmate; and

(b) Determination of further action to be taken.

(6) Evidence, testimony, questions, and examinations shall be limited to facts relevant to the alleged infraction, or disposition if an infraction has been found.

(7) Where institution staff members are witnesses against the inmate, ((every effort shall be made to have such witnesses present to testify at the hearing. PROVIDED, HOWEVER, The written statements of such staff members may be considered in their absence upon a showing of good cause)) a written statement from the staff member may be considered by the hearings officer instead of in-person testimony, except where the hearing officer determines that the staff member's presence is necessary to an adequate understanding of the issues in the case.

(8) The hearing officer shall have the authority to cross-examine the staff member reporting the infraction.

(9) The inmate shall be allowed to call witnesses and present documentary evidence in his/her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals unless the witness and/or information desired to be presented is

deemed to be irrelevant, immaterial, unnecessarily duplicative of other information before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the inmate's case. The testimony of all witnesses from outside the institution shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer will call the witnesses or continue the hearing until such time as the witness is available. If the witness is unavailable, the hearing officer may, in his/her discretion, consider the written testimony previously submitted.

(10) The inmate may question witnesses against him/her in the discretion of the hearing officer. If the hearing officer determines that an inmate witness would be subject to risk of harm if his/her identity were disclosed, testimony of the inmate witness may be introduced by the testimony of a staff member to whom the information was provided by the inmate witness and/or the affidavit of the inmate witness. If the staff member to whom the inmate witness provided information is, for good cause, unavailable, the written statement of such uninvolved staff member may be used.

(11) The hearing officer shall, out of the presence of all inmates, inquire as to the identify of any anonymous inmate witness, and as to how the testifying staff member received such information. The refusal of the staff member presenting the testimony of the unidentified inmate witness to identify such inmate shall make the testimony inadmissible unless the refusal to identify the witness is approved by ~~((a staff member with the rank of captain or above based on that staff member's determination of))~~ the superintendent or acting superintendent who personally determines that there is good cause for nondisclosure and that the informant is reliable. This decision may not be delegated beyond the superintendent or acting superintendent. The hearing officer must make an independent determination as to the reliability of informant and credibility of information offered, except that the hearing officer may accept an assurance of credibility from ~~((a staff member))~~ the superintendent or acting superintendent who approves the nondisclosure of identity of the inmate witness.

NEW SECTION

WAC 137-28-094 LESSER INCLUDED AND RELATED INFRACTIONS. The hearing officer is authorized to find an inmate guilty of a lesser included offense. Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a new proceeding and allow the hearing officer to enter a finding of guilty or not guilty and sanction on the offense.

AMENDATORY SECTION (Amending Order 84-13, filed 8/14/84, effective 10/10/84)

WAC 137-28-097 STAFF ADVISORS. (1) An inmate may have a staff advisor appointed by the hearing officer to prepare for a hearing. The hearing officer

shall consider such factors as the literacy, the complexity of the issue and the inmate's overall ability to speak for himself/herself and adequately present his/her case, prior to assigning a staff advisor. The assignment of a staff advisor will only be necessary when considering such factors, and should not be construed to mean that a staff advisor must be assigned. The staff advisor will be a staff member and not involved in the observation of the infraction. The staff advisor may attend the hearing, but shall not be responsible for presentation of the inmate's case, questioning witnesses, or making other oral presentation unless requested to do so by the hearing officer.

(2) Where a hearing is postponed because of the mental status of an inmate pursuant to this chapter, an advisor shall be appointed immediately and instructed to fully investigate and prepare the inmate's case, should the inmate later be unable to prepare or present his/her own case.

(3) A list of approved staff advisors will be maintained by the superintendent.

~~((3))~~ (4) Staff advisors shall be provided with:

(a) Copies of the written decisions of the hearing officer and the superintendent in cases in which the staff advisors are involved;

(b) An opportunity to have private conversation with inmates they are representing;

(c) Access to written information to be used by the hearing officer in the fact-finding stage as far in advance of the hearing as is reasonably possible; and

(d) Reasonable access to all witnesses.

NEW SECTION

WAC 137-28-107 SANCTIONS AND MENTAL STATUS. In determining an appropriate sanction, the hearing officer should give consideration to the inmate's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the inmate in light of such factors. The hearing officer may request the assistance of other department staff in determining appropriate sanctions.

WSR 89-04-033
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
[EO 89-01]

SEXUAL HARASSMENT

Sexual harassment is unacceptable in the work place and I am issuing this Order to serve as a reminder to agencies and employees, plus to ensure that we continue to emphasize policies against sexual harassment.

It is the public policy of the State to provide and maintain a working environment free from sexual harassment for its employees and all citizens participating in State programs. Sexual harassment is a form of sex discrimination and is an unlawful employment practice under RCW 49.60 (Washington State Law Against Discrimination) and (Federal Law) Title VII of the Civil Rights Act of 1964.

Sexual harassment occurs through unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- A. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The best tools for the elimination of sexual harassment are prevention by education and effective intervention.

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, by the authority vested in me, do hereby order and direct each agency to:

- A. Update or develop and disseminate among all agency employees and contractors a policy that:
 - 1. defines and prohibits sexual harassment in the workplace;
 - 2. includes procedures which describe how the agency will address concerns of employees who are affected by sexual harassment in the workplace; and
 - 3. identifies appropriate sanctions and/or disciplinary actions;
- B. Respond promptly and effectively to sexual harassment concerns;
- C. Conduct training and education for all employees in order to prevent and eliminate sexual harassment in the organization;
- D. Inform employees of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60, or with the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

The Department of Personnel shall incorporate into their Affirmative Action Program Guidelines, criteria addressing compliance with this Executive Order. This Order shall supersede a prior Executive Order 83-12.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia this 20th day of January, A.D, nineteen hundred and eighty-nine.

Booth Gardner

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

WSR 89-04-034
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF WILDLIFE
 [Filed January 30, 1989]

The Department of Wildlife hereby withdraws the proposed amendment of WAC 232-12-271 Conditions for issuance of permits for aquatic plants or releasing of wildlife. The CR-1 was filed December 7, 1988, Notice No. WSR 88-24-060.

Tom Juelson
Acting Assistant Director
Wildlife Management Division

WSR 89-04-035
PROPOSED RULES
CLARK COLLEGE
 [Filed January 30, 1989]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that the Clark Community College District No. 14 intends to adopt, amend, or repeal rules concerning the amending of existing rules regarding public records;

that the institution will at 4:00 p.m., Wednesday, March 15, 1989, in the Board Room, Baird Administration Building, Clark College, 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 42.17.250 - [42.17.]340.

The specific statute these rules are intended to implement is RCW 41.17.260(3) [42.17.260(3)].

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before March 7, 1989.

Dated: January 25, 1989
By: Anthony D. Birch
Dean of Administrative Services

STATEMENT OF PURPOSE

Title: Clark College rules regarding public records.

Statutory Authority: RCW 42.17.250 - [42.17.]340 and to implement RCW 42.17.260(3).

Purpose: Clark College rules regarding public records have been established to provide for the efficient and proper disclosure of public records as required by the laws and regulations of the state of Washington. Rules regarding public records to be amended include the following: Office hours (public records available); requests for public records; review of denials or public records requests; records index; and request for public records form.

Effect: This action is to amend existing WAC 132N-276-070, 132N-276-080, 132N-276-110, 132N-276-130 and 132N-276-150.

Reason: Primarily, to achieve proper rules allowing for the policy of making all existing maintained indexes for college use available for public inspection and copying (an alternative noted in RCW 42.17.260(3)), but not provide a general index (as provided for in RCW 42.17.260(2)) due to undue burden and interference with college operations.

Person Responsible for Drafting, Implementation, and Enforcement: Mr. Tony Birch, Dean of Administrative Services, Administration Building, Room 164, Clark College, 1800 East McLoughlin Boulevard, Vancouver, WA 98663, (206) 699-0123.

Organization Proposing Rule: Clark College, Community College District No. 14, a public agency.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Whether Rule is Necessary as Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: None.

AMENDATORY SECTION (Amending Order 77-3 d, filed 8/29/77)

WAC 132N-276-070 OFFICE HOURS. Public records shall be available for inspection and copying during the customary office hours of the district. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and published college holidays.

AMENDATORY SECTION (Amending Order 77-3 d, filed 8/29/77)

WAC 132N-276-080 REQUESTS FOR PUBLIC RECORDS. In accordance with the requirements of RCW 42.17.250 through 42.17.340 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the district's staff, if the public records officer is not available, at the administrative office of the district during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;

(d) If the matter requested is referenced within ~~((the))~~ a current index maintained by the ~~((records officer))~~ college, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to ~~((the district's))~~ a current index, an appropriate description of the record requested.

(2) The public records officer shall reply to written requests before the close of business on the day following the date of the request by providing copies of the requested records or by informing the requester in writing of:

- (a) The availability of the requested record(s); and
- (b) A definite time and place (within five business days) when such requested record(s) may be inspected or copies provided.

(3) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending Order 77-3 d, filed 8/29/77)

WAC 132N-276-110 REVIEW OF DENIALS OR PUBLIC RECORDS REQUESTS. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the president of the college. The president or his designee shall immediately consider the matter and either affirm or reverse such denial or consult with the attorney general to review the denial. In any case, the request shall be returned with a final decision~~((;))~~ within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the district has returned the petition with a decision, provided the requested records, or until the close of the second business day following the denial or inspection has been reached, whichever occurs first.

AMENDATORY SECTION (Amending Order 77-3 d, filed 8/29/77)

WAC 132N-276-130 RECORDS INDEX. ~~((+))~~ ~~INDEX. The district has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since June 30, 1973:~~

- ~~(a) Final options, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;~~
- ~~(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;~~
- ~~(c) Administrative staff manuals and instructions to staff that affect a member of the public;~~
- ~~(d) Planning policies and goals, and interim and final planning decisions;~~
- ~~(e) Factual staff reports and studies, factual consultants' reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and~~
- ~~(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.~~

~~(2) AVAILABILITY. The current index promulgated by the district shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.))~~
The college shall make available for public inspection and copying all indexes maintained for college use under the same rules and on the same conditions as are applied to public records.

The college board of trustees has adopted a formal order stating that providing a master index of all public records would be unduly burdensome and interfere with college operations.

AMENDATORY SECTION (Amending Order 77-3 d, filed 8/29/77)

WAC 132N-276-150 APPENDIX A—FORM—REQUEST FOR PUBLIC RECORD.

((REQUEST FOR PUBLIC RECORD TO Community College District No. 14

(a) Signature (Please Print) Signature Name of Organization, if Applicable Mailing Address of Applicant Phone Number

(b) Date Request Made at Community College District No. 14 Time of Day Request Made

(c) Nature of request

(d) Identification reference on current index (Please Describe)

(e) Description of record, or matter, requested if not identifiable by reference to the Community College District No. 14's Current Index

Request: Approved Date By Public Records Officer

Date Denied

Reasons for Denial

Referred to Date

By Public Records Officer))

Request for Public Record(s) Clark College Administrative Services

This form is to be used to initiate a request for copying or inspection of public records as prescribed in RCW 42.17.250 through 42.17.340. The form is to be completed and sent to the Clark College Administrative Services Department.

Name (Please Print) Signature

Name of Organization (If Applicable) Phone Number

Mailing Address

Date and Time Request Made

Record(s) Requested

Instructions for Receipt of Record(s)

Date and Time Request Received Request: Approved Denied Date Date Reasons for Denial Referred to: Date: By: Public Records Officer Date and Time Public Record(s) Provided

WSR 89-04-036 NOTICE OF PUBLIC MEETINGS CONVENTION AND TRADE CENTER [Memorandum—January 27, 1989]

The regular meeting of the board of directors of the Washington State Convention and Trade Center scheduled for Wednesday, February 1, 1989, has been cancelled.

The next regular meeting of the board will be held on Wednesday, March 1, 1989, at 3 p.m. at the Convention Center.

WSR 89-04-037 ADOPTED RULES DEPARTMENT OF WILDLIFE (Wildlife Commission) [Order 378—Filed January 30, 1989]

Be it resolved by the State Wildlife Commission, acting at Olympia, Washington, that it does adopt the annexed rules relating to Amendment to 1988-90 Washington game fishing regulations—Mayfield Lake, WAC 232-28-61713.

This action is taken pursuant to Notice No. WSR 88-24-038 filed with the code reviser on December 6, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 77.12.040 and is intended to administratively implement that statute.

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

APPROVED AND ADOPTED January 13, 1989. By Curt Smitch Director for Dr. James M. Walton Chairman, Wildlife Commission

NEW SECTION

WAC 232-28-61713 AMENDMENT TO 1988-90 WASHINGTON GAME FISH REGULATIONS — MAYFIELD LAKE. Notwithstanding the provisions of WAC 232-28-617, it is unlawful to possess more than one tiger muskellunge, or tiger muskellunge less than 30 inches long.

WSR 89-04-038

**NOTICE OF PUBLIC MEETINGS
TRANSPORTATION IMPROVEMENT BOARD**

[Memorandum—January 27, 1989]

MEETING NOTICE FOR FEBRUARY AND MARCH 1989

TRANSPORTATION IMPROVEMENT BOARD
TRANSPORTATION BUILDING
OLYMPIA, WASHINGTON 98504

Work session, 3:00 p.m., Thursday, February 16, 1989, at the Transportation Building, Room 3F-21, Olympia.

TIB meeting, 9:30 a.m., Friday, February 17, 1989, at the Transportation Building, Olympia.

TIB meeting, 9:30 a.m., Friday, March 17, 1989, at the Transportation Building, Olympia.

WSR 89-04-039

**PROPOSED RULES
HIGHLINE COMMUNITY COLLEGE**

[Filed January 31, 1989]

Notice is hereby given in accordance with the provisions of RCW 28B.19.030, that Highline Community College intends to adopt, amend, or repeal rules concerning various sections of chapter 132I-120 WAC, Student rights and responsibilities, to ensure complete compliance with concerns and suggestions raised by the Joint Administrative Rules Review Committee. These modifications adjust procedures for processing administrative withdrawal of students having mental disorders;

that the institution will at 10:00 a.m., Thursday, March 9, 1989, in the Board Room, Building 25, Highline Community College, Des Moines, Washington, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is RCW 28B.50.140.

The specific statute these rules are intended to implement is RCW 28B.50.140(13).

Interested persons may submit data, views, or arguments to this institution in writing to be received by this institution before March 9, 1989.

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:

Edward M. Command, Vice-President
Highline Community College
2400 South 240th
P.O. Box 98000
Des Moines, WA 98198-9800
(206) 878-3710 (203)

Dated: January 27, 1989

By: Edward M. Command
Vice-President

STATEMENT OF PURPOSE

Title and Number of Rule Chapter and Sections: Chapter 132I-120 WAC, Student rights and responsibilities; includes WAC 132I-120-315 Right of assembly; 132I-120-400 Authority and responsibility for discipline; 132I-120-405 Violations; 132I-120-425 Emergency withdrawal; and 132I-120-430 Involuntary administrative withdrawal.

Statutory Authority: RCW 28B.50.140.

Specific Statute that Rule is Intended to Implement: RCW 28B.50.140(13).

Summary of the Rules: These rules describe students' rights and responsibilities of conduct and the procedures for ensuring student rights and compliance. These modifications adjust procedures for processing administrative withdrawal of students having mental disorders.

Reasons Supporting the Proposed Rule: To meet technical and legal concerns and suggestions made by the Joint Administrative Rules Review Committee.

Agency Person Responsible for Drafting, Implementation and Enforcement of Rule: Edward M. Command, Vice-President, Highline Community College, 2400 South 240th Street, P.O. Box 98000, Des Moines, WA 98198-9800, 878-3710.

This rule is not proposed to comply with federal law or federal or state court action.

STUDENT RIGHTS AND RESPONSIBILITIES**AMENDATORY SECTION** [(Amending Order 022, filed 3/23/88)]

WAC 132I-120-315 RIGHT OF ASSEMBLY. (1) Students have the right to conduct or may participate in any assembly as defined in WAC 132I-120-030(1) on facilities that are generally available to the public provided that such assemblies:

- (a) Are conducted in an orderly manner;
- (b) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or regular functions of the college;
- (c) Do not unreasonably interfere with pedestrian or vehicular traffic; or

~~((d) Do not cause mental, verbal, or physical abuse of another person in the college community; or~~

~~(e))~~ (d) Do not cause destruction or damage to college property, including library materials, or private property on college facilities.

(2) Any student group or student organization which wishes to schedule an assembly must reserve the college facilities in the office of the coordinator of student activities.

(3) Assemblies which violate these rules may be ordered to disperse by the college in accordance with Washington state statutes.

(4) ~~((A student who fails to disperse when an assembly is ordered to disperse, in accordance with Washington state statutes, is subject to disciplinary action.))~~ A non-student who violates any provision of the rule will be referred to civilian authorities for criminal prosecution.

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

AMENDATORY SECTION [(Amending Order 022, filed 3/23/88)]

WAC 132I-120-400 AUTHORITY AND RESPONSIBILITY FOR DISCIPLINE. (1) The board of trustees acting in accordance with Washington state statutes does by written order delegate to the president of the college authority to administer disciplinary action. All disciplinary action in which there is a recommendation that a student be suspended or expelled from the college shall be acted upon by the president as defined in WAC 132I-120-030 (1)(g). ~~((The president shall have no authority to delegate this decision.))~~

(2) Administration of the disciplinary procedure is the responsibility of the dean of students.

(3) The instructor is responsible for conduct in the classroom and is authorized to take such steps as are necessary when behavior of the student interrupts the normal classroom procedure. When such behavior may be so serious as to result in expulsion from the class, the instructor must report the infraction in writing to the dean of students at the earliest opportunity.

(4) The student has the right to appeal any disciplinary action of an instructor to the dean of students.

(5) Students bringing children on campus are governed by existing state laws concerning their responsibility for the children.

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

AMENDATORY SECTION [(Amending Order 022, filed 3/23/88)]

WAC 132I-120-405 VIOLATIONS. (1) No college disciplinary action shall be imposed on a student except in accordance with these rules.

(2) Student performance reflecting honest and reliable behaviors is necessary in order to make an accurate appraisal of the student's competencies. Any test-taking behavior observed which may be interpreted by the test proctor as a violation of test confidentiality will result in the test being removed from the student; the consequences of such behavior will be determined on an individual basis by the instructor/faculty and can result in dismissal from the course with a failing grade. Some examples of unacceptable behavior during an exam include but are not limited to:

(a) Talking, whispering or otherwise interacting with another student;

(b) Using notes or books unless authorized by instructor;

(c) Looking at another student's test or test answers.

(3) Written assignments and/or electronic media assignments need to reflect original and appropriately referenced content. Electronic media includes, but is not limited to, computers, word processors and audio-visual equipment. Any falsification of the student's work is viewed seriously by the college. The consequences of such behavior will be determined on an individual basis by the instructor/faculty and can result in dismissal from the course with a failing grade.

(4) Disciplinary action may result from the commission or from the aiding or abetting of violations on college facilities or of the commission or omission in violation of civil or criminal law on college facilities such as:

(a) All forms of dishonesty including, but not limited to, knowingly furnishing false information to the college, and ~~((foregoing))~~ forging, altering or using college documents or instruments of identification with intent to defraud.

(b) Verbal or physical abuse of any person or conduct which unlawfully threatens movement or bodily harm or endangers the health or safety of any person.

(c) Destruction, damage, or misuse of college property or private property including library materials.

(d) Theft or conversion of college property or private property.

(e) Unauthorized use or access to college computers and other electronic media.

(f) Conduct which unreasonably disrupts the educational process of the college as defined in Washington state statutes.

(g) Lewd or indecent conduct as defined by Washington state statute.

(h) Disorderly conduct.

(i) Failure to comply with lawful directions of college personnel acting in performance of their duties.

(j) Interference by force or violence, or by threat of force or violence, with any administrator, faculty member, or student of the college who is in the peaceful discharge or conduct of his or her duties or studies.

(k) Possession, consumption, or furnishing of alcoholic beverages.

(l) Possession, consumption, or furnishing of any narcotic drug or dangerous drug as ~~((currently))~~ defined by law ~~((or hereinafter amended.))~~ except when use or possession is prescribed by an authorized medical doctor or dentist.

~~((m) Failure to disperse when an assembly is ordered to disperse as defined by Washington state statute.))~~

~~((n) ((m)) Disobedience to the notice against trespass as defined in accordance with Washington state statute.~~

~~((o) ((n)) Failure to comply with the following regulations governing firearms and weapons:~~

~~((i) It shall be the policy of the college that carrying, exhibiting, displaying, or drawing any weapon, such as a dagger, sword, knife, or any other cutting or stabbing instrument or club or any other weapons apparently capable of producing bodily harm and/or property damage is prohibited on or in college facilities.~~

~~((ii) Explosives, incendiary devices, or any weapon facsimile are prohibited on or in college facilities.~~

~~((iii) It shall be the policy of the college that carrying of firearms on college facilities is prohibited except and unless the firearm is registered with the campus security for a specific period of time that the firearm is carried on campus.~~

~~((iv) The above regulations shall not apply to equipment or material owned, used, or maintained, by the college; nor will they apply to law enforcement officers.~~

~~((p))~~ ~~((o) Violation of published college regulations including those related to entry and use of college facilities, the rules in these rules, and any other regulations which may be enacted with these rules.~~

~~((q))~~ ~~((5) All rules hereinafter approved by the board pursuant to preceding Washington state statutes shall be in writing and shall be published, or posted in such a manner as to furnish adequate notice of their contents to students affected by such rules.~~

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

AMENDATORY SECTION [(Amending Order 022, filed 3/23/88)]

WAC 132I-120-410 DEFINITION OF DISCIPLINARY ACTION. The following disciplinary action may be imposed upon students according to the procedure outlined in WAC 132I-120-420.

(1) Admonition: An oral statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Warning: Notice in writing that continuation or repetition of conduct deemed wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.

(3) Disciplinary probation: Formal action placing specific conditions upon the student's continued attendance and warning the student that further misconduct may subject him/her to dismissal.

(4) Restitution: Reimbursement for damage to or misappropriation of property. This may take the form ~~((or))~~ of appropriate service or other compensation.

(5) ~~((Involuntary))~~ ~~((a))~~ Administrative withdrawal: Exclusion from classes and other privileges or activities in accordance with WAC 132I-120-430.

(6) Interim emergency withdrawal: Exclusion from classes and other privileges or activities in accordance with WAC-132I-120-425.

(7) Suspension: Exclusion from classes and other privileges or activities as set forth in the notice for a definite period of time.

(8) Dismissal: Termination of student status for an indefinite period of time. Conditions of reinstatement, if any, shall be stated in the order of dismissal.

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

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

AMENDATORY SECTION [(Amending Order 022, filed 3/23/88)]

WAC 1321-120-425 EMERGENCY WITHDRAWAL. (1) An interim emergency withdrawal may be implemented immediately by the president, upon recommendation of the dean of students, if the dean of students determines that a student's behavior poses an imminent danger of:

- (a) Causing serious physical harm to the student or others; or,
- (b) Causing significant property damage, or directly and substantially impeding the lawful activities of others.

(2) A student subject to an interim emergency withdrawal shall be given written notice of the suspension either by personal delivery or by certified mail, to include a copy of these standards and procedures. An interim emergency withdrawal shall specify the length of term of the withdrawal and/or the conditions for reinstatement. The student shall have the right of appeal to the discipline committee in accordance with WAC 1321-120-435 or in the case of a mental disorder or suspected mental disorder may initiate ~~((involuntary))~~ administrative withdrawal procedures in accordance with WAC 1321-120-430.

(3) Any student subject to an interim emergency withdrawal shall be given an opportunity to appeal personally before the dean of students, or designee, within two days from the effective date of the interim emergency withdrawal, in order to review the following issues only:

- (a) The reliability of the information concerning the student's behavior;
- (b) Whether or not the student's behavior poses a danger of causing imminent, serious physical harm to the student or others, causing significant property damage, or directly and substantially impeding the lawful activities of others.

(4) As a result of the meeting between the dean of students and the student, the dean of students may:

- (a) Recommend to the president either continuation or termination of the interim emergency withdrawal;
- (b) Initiate disciplinary procedures in accordance with WAC-1321-120-420 or;
- (c) Initiate ~~((involuntary))~~ administrative withdrawal procedures in accordance with WAC 1321-120-430.

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

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

AMENDATORY SECTION [(Amending Order 022, filed 3/23/88)]

WAC 1321-120-430 ((INVOLUNTARY)) ADMINISTRATIVE WITHDRAWAL. (1) A student may be subject to ~~((involuntary))~~ administrative withdrawal from Highline Community College if it is determined that the student is suffering from a mental disorder, and, as a result of the mental disorder:

- (a) Engages, or threatens to engage, in behavior which poses a danger of causing physical harm to self or others; or
- (b) Engages, or threatens to engage, in behavior which would cause significant property damage, or directly and unreasonably impede the lawful activities of others.

(2) These standards do not preclude disciplinary action in accordance with provisions of other portions of these rules.

(3) A student accused of violating college disciplinary regulations may be diverted from the standard disciplinary process and withdrawn in accordance with the provisions of WAC 1321-120-430, if the student voluntarily introduces or wishes to introduce relevant evidence of any mental disorder and, as a result of mental disorder:

- (a) Lacks the capacity to respond to pending disciplinary charges; or
- (b) Did not know the nature or wrongfulness of the conduct at the time of the offense.

(4) Students subject to disciplinary charges who wish to voluntarily introduce relevant evidence of any mental disorder must so inform the dean of students in writing at least two days prior to any disciplinary hearing. If the dean determines that the evidence may have merit, the case shall be resolved in accordance with the standards and procedures specified in WAC 1321-120-430. Thereafter, if it is determined that the student does not meet the criteria set forth in WAC 1321-120-430(3), the case will be returned to the standard disciplinary process. Evidence of any mental disorder may not be admitted into evidence or considered by the dean of students or the College Discipline Committee in any disciplinary proceeding.

(5) The dean of students may recommend that a student receive a mental health evaluation by any competent mental health professional, if the dean reasonably believes that the student may meet the criteria set forth in WAC 1321-120-430(1), or if a student subject to disciplinary charges wishes to introduce relevant evidence of any mental disorder.

(6) Students wishing to introduce evidence of a mental disorder shall be given five days to complete the mental health evaluation, unless an extension is granted by the dean in writing. Days shall be counted from either the date on which the dean recommended an evaluation or from the date on which the student requested to introduce evidence of a mental disorder.

(7) Any pending disciplinary action may be withheld until the evaluation is completed, in the discretion of the dean of students.

(8) An informal hearing, as provided in WAC 1321-120-430(9), will be held within ten days after either the student has been evaluated by the appropriate mental health professional or the student has requested such a hearing. Students who have been withdrawn on an interim emergency withdrawal will remain withdrawn on an interim basis pending completion of the informal hearing, but will be allowed to enter upon the campus to attend the hearing, or for other necessary purposes, as authorized in writing by the dean of students.

(9) Students subject to an ~~((involuntary))~~ administrative withdrawal shall be accorded an informal hearing before the dean of students, or a designee. The following guidelines will be applicable:

(a) Students will be informed of the time, date, and location of the informal hearing, in writing, either by personal delivery or certified mail, at least two days in advance.

(b) The entire case file, including an evaluation prepared pursuant to WAC 1321-120-430(5), and the names of prospective witnesses, will be available for inspection by the student in the dean of student's office during normal business hours. The file, which should be available at least two days before the informal hearing, need not include the personal and confidential notes of any institutional official or participant in the evaluation process.

(c) The informal hearing shall be conversational and non-adversarial. Formal rules of evidence will not apply. The dean of students or designee shall exercise active control over the proceedings to avoid needless consumption of time and to achieve the orderly completion of the hearing. Any person who disrupts the hearing may be excluded.

(d) The student may choose to be assisted by a family member and a competent mental health professional, or, in lieu of a mental health professional, by a member of the faculty or staff of the institution. Furthermore, the student may be accompanied by legal counsel, although the role of counsel will be limited to providing legal advice to the student.

(e) Those assisting the student, except for legal counsel, will be given reasonable time to ask relevant questions of any individual appearing at the informal hearing, as well as to present relevant evidence.

(f) Whenever possible, the student will be expected to respond to questions asked by the dean or designee. Students who refuse to answer on the grounds of the Fifth Amendment privilege may be informed that the dean or designee could draw a negative inference from their refusal which might result in their dismissal from the institution, in accordance with these standards and procedures.

(g) The informal hearing may be conducted in the absence of a student who fails to appear after proper notice.

(h) The mental health professional who prepared the evaluation pursuant to WAC 1351-120-430(5) procedures may appear at the informal hearing, and respond to relevant questions, upon request of any party, if the dean or designee determines that such participation is essential to the resolution of an issue in the case.

(i) The dean or designee may permit a college official, and the mental health professional who prepared the evaluation, to appear at the informal hearing and to present evidence in support of any withdrawal recommendation. Such evidence will not be presented by legal counsel for the college.

(j) The informal hearing shall be tape recorded by the dean or designee. The tape(s) shall be kept with the pertinent case file for as long as the case file is maintained by the institution.

(k) A written recommendation to the president shall be rendered by the dean or designee within five days after completion of the informal hearing. The president shall have five working days to make a final decision. The president's written decision, which should be mailed or personally delivered to the student, should contain a statement of reasons for any determination leading to ~~((involuntary))~~ administrative withdrawal and the length of time of the administrative withdrawal as

determined by the President, upon the advice of mental health professionals. The student should also be advised as to when a petition for reinstatement would be considered, along with any conditions for reinstatement.

(1) ~~((The decision of the president shall be final and conclusive and not subject to appeal.))~~ All decisions under these proceedings are subject to the same rights and appeals as other informal decisions.

(10) Reasonable deviations from these procedures will not invalidate a decision or proceeding unless significant prejudice to a student may result.

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

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

WSR 89-04-040

NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Memorandum—January 30, 1989]

At the January 1989 regular commission meeting, the commissioners of the Washington State Human Rights Commission decided to hold a special commission meeting, executive session only, to discuss personnel matters. The meeting will be held by telephone conference call, which will be arranged through the Olympia office of the Washington State Human Rights Commission, 402 Evergreen Plaza Building, 711 South Capitol Way, on February 10, 1989, beginning at 11:00 a.m.

WSR 89-04-041

NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Memorandum—January 30, 1989]

The Washington State Human Rights Commission will hold its next regular commission meeting in Olympia. The meeting on February 22, will be held at the Evergreen Plaza Building, Second Floor Conference Room, 711 South Capitol Way, Olympia, beginning at 7:00 p.m. and will be a training and work session. The regular business meeting will be held at the Evergreen Plaza Building, Second Floor Conference Room, 711 South Capitol Way, Olympia, as well, beginning at 9:30 a.m. on February 23. The topic of discussion for the February meeting will be legislative matters.

WSR 89-04-042

PROPOSED RULES DEPARTMENT OF REVENUE

[Filed January 31, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Revenue intends to adopt, amend, or repeal rules concerning hazardous substance tax, amending WAC 458-20-252.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on February 17, 1989.

The authority under which these rules are proposed is RCW 82.32.300.

This notice is connected to and continues the matter in Notice No. WSR 89-01-035 filed with the code reviser's office on December 13, 1988.

Dated: January 31, 1989

By: Garry G. Fujita
Assistant Director

WSR 89-04-043

ADOPTED RULES BUILDING CODE COUNCIL

[Order 88-10—Filed January 31, 1989—Eff. July 1, 1989]

Be it resolved by the Washington State Building Code Council, acting at Angle Lake Fire Hall, 2929 South 200th Street, Seattle, WA, that it does adopt the annexed rules relating to the Washington State Energy Code, chapter 51-12 WAC, as proposed by interested parties.

This action is taken pursuant to Notice No. WSR 88-24-037 filed with the code reviser on December 6, 1988. These rules shall take effect at a later date, such date being July 1, 1989.

This rule is promulgated pursuant to RCW 19.27.074, 19.27A.010 and [19.27A.]020 which directs that the Washington State Building Code Council has authority to implement the provisions of chapter 19.27A RCW.

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

APPROVED AND ADOPTED January 20, 1989.

By Marc Sullivan
Chair

AMENDATORY SECTION (Amending Resolution No. 86-17, filed 9/23/86)

WAC 51-12-102 SECTION 102. SCOPE.

This Code sets forth minimum requirements for the design of new buildings and structures that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy by regulating their exterior envelopes and the selection of their HVAC, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy.

Buildings shall be designed to comply with the requirements of either Chapter 4, 5, or 6 of this Code.

- (a) Exempt Buildings. Buildings and structures or portions thereof meeting any of the following criteria shall be exempt from the building envelope requirements of Sections

402 to 405 inclusive, and Sections 601 and 605, but shall comply with all other requirements for building mechanical systems, service water heating and lighting systems.

1. Buildings and structures or portions thereof whose peak design rate of energy usage is less than three and four tenths (3.4) Btu/h per square foot or one point zero (1.0) watt per square foot of floor area for all purposes.
 2. Buildings and structures or portions thereof which are neither heated according to the definition of heated space in chapter 2, nor cooled, by a depletable energy source, including buildings heated with wood with installed back-up or supplemental heating utilizing a depletable energy source provided that: The depletable energy use for space conditioning complies with the requirements of exemption (1).
 3. Greenhouses that are isolated from any conditioned space and not intended for occupancy.
- (b) Application to Existing Buildings.
1. Additions to Existing Buildings. Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, provided that the new additions shall conform to the provisions of this Code.
 2. Historic Buildings. The Building Official may modify the specific requirements of this Code for historic buildings and require in lieu thereof alternate requirements which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings which have been specifically designated as historically significant by the state or local governing body, or listed in "The National Register of Historic Places" or which have been determined to be eligible for listing.
 3. Alterations and Repairs. All alterations and repairs to buildings or portions thereof originally constructed subject to the requirements of this 1986 Code shall conform to the provisions of this Code without exception. For all other existing buildings, initial tenant alterations shall comply with the new construction requirements of this Code. Other alterations and repairs may be made to existing buildings and moved buildings without making the entire building comply with all of the requirements of this Code for new buildings, provided the

following requirements are met:

- A. Building Envelope. The result of the alterations or repairs (1) improves the energy efficiency of the building and (2) complies with the overall average thermal transmittance values of the gross area of the elements of the exterior building envelope in Table 4-2, 4-3, or 4-4 of Chapter 4 or the nominal R values in Tables 6-1 or 6-5 and U values in Table 6-2 or glazing requirements in Table 6-5 of Chapter 6.

EXCEPTIONS:

1. Untested storm windows may be installed over existing glazing, however, where glass and sash are being replaced in low-rise residential buildings, class 75 glazing shall be installed where there is an electric resistance space heating system and class 90 glazing shall be installed where there is any other space heating system.
 2. Where the structural elements of the altered portions of roof/ceiling, wall or floor are not being replaced, these elements shall be deemed to comply with this Code if all existing framing cavities which are exposed during construction are filled to the full depth with batt insulation or insulation having an equivalent nominal R value while, for roof/ceilings, maintaining the required space for ventilation. Existing roof/ceilings, walls and floors without framing cavities need not be insulated.
- B. Building Mechanical Systems. Those parts of systems which are altered or replaced shall comply with this Code.

EXCEPTION: For low-rise residential buildings not initially subject to the requirements of this Code, replacement heat pumps shall meet class 2 efficiencies specified in Table 6-3 and replacement central combustion heating equipment shall be equipped with spark ignition. All other replacement combustion heating equipment including horizontal furnaces shall have a minimum AFUE of .65.

- C. Service Water Heating. Those parts of systems which are altered or replaced shall comply with Section 420.
- D. Lighting. Those parts of systems which are altered or replaced in buildings initially constructed subject to the requirements of

this Code shall comply with Sections 425 and 426. Other remodels or replacements of lighting systems which are part of a substantial remodel shall comply with Sections 425 and 426. In addition, other remodels or replacements which affect the lighting system of an entire floor shall comply with Sections 425 and 426. For all other remodels or replacements which affect the lighting system of less than an entire floor those parts of systems which are altered or replaced shall comply with the switching requirements of Section 425 and, unless they comply with the lighting power budgets of Section 426 shall either maintain or reduce the watts per square foot of installed lighting.

- E. **Change From Unheated to Heated Space.** Changes from unheated to heated space for buildings, structures or portions thereof shall be permitted if the building, structure or portion thereof is brought into compliance with the building envelope requirements as per Section 102(b)3 of this Code, but in no case, less than those building envelope requirements in effect at the time of the initial construction of the building.

The Building Official may approve designs of alterations or repairs which do not fully conform with all of the requirements of this Code when in his/her opinion full conformance is physically impossible and/or economically impractical and: (1) the alteration or repair improves the energy efficiency of the building; or (2) the alteration or repair is energy efficient and is necessary for the health, safety, and welfare of the general public.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-206 SECTION 206. F. ~~((RE-SERVED))~~ **FIREPLACE.** (1) Any permanently installed masonry fireplace or;

(2) Any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-219 SECTION 219. S. **SEQUENCE.** A consecutive series of operations.

SERVICE SYSTEMS. All energy-using systems in a building that are operated to provide services for the occupants or processes housed therein, including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering or similar functions.

SERVICE WATER HEATING. Supply of hot water for domestic or commercial purposes other than comfort heating.

SERVICE WATER HEATING DEMAND. The maximum design rate of energy withdrawal from a service water heating system in a designated period of time (usually an hour or a day).

SHADED. External protection of glazing area from direct solar radiation by use of devices permanently affixed to the structure or by an adjacent building, topographical feature or vegetation.

SHALL. Where shall is used in specific provision, that provision is mandatory.

SHOULD. Not mandatory but desirable as good practice.

SKYLIGHT. A clear or translucent panel or slope set in the plane of a roof to admit daylight into the interior of a building.

SLAB ON GRADE (in a heated space). Any portion of a slab poured in contact with the ground where the top of the finished slab is less than 12 inches below the final elevation of the nearest exterior grade.

SOLAR ENERGY SOURCE. Source of thermal, chemical or electrical energy derived directly from conversion of incident solar radiation.

SOLID FUEL BURNING APPLIANCE. Any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including woodstove and fireplace.

SUBSTANTIALLY REMODELED OR REHABILITATED. Any alteration or restoration of a building or structure within any 12 month period, the cost of which exceeds 60 percent of the current replacement value of the particular building or structure.

SYSTEM. A combination of equipment and/or controls, accessories, interconnecting means, and terminal elements by which energy is transformed so as to perform a specific function, such as HVAC, service water heating or illumination.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-223 SECTION 223. W X Y Z.

WINDOW THERMAL TESTING. U values for Class 75 or Class 60 glazing shall be the tested values for thermal transmittance due to conduction resulting from either the American Architectural Manufacturers Association (AAMA) 1503.1-1980 test procedure or the American Society for Testing Materials (ASTM) C236 or C976 test procedures; testing shall be conducted under established winter horizontal heat flow test conditions using the 15 mph wind speed and product sample sizes specified under AAMA 1503.1-1980. Testing shall be conducted by a certified testing laboratory. Sealed insulating glass, where used, shall conform to ASTM E-774-81 level C or better.

WOODSTOVE. A solid fuel burning device other than a fireplace, including any fireplace insert, wood

stove, wood burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat output less than one million British thermal units per hour. The term "woodstove" does not apply to cook stoves.

EXCEPTION: U values for site built fixed lites shall use window thermal test results when available. If tested results are unavailable, the Building Official shall require documentation based on a tested value of a comparable window.

ZONE. A space or group of spaces within a building with heating and/or cooling requirements sufficiently similar so that comfort conditions can be maintained throughout by a single controlling device.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-305 SECTION 305. VENTILATION.

The outdoor air quantities specified in Table 3-1 for each type of occupancy shall be used as a minimum for design. These quantities are for 100 percent outdoor air ventilating systems, but a reduction to 33 percent of the specified values for recirculating HVAC systems is permitted. In no case, shall the outdoor air quantities be less than 5 CFM per person.

The minimum requirements for openable area to provide natural ventilation are specified in the ((1985)) 1988 Uniform Building Code as adopted by the state of Washington. All kitchens and bathrooms without natural ventilation in Group R Occupancy spaces shall be provided with exhaust fans or other ventilation systems approved by the building official having a capacity of not less than that specified in Table No. 3-1. (See UBC Section 1205.) Ventilation requirements for other occupancy spaces may be met using operable openings as provided in the UBC.

Where a mechanical ventilation system is installed, the mechanical ventilation system shall be capable of supplying to each zone ventilation air with the minimum outdoor air quantities specified in Table No. 3-1 based upon the greater of the occupant densities in that table

or the design occupant density. The outdoor air shall be ducted directly to every air handling unit in each zone not provided with sufficient openable area for natural ventilation. The maximum outdoor air quantities used as the basis for calculating the heating and cooling design loads shall not exceed three times the quantities specified in Table No. 3-1.

In all parking garages, other than open parking garages as defined in UBC 709(b), used for storing or handling of automobiles operating under their own power and on all loading platforms in bus terminals, ventilation shall be provided at 1.5 cfm per square foot of gross floor area. The building official may approve an alternate ventilation system designed to exhaust a minimum of 14,000 cfm for each operating vehicle. Such system shall be based on the anticipated instantaneous movement rate of vehicles but not less than 2.5 percent (or one vehicle) of the garage capacity. Automatic CO sensing systems may be submitted for approval.

In all buildings used for the repair of automobiles, each repair stall shall be equipped with an exhaust extension duct, extending to the outside of the building, which if over ten feet in length, shall mechanically exhaust 300 cfm. Connecting offices and waiting rooms shall be supplied with conditioned air under positive pressure.

Combustion air requirements shall conform to the requirements of Chapter 6 of the UMC.

Mechanical refrigerating equipment and rooms storing refrigerates shall conform to the requirements of Chapter 15 of the UMC.

EXCEPTION: If outdoor air quantities other than those specified in Table No. 3-1 are used or required because of special occupancy or process requirements, source control of air contamination, health, and safety or other standards, the required outdoor air quantities shall be used as the basis for calculating the heating and cooling design loads.

Table No. 3-1 is an excerpt from ASHRAE Standard 62-73, "Natural and Mechanical Ventilation" published in 1973. Standard 62-73 is no longer in print. ASHRAE now recommends the use of Standard 62-81 "Ventilation for Acceptable Indoor Air Quality" for improved ventilation design.

TABLE NO. 3-1
AIR QUANTITIES FOR VENTILATION

	Estimated persons/ 1000 sq. ft. floor area. Use only when design oc- cupancy is not known	Required ventilation air, cubic feet per minute per human occu- pant, (when the number is bracketed, refer to the notes).	Notes
1. RESIDENTIAL (Private dwelling places, single or multiple units)			
Single Unit Dwellings			
General Living Areas, Bedrooms	5	5	
Kitchens	—	20	1
Baths, Toilet Rooms	—	20	1
Basements, Utility Rooms	—	5	
Multiple Unit Dwellings			
General Living Areas, Bedrooms	7	5	
Kitchens	—	20	1
Baths, Toilet Rooms	—	20	1
Basements, Utility Rooms	—	5	
Garages	—	(1.5)	2
2. COMMERCIAL			
General Requirements—Merchandising (Apply to all forms unless specially noted)			
Sales Floors and Showrooms			
(Basement and Street Floors)	30	7	
(Upper Floors)	20	7	
Storage Areas (Serving Sales Floors and Storerooms)			
Dressing Rooms	—	7	
Malls and Arcades	40	7	
Shipping and Receiving Areas	10	15	
Warehouses	5	7	
Elevators	—	7	
Food Markets, Supermarkets, etc.			
Meat Processing Rooms	10	5	3
Drug Stores			
Pharmacists' Work Rooms	10	20	
Specialty Shops			
Pet Shops	—	(1.0)	2
Florists	10	5	4
Greenhouses	1	5	4, 5
Banks (see Sales Floors and Offices)			
Vaults	—	5	
Food Services			
Dining Rooms	70	10	
Kitchens	20	30	6

	Estimated persons/ 1000 sq. ft. floor area. Use only when design oc- cupancy is not known	Required ventilation air, cubic feet per minute per human occu- pant, (when the number is bracketed, refer to the notes).	Notes
Cafeterias, Short-Order, Drive-Ins, Seating Areas, and Queuing Areas	100	30	
Bars (Predominantly Stand-up)	150	30	
Cocktail Lounges	100	30	
Hotels, Motels, Resorts			
Bedrooms (Single, Double)	5	7	
Living Rooms (Suites)	20	10	
Baths, Toilets (Attached to Bedrooms)	-	20	7
Corridors	5	5	
Lobbies	30	7	
Conference Rooms (Small)	70	20	
Assembly Rooms (Large)	140	15	
Public Rest Rooms	100	15	
Cottages (Treat as Single- Unit Dwellings)	-	-	
(See also Food Services, Industrial, Merchandising, Barber and Beauty Shops, Garages for Associated Hotel/Motel Services)			
Dry Cleaners and Laundries			
Commercial	10	20	8, 9
Storage/Pickup Areas	30	7	
Coin-operated	20	15	9
Barber, Beauty and Health Services			
Beauty Shops (Hair dressers)	50	25	
Reducing Salons (Exercise Rooms)	20	25	
Sauna Baths and Steam Rooms	-	5	
Barber Shops	25	7	
Photo Studios			
Camera Rooms, Stages	10	5	10
Darkrooms	10	10	
Shoe Repair Shops (Combined Workrooms/ Trade Areas)	10	10	
Garages, Auto Repair Shops, Service Stations			
Parking Garages (Enclosed)	-	(1.5)	2
Auto Repair Workrooms (General)	-	(1.5)	2, 11
Service Station Offices	20	7	
Theaters			
Ticket Booths	-	5	
Lobbies, (Foyers and Lounges)	150	20	
Auditoriums (in Motion Picture Theaters, Legitimate Theaters, Lecture, Concert and Opera Halls-no smoking)	150	5	
Auditoriums (Smoking Permitted)	150	10	

	Estimated persons/ 1000 sq. ft. floor area. Use only when design oc- cupancy is not known	Required ventilation air, cubic feet per minute per human occu- pant, (when the number is bracketed, refer to the notes).	Notes
Stages (with Proscenium and Curtains)	70	10	10, 12
Green Rooms and Workrooms	20	10	
Public Rest Rooms	100	15	
Ballrooms			
Public	100	15	
Bowling Alleys (Seating Area)	70	15	
Gymnasiums and Arenas			
Playing Floors—minimal or No Seating	70	20	
Locker Rooms	20	(30)	13
Spectator Areas	150	20	
Ramps, Foyers, and Lobbies	150	10	
Pool Rooms	25	20	
Amusement Parlors	25	20	
Tennis, Squash, Handball Courts (Indoor)	—	20	
Swimming Pools (Indoor)	25	15	14
Ice-skating and Curling Rinks	70	10	14
Roller Rinks	70	10	14
Transportation			
Waiting Rooms	50	15	
Garages	—	(1.5)	2
Ticket and Baggage Areas, Corridors and Gate Areas	50	15	
Control Towers	50	25	
Hangers	2	10	15
Public Rest Rooms	100	15	
Platform	150	10	
Concourses	150	10	
Repair Shops	—	10	
Offices			
General Office Space	10	15	
Conference Rooms	60	25	
Drafting Rooms, Art Rooms	20	7	
Doctor's Consultation Rooms	—	10	
Waiting Rooms (Doctors, Employment Agencies, etc.)	30	10	9
Lithographing Rooms	20	7	9
Diazo Printing Rooms	20	7	
Computer Rooms	20	5	
Keypunching Rooms	30	7	
Public Rest Rooms	100	15	

	Estimated persons/1000 sq. ft. floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).	Notes
Communication			
TV/Radio Broadcasting Booths,			
Radio Studios	20	30	10
Motion Picture and TV Stages	20	30	
Pressrooms	100	15	
Composing Rooms	30	7	
Engraving Shops	30	7	
Telephone Switchboard Rooms (Manual)	50	7	
Telephone Switchgear Rooms (Automatic)	-	7	
Teletypewriter/Facsimile Rooms	-	5	
3. INSTITUTIONAL			
Schools			
Classrooms	50	10	
Multiple Use Rooms	70	10	16
Laboratories	30	10	
Craft Shops, Vocational Training Shops	30	10	16
Music, Rehearsal Rooms	70	10	
Auditoriums	150	5	
Gymnasiums	70	20	
Libraries	20	7	
Common Rooms, Lounges	70	10	
Offices	10	7	
Lavatories	100	15	
Locker Rooms	20	(30)	13
Lunchrooms, Dining Halls	100	10	
Corridors	50	15	
Utility Rooms	3	5	
Dormitory Bedrooms	20	7	
Hospitals, Nursing, and Convalescent Homes			
Foyers	50	20	
Hallways	50	20	
Single, Dual Bedrooms	15	10	
Wards	20	10	
Food Service Centers	20	35	
Operating Rooms, Delivery Rooms	-	20	17
Ready Rooms, Recovery Rooms	-	15	17
Amphitheaters	100	10	
Physical Therapy Areas	20	15	
Autopsy Rooms	10	30	
Incinerator Service Areas	-	5	18
For Shops, Restaurants, Utility Rooms, Kitchens, Bathrooms and Other Service Items (See Hotels)			

	Estimated persons/ 1000 sq. ft. floor area. Use only when design oc- cupancy is not known	Required ventilation air, cubic feet per minute per human occu- pant, (when the number is bracketed, refer to the notes).	Notes
Research Institutes			
Laboratories (Light-duty, Nonchemical)	50	15	16
Laboratories (Chemical)	50	15	16
Laboratories (Heavy-duty)	50	15	16
Laboratories (Radioisotope, Chemically and Biologically Toxic)	50	15	16
Machine Shops	50	15	
Darkrooms, Spectroscopy Rooms	50	10	
Animal Rooms	20	40	17
Military and Naval Installations			
Barracks	20	7	
Toilets/Washrooms	100	15	
Shower Rooms	100	10	
Drill Halls	70	15	
Ready Rooms, MP Stations	40	7	
Indoor Target Ranges	70	20	19
Museums			
Exhibit Halls	70	7	
Workrooms	10	10	
Warehouses	5	5	
Prisons (See also Gymnasiums, Libraries, Applicable Industrial Areas)			
Cell Blocks	20	7	
Eating Halls	70	15	
Guard Stations	40	7	
Veterinary Hospitals			
Kennels, Stalls	20	25	17
Operating Rooms	20	25	17
Reception Rooms	30	10	
4. ORGANIZATIONAL			
Churches, Temples			
(See Theaters, Schools and Offices)	-	-	
Legislative Halls			
Legislative Chambers	70	20	
Committee Rooms and Conference Rooms	70	20	
Foyers, Corridors	50	20	
Offices	10	10	
Press Lounges	20	20	
Press/Radio/TV Booths	20	20	
Public Rest Rooms	20	15	
Private Rest Rooms	-	20	
(For Food Service, Utilities, etc., see Hotels)			

	Estimated persons/1000 sq. ft. floor area. Use only when design occupancy is not known	Required ventilation air, cubic feet per minute per human occupant, (when the number is bracketed, refer to the notes).	Notes
Police and Fire Stations (See Prisons and Military Installations)	—	—	
Survival Shelters	—	5	17

- 1 Installed capacity for intermittent use.
- 2 cfm per sq. ft. of floor area.
- 3 Spaces maintained at low temperatures (-10 to 50° F) are not covered by these requirements unless the occupancy is continuous. Ventilation from adjoining spaces is permissible. When the occupancy is intermittent, infiltration will normally exceed the ventilation requirement. (See Chapter 23, Refrigeration Load, ASHRAE Handbook of Fundamentals, 1972.)
- 4 Maximum allowable concentration (MAC) for sulfur dioxide = 30 microgram/cubic meter.
- 5 Ventilation to optimize plant growth, temperature, humidity, etc. will almost always be greater than shown.
- 6 Exhaust to outside; source control as required.
- 7 Installed capacity for intermittent use.
- 8 Exhaust to outside; source control as required.
- 9 Installed equipment must incorporate positive exhaust and control (as required) of undesirable contaminants (toxic or otherwise).
- 10 Thermal effects probably determine requirements.
- 11 Stands where engines are run must incorporate systems for positive engine exhaust withdrawal.
- 12 Special ventilation will be needed to eliminate stage effect contaminants.
- 13 cfm/locker.
- 14 The same for air-supported structures.
- 15 Special solvent and exhaust problems handled separately.
- 16 Special contaminant control systems may be required.
- 17 Special requirements or codes may determine requirements.
- 18 Special exhaust systems required.
- 19 Floor area behind firing line only.

NOTE: In the case of an occupancy type not specifically mentioned above, the ventilation air requirements shall be determined by the Building Official. Such determination shall be based on the most comparable occupancy type specified.

AMENDATORY SECTION (Amending Resolution No. 86-17, filed 9/23/86)

WAC 51-12-402 SECTION 402. OVERALL THERMAL PERFORMANCE AND BUILDING ENVELOPE REQUIREMENTS.

- (a) The stated U_o value of any one element of a building, such as roof/ceiling, wall or floor,

- may be increased and the U_o value for other components decreased provided that the overall heat gain or loss for the entire building envelope does not exceed the total resulting from the conformance to the stated U_o values.
- (b) Where return air ceiling plenums are employed, the roof/ceiling assembly area shall:
 - 1. For thermal transmittance purposes, not include the ceiling proper nor the plenum space as part of the assembly; and
 - 2. For gross area purposes, be based upon the interior face of the upper plenum surface.
- (c) U_o values listed in Tables 4-2, 4-3, and 4-4 refer to component assembly only. Credit for buffering from adjacent unheated spaces is not allowed when calculating U_o values.
- (d) Exemption for Passive Solar features. Glazing areas which meet all of the following criteria may be exempted from the U_o calculations. Exempted glazing shall not be included in the gross wall area.
 - 1. For buildings that have Electric Resistance heating systems, the glazing area must have a tested thermal transmittance (U) value of less than .61. For Other heating systems, the glazing area need not be tested, but must be double glazed. (See Section 403(e).)
 - 2. The south glazing shall be oriented within 45 degrees of true south.
 - 3. The glazing shall be mounted at least 60 degrees up from the horizontal.
 - 4. The glazing shall have a transmission coefficient greater than or equal to 0.80 for visible light or greater than or equal to 0.73 for total solar radiation.
 - 5. Documentation shall be provided in the form of a sun chart, a photograph, or approved evidence, demonstrating that the glazing area shall not be shaded for at least 4 hours between 8

a.m. and 4 p.m. standard time on January 21 and March 21.

6. The building shall contain a heat capacity equivalent to at least 20 Btu/degree F for each square foot of south glazing when the south glazing area is between 10% and 14% of the buildings gross floor area, and at least 45 Btu/degree F for each square foot of south glazing when the south area glazing exceeds 14 percent of gross floor area. This heat storage capacity shall be located inside the insulated shell of the structure and not covered with insulation materials, such as carpet, which yield an R value of 1.0 or greater. If the storage medium is not within the space containing the south glazing, an approved natural or mechanical means of transferring the heat to the heat storage medium shall be provided. Heat storage capacity shall be calculated using the below equation and/or accepted analytical methods:

$$HS = D \times SH \times V$$

Where:

HS = Heat Storage. The heat storage capacity available inside the insulated space.

V = Volume of heat storage components.

D = Density of material inside the insulated shell of the building to a depth yielding a thermal resistance of R 1, except in the case of slab floors where only the slab itself is credited. Mass located in conditioned or unconditioned basements without solar glazing shall not be counted (lbs/cu ft).

SH = Specific heat of the material (Btu/lb/°F).

(e) Insulation.

1. General: Thermal and acoustical insulation located on or within floor/ceiling and roof/ceiling assemblies, crawl spaces, walls, partitions, and insulation on pipes and tubing shall comply with this section. Duct insulation shall conform to Section 416 and Table 4-16.

EXCEPTIONS:

- A. Roof insulation shall comply with Section 3204 of the Uniform Building Code.
- B. Roof insulation in vaulted ceilings

over 3 in 12 shall conform with Section 3204 of the Uniform Building Code.

- C. Exposed deck ceiling insulation shall conform with Section 3204 of the Uniform Building Code.
2. Insulation Materials: All insulation materials including facings such as vapor barriers or breather papers installed within floor/ceiling assemblies, roof/ceiling assemblies, walls, crawl spaces, or attics shall have a flame-spread rating not to exceed 25 and a smoke density not to exceed 450 when tested in accordance with UBC Standard No. 42-1.

EXCEPTIONS:

- A. Foam plastic insulation shall comply with Section ((1717)) 1712 of the Uniform Building Code.
- B. When such materials are installed in concealed spaces of Types III, IV and V construction, the flame-spread and smoke-developed limitations do not apply to facing, provided that the facing is installed in substantial contact with the unexposed surface of the ceiling, floor or wall finish.
- C. Cellulose insulation shall conform to Section 1713 of the Uniform Building Code.
3. Ventilation: Enclosed joist or rafter spaces formed where ceilings are applied directly to the underside of roof joists or rafters must have joists or rafters of sufficient size to provide a minimum of one inch clear vented air space above the insulation (see also Section 3205 (c) of UBC). Ceiling insulation may be tapered or compressed at the perimeter to permit proper venting.

(f) Moisture Control.

1. Vapor retarders shall be installed on the warm side (in winter) of insulation as specified in the following cases:
 - A. Walls separating conditioned space from unconditioned space shall have a vapor retarder installed when thermal insulation is installed. The vapor retarder shall have a one perm dry cup rating or less. Inset stapled batts with a perm rating less than one may be installed if staples are placed not more than (8) inches on center and gaps between the facing and the framing do not exceed (1/16) of an inch.
 - B. Roof/ceilings.

- i. Roof/ceiling assemblies where the ventilation space above the insulation is less than an average of twelve (12) inches shall be provided with a vapor retarder having a dry cup perm rating of 1.0 or less.
- ii. Vapor retarders shall not be required in roof/ceiling assemblies where the ventilation space above the insulation averages twelve (12) inches or greater.
- iii. Vapor retarders shall not be required where all of the insulation is installed between the roof membrane and the structural roof deck.
- iv. Vapor retarders with a 1.0 or less dry cup perm rating polyethylene or an approved equal shall be installed in roof/ceiling assemblies where the insulation is comprised of insulation between the roofing membrane and the structural roof decking and insulation below the structural roof decking.

C. Ground Cover.

A ground cover of 4 mil (0.004 inch thick) polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped twelve (12) inches minimum at joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in unheated crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of 3-1/2 inches.

AMENDATORY SECTION (Amending Order 86-04, filed 5/13/86)

WAC 51-12-411 SECTION 411. HVAC EQUIPMENT PERFORMANCE REQUIREMENTS.

- (a) The requirement of this section applies to equipment and component performance for heating, ventilating and air-conditioning systems. Where equipment efficiency levels are specified, approved data furnished by the equipment supplier or certified under a nationally recognized certification program or rating procedure shall be used to satisfy these requirements. Equipment efficiencies shall be based on the standard rating conditions shown in Tables 4-9, 4-10 and 4-11.

- (b) HVAC-System Heating Equipment Heat Pumps—Heating Mode: Heat pumps whose energy input is entirely electric shall have a Coefficient of Performance (COP heating, as defined herein) not less than the values shown in Table 4-12.

- 1. These requirements apply to, but are not limited to, unitary heat pumps (air source and water source) in the heating mode and to heat pumps in the packaged terminal air-conditioner and room air-conditioner forms in the heating mode. Field assembled unitary heat pumps, consisting of one or more components, shall comply with this section.

- 2. Coefficient of Performance (COP) Heating: The ratio of the rate of net heat output to the rate of total energy input, expressed in consistent units and under designated rating conditions.

The rate of net heat output shall be defined as the change in the total heat content of the air entering and leaving the equipment (not including supplementary heat).

Total energy input shall be determined by combining the energy inputs to all elements, except supplementary heaters, of the heat pump, including, but not limited to, compressor(s), pump(s), supply-air fan(s), return-air fan(s), outdoor-air fan(s), cooling-tower fan(s), and the HVAC-system equipment control circuit.

- 3. Supplementary Heater: The heat pump shall be installed with a control to prevent supplementary heater operation when the heating load can be met by the heat pump alone. Supplementary heater operation is permitted during transient periods, such as start-ups, following room thermostat set-point advance, and during defrost, when the outdoor air temperature is below 55°F.

A two-stage thermostat, which controls the supplementary heat on its second stage, with outdoor air control, shall be accepted as meeting this requirement. The cut-on temperature for the compression heating shall be higher than the cut-on temperature for the supplementary heat, and the cut-off temperature for the compression heating shall be higher than the cut-off temperature for the supplementary heat. Supplementary heat may be derived from any source of electric resistance heating or combustion heating.

(c) HVAC-System-Combustion Heating Equipment: All commercial gas and oil-fired central heating plants shall show a minimum combustion efficiency of not less than those shown in Table 4-5.

All residential gas, oil, and propane central heating systems must have a minimum AFUE of .74. All other residential heating equipment fueled by gas, oil, or propane must be equipped with an intermittent ignition device.

(d) Mechanical Ventilation. Each mechanical ventilation system (supply and/or exhaust) shall be equipped with a readily accessible or automatic means for either shut-off or volume reduction and shut-off when ventilation is not required.

(e) Packaged and unitary HVAC-system equipment, electrically operated cooling mode. HVAC-system equipment as listed below whose energy input in the cooling mode is entirely electric, shall show a Coefficient of Performance (COP) cooling as defined herein not less than values shown in Table 4-13.

1. These requirements apply to, but are not limited to unitary cooling equipment (air-cooled, water-cooled and evaporatively-cooled); the cooling mode of unitary and packaged heat pumps (air source and water source); packaged terminal air-conditioners; and room air-conditioners.

EXCEPTION: These requirements do not apply to equipment used for refrigerated food or florists' and nurseries' coolers.

2. Coefficient of Performance (COP) Cooling: The ratio of the rate of net heat removal to the rate of total energy input, expressed in consistent units and under designated rating conditions.

The rate of net heat removal shall be defined as the change in the total heat contents of the air entering and leaving the equipment (without reheat).

Total energy input shall be determined by combining the energy inputs to all elements of the equipment, including but not limited to compressor(s), pump(s), supply-air fan(s), return-air fan(s), condenser-air fan(s), cooling-tower fan(s), circulating water pump(s), and the HVAC-system equipment control circuit.

(f) Applied HVAC-system components, electrically operated cooling-mode. HVAC-system components, as listed in Table 4-14 whose energy input is entirely electric, shall show a Coefficient of Performance (COP)

cooling, as defined herein, and not less than the values shown in Table 4-14.

1. Coefficient of Performance (COP) Cooling. The ratio of the rate of net heat removal to the rate of total energy input, expressed in consistent units and under designated rating conditions.

2. The rate of net heat removal is defined as the difference in total heat contents of the water or refrigerant entering and leaving the component.

3. Total energy input shall be determined by combining the energy inputs to all elements and accessories of the component, including but not limited to, compressor(s), internal circulating pump(s), condenser-air fan(s), evaporative-condenser cooling water pump(s), purge, and the HVAC-system component control circuit.

(g) HVAC-system equipment—heat operated cooling mode. Efficiency limitation equipment: Heat operated cooling equipment shall show a (COP) cooling not less than the values shown in Table 4-15. These requirements apply to, but are not limited to, absorption equipment, engine driven equipment, and turbine driven equipment.

(h) Fireplaces. Fireplaces shall be provided with:
1. Tightly fitting flue dampers, operated with a readily accessible manual or approved automatic control.

EXCEPTION: Fireplaces with gas logs installed in accordance with UMC 803 shall be equipped with tightly fitting glass or metal doors.

2. An outside source for combustion air. The duct shall be at least six square inches in area, and shall be provided with a readily operable damper.

(i) Solid fuel burning appliances shall be provided with combustion air ducted directly to the appliance.

Combustion air shall be provided as per manufacturers specifications.

EXCEPTIONS: Combustion air may be supplied to the room in which the solid fuel burning appliance is located in lieu of direct ducting, in an existing building, provided that:

1. The solid fuel burning appliance is not designed for directly connected outside combustion air or;

2. The existing construction prohibits the introduction of outside combustion air directly to the solid fuel burning appliance.

3. The combustion air source shall be located as close to the solid fuel burning

- appliance as possible, shall be provided with a backdraft damper, and shall be no less than six inches in diameter.
4. The solid fuel burning appliance is part of a central heating system and is installed in a room designed to house it.

AMENDATORY SECTION (Amending Resolution No. 86-17, filed 9/23/86)

WAC 51-12-426 SECTION 426. LIGHTING POWER BUDGET. A lighting power budget is the upper limit of the power to be available to provide the lighting needs in accordance with the criteria and calculation procedure specified herein.

The lighting power budget for a building shall be the sum of the power limits computed for all lighted interior and exterior spaces and shall be determined in accordance with the procedures specified in this section.

EXCEPTION: One- and two-family detached dwellings and the dwelling portion of multifamily buildings are exempt from the requirements of Section 426.

(a) Budget Development.

The installed lighting wattage for the building project shall not exceed the budget level calculated in this section. The budget wattage level shall be the sum of the interior budget calculated and the exterior budget. Lighting wattage includes lamp and ballast wattage.

(b) Building Interiors.

The interior lighting budget shall be calculated by multiplying the gross conditioned floor area, in square feet, by the appropriate unit power budget, in watts per square foot, specified in Table No. 4-18.

For special conditions when approved by the Building Official, calculation based on Illuminating Engineering Society Unit Power Density or similar nationally recognized standards may be used.

The lighting power budget shall be based on the primary occupancy for which the space within the building is intended. If multiple occupancies are intended, the lighting power budget for each type of occupancy shall be separately calculated and summed to obtain the lighting budget for the interior spaces of the building. If a common circulation area serves multiple occupancies or multiple retail spaces, the lighting power budget for the common circulation area shall be the weighted average of the lighting power budgets for all other areas on that floor. In cases where a lighting plan for only a portion of a building is submitted, the interior lighting budget shall be based on the gross floor area covered by the plan.

EXCEPTIONS:

1. Where the following automatic lighting controls are installed, for calculations used to determine

code compliance, the installed lighting wattage may be reduced by the following percentages:

- A. For occupant-sensing devices, energy savings of 30 percent shall be allowed for any single space up to 400 square feet and enclosed by ceiling height partitions; classrooms, conference rooms, computer rooms, storage areas, corridors, or waiting rooms.
 - B. For daylighting controls, energy savings of 30 percent for continuous dimming and 20 percent for stepped controls shall be allowed for any daylit space.
 - C. For lumen maintenance controls, energy savings of 10 percent shall be allowed for any space.
 - D. For daylighting controls with occupant-sensing devices, energy savings of 44 percent shall be allowed for any single space up to 400 square feet within daylit spaces, and enclosed by ceiling height partitions.
 - E. For occupant-sensing devices with lumen maintenance controls, energy savings of 37 percent shall be allowed for any single space up to 400 square feet and enclosed by ceiling height partitions.
2. Lighting for the following applications shall be exempted from inclusion in the calculation of lighting power budgets:
- A. Stage lighting, entertainment, or audiovisual presentations where the lighting is an essential technical element for the function performed.
 - B. Lighting for medical and dental tasks.
 - C. Lighting in areas specifically designed for visually handicapped people.
 - D. For restaurant occupancies, lighting for kitchens and food preparation areas.
- (c) Building Exteriors.
- The exterior lighting budget shall be calculated by multiplying the building perimeter in feet by 7.5 watts per foot. Lighting for parking structures shall be calculated at 0.3

watts per gross square foot of parking area. An allowance for outdoor surface parking and circulation lighting may be added at 0.05 watts per square foot of area. Lighting for signs that are not an integral part of the building shall be exempted from inclusion in these calculations.

TABLE 4-1
Classification of Building Occupancies

	All Group R Occupancy Space	Other than Group R Occupancy Space
Three conditioned stories and less	Table 4-2	Table 4-3
More than three conditioned stories	Table 4-4	Table 4-4

TABLE 4-2
Low-rise Residential Buildings
Maximum Allowed U_o Values
and Minimum Allowed R Values

Heat Type	Climatic Zone	Roofs	Cathedral	Walls	Floors	Slab ¹
		Ceilings	Ceilings	(Includes Glazing)		on Grade
		U _o	U _o	U _o	U _o	Installed R Value
Electric Resistance	I	0.026	0.035	0.144	0.055	((8)) 7
Other	I	0.035	0.035	0.203	0.055	((8)) 7
Electric Resistance	II	0.026	0.035	0.144	0.043	10
Other	II	0.035	0.035	0.203	0.055	10

¹Insulation shall be water-resistant material manufactured for this use.

TABLE 4-3
Nonresidential Occupancies
Buildings 3 Stories or Less
Maximum Allowed U_o Values and
Minimum Allowed R Values

Zone	Roofs	Cathedral	Walls	Floors	Slab ¹
	Ceilings	Ceilings	(Includes Glazing)		on Grade
	U _o	U _o	U _o	U _o	Installed R Value
I	0.035	0.25	0.05		((8)) 7
II	0.035	0.20	0.05		10

¹Insulation shall be water-resistant material manufactured for this use.

TABLE 4-4
All Occupancies
Buildings over 3 Stories
Maximum Allowed U_o Values and
Minimum Allowed R Values

Zone	Ceilings	Walls (Includes Glazing)	Floors	Slab ¹ on Grade
	U _o	U _o	U _o	Installed R Value
I	0.08	0.30	0.08	((8))
II	0.06	0.25	0.08	7 10

¹Insulation shall be water-resistant material manufactured for this use.

TABLE 4-5
Nonresidential HVAC System Heating Equipment—
Gas- and Oil-Fired Minimum Steady State
Combustion Efficiency

Types of Equipment	Furnaces of Capacity of 225,000 Btu/h and Less Boilers of Capacities of 300,000 Btu/h and Less		All Other Commercial/Industrial Furnaces and Boilers
	Percent ¹	Percent ²	
Forced-air furnaces and low-pressure steam or hot-water boilers	74	75	
Gravity central furnaces	69	—	
All other vented heating equipment	69	—	

¹Combustion efficiency for furnaces of capacities of 225,000 Btu/h and less and boilers of capacities of 300,000 Btu/h and less shall be tested in accordance with the applicable U.S. Department of Energy furnace test procedures.

²Combustion efficiency of commercial/industrial furnaces and boilers is defined as 100 percent minus stack losses in percent of heat input. Stack losses are:

- Loss due to sensible heat in dry flue gas.
- Loss due to incomplete combustion.
- Loss due to sensible and latent heat in moisture formed by combustion of hydrogen in the fuel.

TABLE 4-6
(Reserved)

TABLE 4-7
(Reserved)

TABLE 4-8
Allowable Air Infiltration Rates

Windows (cfm per lineal foot of operable sash crack)	Residential Doors		Commercial Doors
	cfm per sq. ft. of door area		cfm per lin. ft. of crack
	sliding glass	entrance	swinging, sliding, revolving
0.5	0.5	1.00	11.0

TABLE 4-9
HVAC System Heating Equipment (Heat Pumps)
Standard Rating Conditions

Conditions		Type		
		Air Source	Water Source	Water Source
Air entering equipment	°F	70 db	70 db	70 db
Outdoor unit ambient	°F	47 db/ 43 wb	17 db/ 15 wb	—
Entering water temperature	°F	—	—	60
Water flow rate		—	—	as used in cooling mode

TABLE 4-10
HVAC System Equipment
Standard Rating Conditions — Cooling

		Temperatures			
		DB	WB	Inlet	Outlet
Air Entering Equipment	°F	80	67	—	—
Condenser Ambient (Air Cooled)	°F	95	75	—	—
Condenser Water (Water Cooled)	°F	—	—	85	95

Standard ratings are at sea level.

Note: db = dry bulb
wb = wet bulb

TABLE 4-11
Applied HVAC System Components
Standard Rating Conditions — Cooling

Item		Centrifugal or Self-Contained Reciprocating Water-Chiller	Condenserless Reciprocating Water-Chiller
Leaving chilled Water temperature	°F	44	44
Entering chilled Water temperature	°F	54	54
Leaving condenser Water temperature	°F	95	—
Entering water temp.	°F	85	—
Fouling factor, water			
Non-ferrous tubes	*	0.0005	0.0005
Steel tubes	*	0.0010	0.0010
Fouling factor, Refrigerant	*	0.0000	0.0000
Condenser ambient			
Air or evap. cooled	°F	95 dB/75 wb	—
Compressor Water cooled			
Saturated (or evap. cooled)	°F	—	105
Discharge Temperature			
Air cooled	°F	—	120

Standard ratings are at sea level.
* h ft² F/Btu.

TABLE 4-12
HVAC-System Heating Equipment (Heat Pumps)
Minimum COP & HSPF for Heat Pumps, Heating Mode

Source and Outdoor Temperature(°F)	Minimum COP	Minimum HSPF
Air source — 47 dB/43 WB	2.7	
Air source — 17 dB/15 WB	1.8	
Air source		6.35
Water source — 60 entering	3.0	
Ground source	3.0	

TABLE 4-13
Minimum EER and COP—Cooling for
Electrically Driven HVAC System Equipment—Cooling¹

Standard Rating Capacity	Air Cooled		Evaporative or Water Cooled	
	EER	COP	EER	COP
Under 65,000 Btu/hr (19,050 watts)	7.8	2.28	8.8	2.58
65,000 Btu/hr (19,060 watts) and over	8.2	2.4	9.2	2.69

¹The U.S. Department of Energy has established required test procedures for single-phase, air-cooled, residential central air conditioners under 19 KW (65,000 Btu/h) capacity, which have been incorporated into ARI Standard 210-79. EER and COP values in Table 4-13 are based on Test A of DOE Test Procedures.

TABLE 4-14
Minimum EER and COP for Electrically Driven HVAC-System Components¹

Water Chilling Packages

Component	Type	Condensing Means			
		Air	Water	Evap.	
		EER	COPEER	COPEER	COP
Condenser included	Centrifugal or rotary	8.00	2.34	13.80	4.04
Condenser included	Reciprocating	8.40	2.46	12.00	3.51
Condenserless	Reciprocating	9.90	2.90	12.00	3.51
Compressor & condenser units 65,000 Btu/hr (19,050 watts) and over ²	Positive displacement	9.50	2.78	12.50	3.66

Hydronic Heat Pumps

Component	Type	EER	COP
Water source under 65,000 Btu/h (19,000 watts)	Centrifugal or rotary	9.00	2.64
Water source 65,000 Btu/h (19,000 watts) and over	Centrifugal or rotary	9.40	2.75

¹When tested at the standard rating conditions specified in Table No. 4-9, 4-10, and 4-11.

²Ratings in accordance with Standard for Positive Displacement Refrigerant Compressor and Condensing Units, ARI Standard 520-74 as applicable. COP based on condensing unit standard rating capacity and energy input to the unit, all at sea level.

TABLE 4-15
HVAC-System Heat-Operated Cooling Equipment

$$\text{Minimum COP} = \frac{\text{Net Cooling Output}}{\text{Total Heat Input (Electrical Auxiliary Inputs Excluded)}}$$

Heat Source	Minimum COP
Direct fired (gas, oil)	0.48
Indirect fired (steam, hot water)	0.68

TABLE 4-16
Insulation of Ducts

Duct Location	Insulation Types Mechanically Cooled	Climate Zone	Insulation Types Heating Only
On roof or on exterior of building	C, V ² and W D, V ² and W	I II	C and W D and W

Duct Location	Insulation Types Mechanically Cooled	Climate Zone	Insulation Types Heating Only
Attics, garages and crawl spaces, in walls ¹ , within floor-ceiling spaces ¹	B and V ² C and V ²	I II	B C
Within the conditioned space or in basements	None Required		None Required
Cement slab or within ground	A		B

Note: Where ducts are used for both heating and cooling, the minimum insulation shall be as required for the most restrictive condition.

¹ Insulation may be omitted on that portion of a duct which is located within a wall or floor-ceiling space where both sides of this space are exposed to conditioned air and where this space is not ventilated or otherwise exposed to unconditioned air.

² Vapor barriers shall be installed on conditioned air supply ducts in geographic areas where the average of the July, August, and September mean dewpoint temperature exceeds 60°F.

INSULATION TYPES: Minimum densities and cut-off package thicknesses.

- A. 0.5-inch 1.5 to 2 lb/cu. ft. duct liner, mineral or glass fiber blanket or equivalent to provide an installed total thermal resistance of at least R-2
- B. 2-inch 0.60 lb/cu. ft. mineral or glass fiber blanket
1.5-inch 1.5 to 2 lb/cu. ft. duct liner, mineral or glass fiber blanket
1.5-inch 3 to 7 lb/cu. ft. mineral or glass fiber board or equivalent to provide an installed total thermal resistance of at least R-5
- C. 3-inch 0.60 lb/cu. ft. mineral or glass fiber blanket
2-inch 1.5 to 2 lb/cu. ft. duct liner, mineral or glass fiber blanket
2-inch 3 to 7 lb/cu. ft. mineral or glass fiber board or equivalent to provide an installed total thermal resistance of at least R-7
- D. 4-inch 0.60 lb/cu. ft. mineral or glass fiber blanket
3-inch 1.5 to 2 lb/cu. ft. duct liner, mineral or glass fiber blanket
3-inch 3 to 7 lb/cu. ft. mineral or glass fiber board or equivalent to provide an installed total thermal resistance of at least R-10
- V. Vapor barrier, with perm rating not greater than 0.5 perm, all joints sealed.
- W. Approved weatherproof barrier.

TABLE 4-17
Minimum Pipe Insulation

Piping System Types	Fluid temperature range, °F	Run-outs up to 2" ¹	Insulation Thickness In Inches for Pipe Sizes ²				
			1" and less	1.25" to 2"	2.5" to 4"	5" to 6"	8" and larger
HEATING AND HOT WATER SYSTEMS							
Steam and hot water							
High pressure/temperature	306-450	1.5	2.5	2.5	3.0	3.5	3.5

Piping System Types	Fluid temperature range, °F	Insulation Thickness In Inches for Pipe Sizes ²					
		Run-outs up to 2" ¹	1" and less	1.25" to 2"	2.5" to 4"	5" to 6"	8" and larger
Med. pressure/temperature	251-305	1.5	2.0	2.5	2.5	3.0	3.0
Low pressure/temperature	201-250	1.0	1.5	1.5	2.0	2.0	2.0
Low temperature	100-200	.5	1.0	1.0	1.5	1.5	1.5
Steam condensate (for feed water)	Any	1.0	1.0	1.5	2.0	2.0	2.0
COOLING SYSTEMS.							
Chilled water	40-55	.5	.5	.75	1.0	1.0	1.0
Refrigerant, or brine	Below 40	1.0	1.0	1.5	1.5	1.5	1.5

¹Runouts not exceeding 12 feet in length to individual terminal units.

²For piping exposed to outdoor air, increase thickness by .5 inch.

TABLE 4-18
Interior Lighting Power Budget¹

Group	Occupancy Description	Lighting Power Budget ² (W/sq ft)
A	Assembly w/stage	1.1
	Stage lighting	Exempt
B	Assembly w/o stage: other than B and E	1.1
	Gasoline service station	1.7
	Storage garages	0.3
	Office buildings	1.7
	Wholesale stores	2.0
	Police and fire stations	1.7
	Retail Stores:	
	less than 6000 s.f.	4.0
	6000 to 20,000 s.f.	3.0
	over 20,000 s.f.	2.0
	Drinking and dining establishments	1.85
	Food preparation task light	Exempt
	Aircraft hangars - storage	0.7
	Process plants ³	1.0
	Factories and work shops ³	1.7
Storage structures	0.7	
E	Schools and daycare centers	1.7
	Audio-visual presentation lighting	Exempt
H	Storage structures	0.7
	Handling areas	1.7
	Paint shops	2.5
	Auto repair shops	1.7
	Aircraft repair hangars	1.7
I	Institutions	1.7
	Administrative support areas	1.7
	Diagnostic, treatment, food service task lighting	Exempt
R	Dwelling units	Exempt
	Food preparation task lighting	Exempt

¹Watts/sq. ft. of room may be increased by two percent per foot of height above 20 feet.

²Emergency exit lighting is exempt from interior lighting budget.

³Lighting that is part of machines or equipment is exempt from this budget.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-503 SECTION 503. ANALYSIS PROCEDURE.

The analysis of the annual energy usage of the standard design and the proposed alternative building and system design shall meet the following criteria:

- (a) The building heating/cooling load calculation procedure used for annual energy consumption analysis shall be of sufficient detail to permit the evaluation of effect of factors specified in Section 504.

EXEMPTION: Low-rise residential not installing cooling equipment, shall not be required to model cooling loads.

- (b) The calculation procedure used to simulate the operation of the building and its service systems through a full year operating period shall be of sufficient detail to permit the evaluation of the effect of system design, climatic factors, operational characteristics, and mechanical equipment on annual energy usage. Manufacturer's data or comparable field test data shall be used when available in the simulation of all systems and equipment. The calculation procedure shall be based upon operation of the building and its service systems through a typical year. Variations in climatic data shall be represented.
- (c) The calculation procedure for the standard design and the proposed alternative design shall separately identify the energy input to each of the following systems: heating, cooling, ventilation, and lighting. The energy input to any other system using over ten percent of the total energy input shall also be separately identified. The energy use for the standard and alternative designs shall be calculated by summing the energy inputs assigned to each identified system and all other energy inputs not separately identified. The systems identified, and, to the extent possible, the assumptions made in assigning energy inputs to each system, shall be the same for the standard design and the proposed alternative design. When electrically driven heat pumps are employed to provide all or part of the heat for the alternative design, the standard design shall also, for the purposes of the analysis, assume that electrically driven heat pumps in conformance with Section 411 and having capacity at least as great as those used in the alternative design are employed.
- (d) The energy use assigned to each building system in the proposed alternative design shall be as calculated in subsection (c) or

eighty percent of the use calculated for the same system in the standard design in subsection (c), whichever is greater.

AMENDATORY SECTION (Amending Resolution No. 86-17, filed 9/23/86)

WAC 51-12-601 SECTION 601. LOW-RISE RESIDENTIAL BUILDING ENVELOPE REQUIREMENTS.

For all components, except for walls, the R values specified in Table 6-1 are for installed insulation material only. R values for construction are defined as any combination of rigid-sheathing, loose fill, or batt insulation that achieves the prescribed R value. Where insulation is installed in a continuous manner and is not interrupted by occasional framing members, its R value may be increased by 20% in determining compliance with the requirements of this table. This allowance does not apply to insulation of slab on grade or walls.

(a) Walls. The total assembly of opaque exterior wall sections, walls in finished basements, and the interior walls exposed to unheated spaces shall have a thermal resistance R value not less than the values specified in Table 6-1. Total wall assembly R values include values for insulation, sheathing, gypsum-board, air-films, concrete, etc. The following walls shall be considered to meet the R-19 total assembly criteria without additional documentation:

1. 2" x 6" with installed R-19 batt.
2. 2" x 4" with an installed R-13 batt and ((R=5)) R-3.7 insulating sheathing.
3. 2" x 4" with an installed R-11 batt and ((R=5.4)) R-5.0 insulating sheathing.

EXCEPTION: Concrete or masonry foundation walls of unfinished basements that have one foot or less of the wall above grade need not be insulated until finished, provided that:

- A. Any frame walls comply with the requirements of Table 6-1;
- B. The rim-joists are properly insulated;
- C. All walls that are more than an average of one foot above grade are insulated to meet the requirements of Table 6-1.

(b) Roof/ceiling. The roof/ceiling assembly shall have a thermal resistance R value not less than the value specified for the indicated type of construction in Table 6-1.

EXCEPTION: Insulation levels in the case of single rafter or joist vaulted ceilings. These types of ceilings may be insulated to a level of R-30, regardless of space heat type.

(c) Thermal Design Standards for Floors.

1. Slab on Grade Floors. For slab on grade floors, the thermal resistance of the insulation around the perimeter of

the floor shall not be less than the value given in Table 6-1.

Insulation installed inside the foundation shall extend downward from the top of the slab for a minimum distance of 24 inches; or downward to the bottom of the slab, then horizontally beneath the slab for a minimum total distance of 24 inches. Insulation installed outside the foundation shall extend downward a minimum of 6 inches below grade but not less than to the frostline and need not extend deeper than to the top of the footing.

2. Floor Sections. Floor sections over unheated spaces, such as unheated basements, unheated garages or ventilated crawl spaces, shall be constructed to comply with the required values as specified in Table 6-1.

EXCEPTION: Insulation may be omitted from floor areas over heated basements, heated garages, or under floor areas used as HVAC plenums or where operable foundation vents are used and when foundation walls are insulated. When foundation walls are insulated in accordance with Section 601(a), the insulation shall be attached in a permanent manner.

(d) Thermal Design Standards for Openings.

1. At a minimum, all windows must be double glazed, and are classed according to U values as shown on Table 6-2. Glazing requirements are listed in Table 6-4.
2. At a minimum, all skylights must be double glazed. The area of Class 90 skylights and Class 90 exterior windows sloped more than 30° from the vertical shall be doubled and this area included in the percentage of the total glazing area as allowed for in Table 6-4. Class 75 or Class 60 glazing in skylights or Class 75 or Class 60 windows sloped more than 30° from the vertical need not be doubled.
3. Single glazing for ornamental, security or architectural purposes shall have its area doubled and shall be included in the percentage of the total glazing area as allowed for in Table 6-4. The maximum area (before doubling) allowed for the total of all single glazing is 1% of the floor area.

(e) Air Leakage.

1. Windows and Doors. All windows within a wall and doors shall conform to the air infiltration requirements specified in Section 405. Site built windows shall be constructed to minimize leakage.

EXCEPTION: Openings required to be protected by fire resistive assemblies are exempt from this section.

2. Exterior joints around windows and door frames, openings between walls and foundations, between walls and roof and between wall panels; openings at penetrations of utility services through walls, floors and roofs; and all other such openings in the building envelope shall be sealed, caulked, gasketed, or weatherstripped to limit air leakage.
- (f) **Moisture Control.** Vapor retarders shall be installed on the warm side (in winter) of insulation as specified in the following cases:
1. Walls separating conditioned space from unconditioned space shall have a vapor retarder installed when thermal insulation is installed. The vapor retarder shall have a one perm dry cup rating or less. Inset stapled batts with a facing with a perm rating less than one may be installed if staples are placed not more than (8) inches on center and gaps between the facing and the framing do not exceed (1/16) of an inch.
 2. **Roof/ceilings:**
 - A. Roof/ceiling assemblies where the ventilation space above the insulation is less than an average of twelve (12) inches shall be provided with a vapor retarder having a dry cup perm rating of 1.0 or less.
 - B. Vapor retarders shall not be required in roof/ceiling assemblies where the ventilation space above the insulation averages twelve (12) inches or greater.
 - C. Vapor retarders shall not be required where all of the insulation is installed between the roof membrane and the structural roof deck.
 - D. Vapor retarders with a 1.0 or less dry cup perm rating shall be installed in roof/ceiling assemblies where the insulation is comprised of insulation between the roofing membrane and the structural roof decking and insulation below the structural roof decking.
 3. **Ground Cover.** A ground cover of 4 mil (0.004 inch thick) polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped twelve (12) inches minimum at joints and shall extend over

the top of the footing.

EXCEPTION: The ground cover may be omitted in unheated crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of 3-1/2 inches.

- (g) **General Requirements for Loose Fill Insulation.** Blown or poured loose fill insulation may be used in attic spaces where the slope of the ceiling is not more than 3 feet in 12 feet and there is at least 30 inches of clear distance from the top of the bottom chord of the truss or ceiling joist to the underside of the roof sheathing at the roof ridge. When eave vents are installed, baffling of the vent openings shall be provided so as to deflect the incoming air above the surface of the insulation.
- (h) **Space Heat Type.** The following four categories comprise all space heating types:
 1. **Electric Resistance.** Space heating systems which include baseboard units, radiant units, and forced air units as either the primary or secondary heating system.

EXCEPTIONS: Electric resistance elements which are integral to either heat pump or passive solar heating systems (as defined below), or when the total electric heat capacity in each individual dwelling unit does not exceed the greater of: 1) 1,000 watts per dwelling, or; 2) 1.0 watt per square foot of the gross floor area.
 2. **Electric, Passive Solar.** Electric resistance space heating systems which utilize solar energy to provide a portion of the building's heating load. A Passive Solar System is required to have at least ten (10) percent of the building's gross floor area in glazing that meets the specifications of Section 601(i).
 3. **Other.** Includes all gas, wood (not meeting the provisions of Section 102 (a)2), oil, propane, and electric heat pump space heating systems, unless electric resistance is used as a secondary heating system. (See **EXCEPTIONS**, Electric Resistance, Section 601 (h) 1. above.) Nonelectric heat pump heating systems are also included in this category.
 4. **Other, Passive Solar.** Other types of space heating systems which utilize solar energy to provide a portion of the building's heating load. A Passive Solar System is required to have at least ten (10) percent of the building's gross floor area in glazing that meets the specifications of Section 601(i).

(i) Passive Solar Glazing. Glazing areas are required to meet the following criteria in order to be considered Passive Solar Glazing.

1. Glazing areas are required to meet the "Electric, Passive Solar" and "Other, Passive Solar" glazing requirements of Table 6-4.
2. The south glazing shall be oriented within 45 degrees of true south.
3. The glazing shall be mounted at least 60 degrees up from the horizontal.
4. The glazing shall have a transmission coefficient greater than or equal to 0.80 for visible light or greater than or equal to 0.73 for total solar radiation.
5. Documentation shall be provided in the form of a sun chart, a photograph, or approved evidence, demonstrating that the glazing area shall not be shaded for at least 4 hours between 8 a.m. and 4 p.m. standard time on January 21 and March 21.
6. The building shall contain a heat capacity equal to a four inch concrete slab. The heat capacity shall be equivalent to at least 20 Btu/degree F for each square foot of south glazing when the south glazing area is between 10% and 14% of the building's gross floor area, and at least 45 Btu/degree F for each square foot of south glazing when the south area glazing exceeds 14 percent of gross floor area. In buildings with south glazing area between 10% and 14% of gross floor area, the heat capacity provided by a four inch concrete slab shall be deemed sufficient. This heat storage capacity shall be located inside the insulated shell of the structure and not covered with insulation materials, such as carpet, which yield an R value of 1.0 or greater. If the storage medium is not within the space containing the south glazing, an approved natural or mechanical means of transferring the heat to the heat storage medium shall be provided. Heat storage capacity shall be calculated using the below equation and/or accepted analytical methods:

$$HS = D \times SH \times V$$

Where:

HS = Heat Storage. The heat storage capacity available inside the insulated space.

V = Volume of heat storage components.

D = Density of material inside the insulated shell of the building to a depth yielding a thermal resistance of R-1, except in the case of slab floors where only the slab itself is credited. Mass located in conditioned or unconditioned basements without solar glazing shall not be counted (lbs/cu ft).

SH = Specific heat of the material (Btu/lb/°F).

- (j) Ventilation: Enclosed joist or rafter spaces formed where ceilings are applied directly to the under side of roof joists or rafters must have joists or rafters of sufficient size to provide a minimum of one inch clear vented air space above the insulation (see also Section 3205 (c) of UBC). Ceiling insulation may be tapered or compressed at the perimeter to permit proper venting.

AMENDATORY SECTION (Amending Order 86-04, filed 5/13/86)

WAC 51-12-602 SECTION 602. LOW-RISE RESIDENTIAL BUILDING MECHANICAL SYSTEMS.

All HVAC devices, components and their elements shall conform to the requirements of this section.

(a) Heating and Mechanical Cooling Devices.

1. All heating and mechanical cooling devices shall meet the required efficiency factor specified herein or in Tables 4-12, 4-13, 4-14, and 4-15, 6-3, and 6-4, for the specific type of device.
2. Combustion Heating Equipment. All gas and oil-fired heating equipment shall meet the minimum combustion efficiencies as specified in Table 6-4.
3. Fireplaces shall be provided with:
 - A. Tightly fitting flue dampers, operated with a readily accessible manual or approved automatic control.

EXCEPTION: Fireplaces with gas logs installed in accordance with UMC 803 shall be equipped with tightly fitting glass or metal doors.

- B. An outside source for combustion air. The duct shall be at least six square inches in area, and shall be provided with a readily operable damper.
4. Solid fuel burning appliances shall be provided with combustion air ducted directly to the appliance.
Combustion air shall be provided as per manufacturers specifications.

EXCEPTIONS: Combustion air may be supplied to the room in which the solid fuel burning appliance is located in lieu of direct ducting, in an existing home, provided that:

- A. The solid fuel burning appliance is not designed for directly connected outside combustion air or;
- B. The existing construction prohibits the introduction of outside combustion air directly to the solid fuel burning appliance.
- C. The combustion air source shall be located as close to the solid fuel burning appliance as possible, shall be provided with a backdraft damper, and shall be no less than six inches in diameter.

- 5. Calculation of Heating and Cooling Loads. Heating and cooling design loads for the purpose of sizing HVAC systems are required and shall be calculated in accordance with accepted engineering practice. The design parameters specified in Chapter 3 shall apply for all computations. HVAC equipment for low-rise residential buildings shall be sized no greater than 150 percent of the design load as calculated above.

EXCEPTION: The following exemption from the sizing limit shall be allowed, however, in all cases heating and/or cooling design load calculations shall be submitted. For equipment which provides both heating and cooling in one package unit, including heat pumps with electric heating and cooling and gas-pack units with gas heating and electric cooling, compliance need only be demonstrated for either the space heating or space cooling system size.

- (b) Temperature Control. Each heating system shall be provided with at least one thermostat for the regulation of temperature. Each thermostat shall be capable of being set as follows:
 - Where used to control heating only—55–75°;
 - Where used to control cooling only—70–85°;
 - Where used to control both heating and cooling, it shall conform to the requirements of Section 415.
- (c) Zoning for Temperature Control.
 - 1. Group R-3 Occupancy
 - At least one thermostat for regulation of space temperature shall be provided for each separate HVAC system. In addition, a readily accessible manual

or automatic means shall be provided to partially restrict or shut off the heating or cooling input to each zone or floor.

EXCEPTION: Nonconditioned basements and garages.

- 2. Group R-1 Occupancy. For multifamily dwellings, each individual dwelling unit shall be considered separately and shall meet the requirements of Section 602. Spaces other than living units shall meet the requirements of section 415 (c) 3.
- 3. Control Setback and Shutoff: Group R-1 and R-3. The thermostat required in (a) and (b) or an alternate means such as a switch or clock, shall provide a readily accessible, manual or automatic means for reducing the energy required for heating and cooling during periods of nonuse or reduced need such as, but not limited to, unoccupied periods and sleeping hours. Lowering thermostat set points to reduce energy consumption of heating systems shall not cause energy to be expended to reach the reduced setting.
- 4. Duct Insulation. All ducts, plenums and enclosures installed in or on buildings shall be thermally insulated and constructed in accordance with Section 416.
- 5. Pipe Insulation. All piping installed to serve buildings or within buildings shall be thermally insulated in accordance with Table 4-17.

EXCEPTION: For service water heating systems, see Section 603.

AMENDATORY SECTION (Amending Order 85-14, filed 11/26/85)

WAC 51-12-605 SECTION 605. BUILDING ENVELOPE REQUIREMENTS FOR OTHER THAN LOW-RISE RESIDENTIAL BUILDINGS.

- (a) Opaque Envelope Criteria. Roof/ceilings, exterior walls, floors over unconditioned space, below grade walls and slab on grade floors enclosing heated spaces shall be insulated to not less than the nominal R value specified for roof/ceilings, exterior walls, floors over unconditioned space, below grade walls and slab on grade floors, respectively, in Table No. 6-5. Roof/ceilings enclosing mechanically cooled spaces shall be insulated to not less than the nominal R value specified for roof/ceilings in Table No. 6-5. Compliance with nominal R values shall be demonstrated for the thermal resistance of the added insulation in framing cavities and/or insulated sheathing only and shall not include

the thermal transmittance of other building materials or air films, but shall permit interruption by occasional framing members.

Installation of materials shall comply with Section 402 ((~~(d)~~ and)) (e) and (f). In addition, below grade wall insulation shall extend from the top of the wall to the top of the footing or floor slab. Slab on grade floor insulation shall be installed along the entire perimeter of slab on grade floors, except for any part of slab which extends into an unconditioned space such as a garage, and shall extend downward from the top of the slab to the top of the footing or to the bottom of the thickened edge of a monolithic slab or for a minimum distance of 24 inches or downward to the bottom of the slab then horizontally beneath the slab for a minimum total distance of 24 inches and shall be an approved type.

- (b) Glazing Criteria. All glazing shall be, at a minimum, double glazing. Insulating glass with at least ((~~1/4~~)) one-half (1/2) inch air space or approved storm sash will be considered as complying. The total glazing area shall not exceed the percentage of gross exterior wall area specified in Table No. 6-5.

EXCEPTION: Single glazing in doors may be installed provided that the glazing area is doubled for the purpose of demonstrating compliance with the glazing area requirements.

- (c) Air Leakage. All buildings shall comply with the air leakage requirement of Section 405.

AMENDATORY SECTION (Amending Order 86-04, filed 5/13/86)

WAC 51-12-608 SECTION 608. ELECTRICAL POWER AND LIGHTING REQUIREMENTS FOR OTHER THAN LOW-RISE RESIDENTIAL BUILDINGS.

All electrical power and lighting systems shall comply with the requirements of Sections 424 to 426, inclusive.

TABLE 6-1
Low-rise Residential Buildings
Minimum (average) Allowed R Values¹

Space Heat Type	Climatic Zone	Ceilings ²	Roof			Slab on ³ Grade
			Decks	Walls	Floors	
Electric Resistance	I	38	38	19	19	((8)) ⁷
Electric, Passive Solar	I	30	30	19	19	((8)) ⁷
Other	I	30	30	19	19	((8)) ⁷
Other, Passive Solar	I	30	30	19	19	((8)) ⁷
Electric Resistance	II	38	38	19	25	10
Electric, Passive Solar	II	30	30	19	19	10
Other	II	30	30	19	19	10
Other, Passive Solar	II	30	30	19	19	10

¹R values, except for walls, are for installed insulation material only.
²R-30 in single rafter, joist vaulted ceilings.
³Insulation shall be water-resistant material manufactured for this use.

TABLE 6-2
Low-rise Residential Buildings
Classes of Glazing

Class	U-Value	Window Thermal Testing Requirement ¹
90	.90	Untested
90	Greater than .75	Tested
75	.61 to .75	Tested
60	Less than .61	Tested

¹See DEFINITIONS, Section 223. WINDOW THERMAL TESTING.

TABLE 6-3
Low-rise Residential Buildings
Heat Pump Minimum Efficiencies

Source and Outdoor Temperature (°F)	Class 1		Class 2	
	COP	HSPF	COP	HSPF
Air Source - 47 dB/43 WB	2.7		2.5	
Air source - 17 dB/15 WB	1.8		1.5	
Air Source		6.35		5.60
Water Source - 60 entering	3.0		2.5	
Ground Source	3.0		3.0	

TABLE 6-4
Low-rise Residential Buildings
Glazing and Furnace Efficiency Requirements

Space Heat Type	Climate Zone	Maximum Percentage of Floor Area in Glazing	Glazing Class		Heat Pump AFUE* Class
			AFUE*	Class	
Electric Resistance	I	21%	60	n/a	n/a
Electric, Passive Solar	I	21%	60	n/a	n/a
Other	I	21%	75	.65	2
Other	I	21%	90	.74	1
Other, Passive Solar	I	21%	90	.65	2
Electric Resistance	II	17%	60	n/a	n/a
Electric, Passive Solar	II	17%	60	n/a	n/a
Other	II	17%	75	.65	2
Other	II	17%	90	.74	1
Other, Passive Solar	II	17%	90	.65	2

*AFUE applies only to central heating equipment. All other types of heating equipment fueled by gas, oil, or propane must be equipped with an intermittent ignition device in order to use Class 90 glazing.

TABLE NO. 6-5
All Other than Low-rise Residential Buildings
Component Requirements

Component	Space Condition	System Type
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Component	Zone I	Zone II
Opaque Envelope		
Minimum Nominal R Value		
Roof/Ceilings	R-30	R-30
Exterior Walls	R-11	R-11
Floors over Unconditioned Space	R-11	R-11
Below Grade Walls ¹	R-4	R-5
Slab on Grade Floors ¹	((R-8)) R-7	R-10
Glazing		
Type	Double	Double
Maximum Total Area (Percent of Gross Exterior Wall)	32%	22%

¹Insulation shall be water-resistant material manufactured for this use.

**WSR 89-04-044
ADOPTED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Order R-293, Docket No. U-88-1882-R—Filed January 31, 1989]

In the matter of amending WAC 480-120-021, 480-120-041 and 480-120-106; and adopting WAC 480-120-141 relating to alternate operator services.

This action is taken pursuant to Notice No. WSR 88-23-043 filed with the code reviser on November 10, 1988. The rule change hereinafter adopted shall take effect pursuant to RCW 34.04.040(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and chapter 91, Laws of 1988, and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Right to Know Act (chapter 19.85 RCW).

Pursuant to the above, the Commission's decision is hereby adopted, effective January 23, 1989, and orally announced at the meeting of the Commission on January 23, 1989, at 9:00 a.m. in Olympia, Washington.

comments were received from American Operator Services, Inc., d/b/a National Telephone Services, Inc., AT&T Communications of the Pacific Northwest, Inc. (AT&T), GTE Northwest, Inc. (GTE), International Telecharge, Inc. (ITI), Military Communications Center, Inc., Payline Systems, Inc., US West Communications, and Whidbey Island Telephone Company. Oral comments were presented by Mr. Robert Snyder on behalf of Whidbey Island Telephone Company, Ms. Gretchen Hoover for International Telecharge, Inc., Mr. Carrington Phillip for the Public Counsel Division of the Office of the Attorney General, Mr. Dean Randall for GTE Northwest, Mr. Laddie Taylor for AT&T, Mr. Robert Saucier for International Pacific, Mr. Mike Moran for US West Communications, Mr. Jamie Bryant for National Telephone Services, Inc., and Mr. Roger Pease for Payline Systems, Inc.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-120-021, 480-120-041 and 480-120-106 should be amended; and WAC 480-120-141 should be adopted to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-120-021, 480-120-041 and 480-120-106 as amended; and WAC 480-120-141 as adopted will assure appropriate disclosure to consumers of the rates, fees, and charges for services provided by alternative operator service companies, as contemplated by chapter 91, Laws of 1988.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-120-021, 480-120-041, 480-120-106 and 480-120-141 as set forth in Appendix A, be amended and adopted as rules of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rules, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

DATED at Olympia, Washington, this 31st day of January, 1989.

Washington Utilities and Transportation Commission
Sharon L. Nelson, Chairman
Richard D. Casad, Commissioner
A. J. Pardini, Commissioner

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-250, Cause No. U-85-58, filed 5/12/86, effective 7/31/86)

WAC 480-120-021 **GLOSSARY.** Alternate operator services company - any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from places including but not limited to, hotels, motels, hospitals, campuses, and customer-owned pay telephones. Alternate operator services companies are those with which a hotel, motel, hospital, campus, or customer-owned pay

telephone, etc., contracts to provide operator services to its clientele.

Applicant – any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., applying to the utility for new service or reconnection of discontinued service.

Automatic dialing–announcing device – any automatic terminal equipment which incorporates the following features:

- (1)(a) Storage capability of numbers to be called; or
 - (b) A random or sequential number generator that produces numbers to be called; and
 - (c) An ability to dial a call; and
- (2) Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.

Base rate area or primary rate area – the area or areas within an exchange area wherein mileage charges for primary exchange service do not apply.

Central office – a switching unit in a telephone system having the necessary equipment and operating arrangements for terminating and interconnecting subscribers' lines, farmer lines, toll lines and interoffice trunks. (More than one central office may be located in the same building or in the same exchange.)

Commission – the Washington utilities and transportation commission.

Competitive telecommunications company – a telecommunications company which is classified as such by the commission pursuant to RCW 80.36.320.

Competitive telecommunications service – a service which is classified as such by the commission pursuant to RCW 80.36.330.

Customer – user not classified as a subscriber.

Exchange – a unit established by a utility for communication service in a specific geographic area, which unit usually embraces a city, town or community and its environs. It usually consists of one or more central offices together with the associated plant used in furnishing communication service to the general public within that area.

Exchange area – the specific area served by, or purported to be served by an exchange.

Farmer line – outside plant telephone facilities owned and maintained by a subscriber or group of subscribers, which line is connected with the facilities of a telecommunications company for switching service. (Connection is usually made at the base rate area boundary.)

Farmer station – a telephone instrument installed and in use on a farmer line.

Interexchange telecommunications company – a telecommunications company, or division thereof, that does not provide basic local service.

Outside plant – the telephone equipment and facilities installed on, along, or under streets, alleys, highways, or on private rights-of-way between the central office and subscribers' locations or between central offices.

Station – a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

Subscriber – any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., supplied with service by any utility.

Toll station – a telephone instrument connected for toll service only and to which message telephone toll rates apply for each call made therefrom.

Utility – any corporation, company, association, joint stock association, partnership, person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, operating or managing any telephone plant within the state of Washington for the purpose of furnishing telephone service to the public for hire and subject to the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order R-242, Cause No. U-85-56, filed 11/7/85)

WAC 480-120-041 AVAILABILITY OF INFORMATION. Each utility shall make known to applicants for service and to its subscribers such information as is needed to assist in obtaining adequate and efficient service.

Information relative to the rates, and rules and regulations (filed tariffs and/or price lists) of the telecommunications company shall be made available to the public upon request and at any of its listed business offices. In addition, each telecommunications company shall publish in its directory a consumer information guide which details the rights and responsibilities of a utility customer. 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.

A copy of these rules (chapter 480-120 WAC) shall also be kept on file in each of the utility's listed business offices and made available to its subscribers or their representatives upon request.

AMENDATORY SECTION (Amending Order R-233, Cause No. U-85-35, filed 8/23/85)

WAC 480-120-106 FORM OF BILLS. Bills to subscribers shall be rendered regularly and clearly list all charges. Each bill shall indicate the date it becomes delinquent and notice of means by which a subscriber can contact the nearest business office of the utility.

The portion of a bill rendered by the local exchange company on behalf of itself and other companies shall clearly specify the provider of the service or its authorized billing agent, and a toll free telephone number the consumer can call to question that portion of the bill and, if appropriate, receive credit. Consumers requesting an address where they can write to question that portion of the bill shall be provided that information.

A local exchange company shall not provide billing and collection services for telecommunications service to any company not properly registered to provide service within the state of Washington, except to a billing agent that certifies to the local exchange carrier that it will submit charges only on behalf of properly registered companies.

All bills for telephone service shall identify and set out separately any access or other charges imposed by order of or at the direction of the Federal Communications Commission. In addition, all bills for telephone service within jurisdictions where taxes are applicable will clearly delineate the amount, or the percentage rate at which said tax is computed, which represents municipal occupation, business and excise taxes that have been levied by a municipality against said utility, the effect of which is passed on as a part of the charge for telephone service.

Subscribers requesting by telephone, letter or office visit an itemized statement of all charges shall be furnished same. An itemized statement is meant to include separately, the total for exchange service, mileage charges, taxes, credits, miscellaneous or special services and toll charges, the latter showing at least date, place called and charge for each call. In itemizing the charges of information providers, the utility shall furnish the name, address, telephone number and toll free number, if any, of such providers. Any additional itemization shall be at a filed tariff charge.

Upon a showing of good cause, a subscriber may request to be allowed to pay by a certain date which is not the normally designated payment date. Good cause shall include, but not be limited to, adjustment of the payment schedule to parallel receipt of income. A utility may be exempted from this adjustment requirement by the commission.

NEW SECTION

WAC 480-120-141 ALTERNATE OPERATOR SERVICES. All telecommunications companies providing alternate operator services shall conform to this and all other rules relating to telecommunications companies not specifically waived by order of the commission. Alternate operator services companies (AOS) are those with which a hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracts to provide operator services to its clientele.

For purposes of this section the "consumer" means the party billed for the completion of an interstate/intrastate or local call. "Customer" means the hotel, motel, hospital, prison, campus, customer-owned pay telephone, etc., contracting with an AOS for service.

(1) An alternate operator services company shall require, as a part of the contract with its customer, that the customer:

(a) Post on the telephone instrument in plain view of anyone using the telephone, in eight point Stymie Bold type, the following notice:

SERVICES ON THIS INSTRUMENT MAY BE PROVIDED AT RATES THAT ARE HIGHER THAN NORMAL. YOU HAVE THE RIGHT TO CONTACT THE OPERATOR FOR INFORMATION REGARDING CHARGES BEFORE PLACING YOUR CALL. INSTRUCTIONS FOR DIALING THROUGH THE LOCAL TELEPHONE COMPANY ARE ALSO AVAILABLE FROM THE OPERATOR

(b) Post and maintain in legible condition on or near the telephone:

(i) The name of the alternate operator services company, as registered with the commission;

(ii) Dialing directions so that a consumer may reach the AOS operator so as to receive specific rate information; and

(iii) Dialing directions to allow the consumer to dial through the local telephone company and to make it clear that the consumer has access to the other providers.

(2) The alternate operator services company shall:

(a) Identify the AOS company providing the service or its authorized billing agent at the beginning of every call, including those handled automatically; and

(b) Provide to the local exchange company such information as may be necessary for billing purposes, as well as an address and toll free telephone number for consumer inquiries.

(3) The alternate operator services company shall assure that consumers are not billed for calls which are not completed. For billing purposes, calls shall be itemized, identified, and rated from the point of origination to the point of termination. No call shall be transferred to another carrier by an AOS which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

(4) For purposes of emergency calls, every alternate operator services company shall have the following capabilities:

(a) Automatic identification at the operator's console of the location from which the call is being made;

(b) Automatic identification at the operator's console of the correct telephone numbers of emergency service providers that serve the telephone location, including but not limited to, police, fire, ambulance, and poison control;

(c) Automatic ability at the operator's console of dialing the appropriate emergency service with a single keystroke;

(d) Ability of the operator to stay on the line with the emergency call until the emergency service is dispatched.

No charge shall be imposed on the caller from the telephone company or the alternate operator services company for the emergency call.

If the alternate operator services company does not possess these capabilities, all calls in which the caller dials zero (0) and no other digits within five seconds shall be routed directly to the local exchange company operator, or to an entity fully capable of complying with these requirements. AOS companies lacking sufficient facilities to provide such routing shall cease operations until such time as the requirements of this section are met.

(5) Consumer complaints and disputes shall be treated in accordance with WAC 480-120-101, Complaints and disputes.

(6) Charges billed to a credit card company (e.g., American Express or Visa) need not conform to the call detail requirements of this section. However, the AOS shall provide consumers with specific call detail in accordance with WAC 480-120-106 upon request.

WSR 89-04-045
ADOPTED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Order R-294, Cause No. TV-2223—Filed January 31, 1989]

In the matter of amending WAC 480-12-285 relating to distribution and cost of tariffs.

This action is taken pursuant to Notice No. WSR 88-23-118 filed with the code reviser on November 23, 1988. The rule change hereinafter adopted shall take effect pursuant to RCW 34.04.040(2).

This rule-making proceeding is brought on pursuant to RCW 80.01.040 and 81.80.290, and is intended administratively to implement these statutes.

This rule-making proceeding is in compliance with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

Pursuant to Notice No. WSR 88-23-118 the above matter was scheduled for consideration at 9:00 a.m., Wednesday, December 28, 1988, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA, before Chairman Sharon L. Nelson and Commissioners Richard D. Casad and A. J. Pardini.

Under the terms of said notice, interested persons were afforded the opportunity to submit data, views, or arguments to the commission in writing prior to December 21, 1988, and orally at 9:00 a.m., Wednesday, December 28, 1988, in the commission's hearing room above noted. At the December 28, 1988, meeting the commission considered the rule change proposal. No written or oral comments were presented.

The rule change affects no economic values.

In reviewing the entire record herein, it has been determined that WAC 480-12-285 should be amended to read as set forth in Appendix A shown below and by this reference made a part hereof. WAC 480-12-285 as amended will provide for the publication and distribution in due course of a new class rate tariff to be used by all motor carriers operating under commission published tariffs. The new tariff is based on zip codes rather than point to point locations, making more simple the proper application of class rates. The rule also reflects implementation of concomitant revisions to other tariffs published by the commission presently naming class rates. Finally, the rule, as amended, recovers the cost of tariff publication, as provided in RCW 81.80.150.

ORDER

WHEREFORE, IT IS ORDERED That WAC 480-12-285 as set forth in Appendix A, be amended and adopted as a rule of the Washington Utilities and Transportation Commission to take effect pursuant to RCW 34.04.040(2).

IT IS FURTHER ORDERED That the order and the annexed rules, after first being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for

filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

DATED at Olympia, Washington, this 31st day of January, 1989.

Washington Utilities and Transportation Commission
 Sharon L. Nelson, Chairman
 Richard D. Casad, Commissioner
 A. J. Pardini, Commissioner

APPENDIX "A"

AMENDATORY SECTION (Amending Order R-280, Cause No. TV-2113, filed 11/12/87)

WAC 480-12-285 TARIFFS, DISTRIBUTION AND COST OF. Tariffs, with description and cost thereof are as follows:

Tariff No.	Territory	Cost per tariff	
		*Initial Charge	*Annual Maintenance
3-B	Spokane cartage	(\$ 8.00)	(\$ 8.00)
		\$ 10.00	\$ 19.00
4-A	Special commodities (state-wide)	(+15.00)	25.00
		17.50	40.00
5-A	General freight west of cascades	(+15.00)	35.00
		20.00	50.00
6-A	General freight east of Cascades and between east and west	(+15.00)	35.00
		20.00	50.00
7-B	Bulk petroleum products	(+10.00)	25.00
		12.50	40.00
9	General freight in King, Pierce, Snohomish & Thurston counties	(+15.00)	30.00
		20.00	50.00
10	Mileage circular	8.00	(8.00)
			18.00
12	Local areas	(+10.00)	8.00
		12.50	20.00
13	Bulk commodities except petroleum	(+15.00)	25.00
		17.50	40.00
14	Mobile homes (towaway)	8.00	(8.00)
			18.00
15	Household goods	8.00	(+2.00)
			22.00
16	Zip code (class rates)	15.00	25.00

*Subject to Washington state retail sales tax.

During the calendar year in which the purchase of a tariff is made the annual maintenance fee shall be payable in advance on the following basis:

Month Purchased	Fee Payable
January, February, March	In full
April, May, June	Three-quarters
July, August, September	One-half
October, November, December	One-quarter

Each subsequent year the annual maintenance fee shall be payable on or before December 31 of the preceding year.

One or more single pages in any tariff will be supplied at twenty-five cents per page - minimum order ~~((one))~~ two dollars.

All prices set out in this rule shall be subject to change without notice. All subsequent issues or reissues

of commission tariffs shall be priced according to the cost of compilation and maintenance and all fees shall be payable in advance as stated herein unless otherwise specifically ordered by the commission.

WSR 89-04-046
EMERGENCY RULES
DEPARTMENT OF FISHERIES
[Order 89-03—Filed January 31, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulations.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is in-season run size estimates for winter run spring chinook indicate harvestable numbers are available. This regulation is adopted at the recommendation of the January 26, 1989, Columbia River Compact, and there is inadequate time to promulgate permanent 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 75.08.070 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 January 31, 1989.

By R. Kahler Martinson
for Joseph R. Blum
Director

NEW SECTION

WAC 220-32-05100P COLUMBIA RIVER GILLNET SEASONS ABOVE BONNEVILLE. (1) *Notwithstanding the provisions of WAC 220-32-052, WAC 220-32-058 and WAC 220-32-059, it is unlawful for a person to take or possess salmon, shad and sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla and Nez Perce treaties may fish from Noon February 1, 1989 to Noon March 21, 1989.*

(2) *During the seasons specified in subsection 1, the following areas are closed.*

(a) *Hood River is those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between approximately 0.8 miles downriver from the west bank at the end of the breakwall at the west end of the*

port of Hood River to 1/2 mile upriver from the east bank.

(b) *Herman Creek is those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of of the boat ramp.*

(c) *Deschutes River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.*

(d) *Umatilla River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.*

(e) *Big White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a point one-half mile upstream from the eastern shoreline and a boundary marker located 3/4 of a mile downstream from the western shoreline of the mouth of the Big White Salmon River.*

(f) *Wind River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one and one-half mile downstream from the western shoreline.*

(g) *Klickitat River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one and one-half mile downstream from the western shoreline.*

(h) *Little White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to three-quarters mile downstream from the western shoreline.*

(3) *Notwithstanding the provisions of WAC 220-22-010, during the open periods in subsection (1):*

(a) *Area 1F (Bonnevillie Pool) shall include those waters of the Columbia River upstream from the Bridge of Gods, and downstream from the west end of the 3 mile rapids.*

(b) *Area 1G shall include those waters of the Columbia River upstream from a line drawn between a point one mile above the fishway exit on the Washington shore and a point one mile above the fishway exit on the Oregon shore, and downstream from Preacher's Eddy light below John Day Dam.*

(c) *Area 1H shall include those waters of the Columbia River upstream from a fishing boundary marker approximately one-half mile above the John Day River, Oregon, to a fishing boundary marker on the Washington shore and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.*

WSR 89-04-047
EMERGENCY RULES
DEPARTMENT OF FISHERIES
 [Order 89-04—Filed January 31, 1989]

I, Joseph R. Blum, director of the Department of Fisheries, do promulgate and adopt at Olympia, Washington, the annexed rules relating to commercial fishing regulation.

I, Joseph R. Blum, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is in-seasons run size estimates for winter run spring chinook indicate harvestable numbers are available. This regulation is adopted at the recommendation of the January 26, 1989, Columbia River Compact, and there is inadequate time to promulgate permanent 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 75.08.070 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 January 31, 1989.

By R. Kahler Martinson
 for Joseph R. Blum
 Director

NEW SECTION

WAC 220-33-01000C COLUMBIA RIVER GILL NET SEASONS BELOW BONNEVILLE. *Notwithstanding the provisions of WACs 220-33-005, 220-33-010, 220-33-020, and 220-33-030:*

(1) *It is unlawful for a person to take or possess salmon, shad, and sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, and 1D to Kelly Point, except from:*

Noon February 15 to 6:00 p.m. February 17, 1989

Noon February 19 to 6:00 p.m. February 24, 1989

Noon February 26 to 6:00 p.m. March 2, 1989

(2) *It is unlawful to fish for salmon, shad, and sturgeon with gill net gear, with a mesh size less than 8 inches.*

(3) *During the season provided for in subsection 1 of this section, the following sanctuaries are closed waters as defined in WAC 220-33-005:*

Grays Bay, Elokomin-A, Kalama-A, Lewis-A, Washougal, Gnat Creek, Sandy River and the Cowlitz defined as:

Cowlitz - those waters of the Columbia River and Carrolls Channel lying inside the center of the shipping channel between a fishing boundary marker at the junction of the Port of Longview docks and international paper docks on the Washington shore approximately one mile downstream from the Cowlitz River mouth and flashing green light "29A" on Cottonwood Island and also those waters of Carrolls Channel downstream of a line between a fishing boundary marker approximately 3000 feet upstream of the Cowlitz river mouth and fishing boundary marker on Cottonwood Island.

Reviser's note: The spelling errors in the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

WSR 89-04-048
PROPOSED RULES
HIGHER EDUCATION COORDINATING BOARD
 [Filed February 1, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Higher Education Coordinating Board intends to adopt, amend, or repeal rules concerning displaced homemaker program, chapter 250-44 WAC;

that the agency will at 2:00 p.m., Tuesday, March 7, 1989, in the Higher Education Coordinating Board Conference Room, 917 Lakeridge Way, GV-11, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 15 and 16, 1989.

The authority under which these rules are proposed is RCW 28B.10.806.

The specific statute these rules are intended to implement is chapter 28B.04 RCW, as amended.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 6, 1989.

Dated: January 31, 1989

By: Ann Daley
 Executive Director

STATEMENT OF PURPOSE

Title: Amendments modifying regulations for the administration of the displaced homemaker program.

Summary: These amendments make the following changes to the regulations for the administration of the displaced homemaker program: Clarifies specific dates and dollar amounts contained in the sections concerning utilization of contract funds, length of contract periods and contract calendar and closing dates for the 1989-91 biennium.

Institutional Personnel Responsible for Drafting, Implementation and Enforcement of Rule: Ms. Charlie Arnold, Higher Education Coordinating Board, 917 Lakeridge Way, GV-11, Olympia, WA 98504.

Governmental Organization Proposing the Rule: Higher Education Coordinating Board.

Institutional Comments Regarding Statutory Matters:
Not applicable.

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

AMENDATORY SECTION (Amending Order 4-87, Resolution No. 87-57, filed 7/31/87)

WAC 250-44-050 UTILIZATION OF AVAILABLE CONTRACT FUNDS. (1) Each biennium the executive director shall issue contract application guidelines which shall establish criteria for specific utilization of available contract funds. The guidelines shall set forth:

(a) The maximum contract amount for a multipurpose service center to be provided depending on available funds under the act during the ~~((1987-89))~~ 1989-91 biennium shall not exceed \$~~((4,300))~~ 4,600 per month.

(b) The maximum contract amount for a contract for a program or programs of service depending on available funds under the act during the ~~((1987-89))~~ 1989-91 biennium shall not exceed \$~~((2,900))~~ 3,200 per month.

(c) A reservation of funds for contracts to provide state-wide outreach and information services and/or training for service providers.

(2) At least two multipurpose service centers in major population centers will be supported under the displaced homemaker program, provided adequate funds have been appropriated.

(3) Remaining funds will be used for contracts selected to provide geographic dispersion of displaced homemaker multipurpose service centers and programs of service.

AMENDATORY SECTION (Amending Order 4-87, Resolution No. 87-57, filed 7/31/87)

WAC 250-44-110 LENGTH OF CONTRACT PERIODS. Contract periods for contracts awarded under the act shall be in accordance with each application proposal, subject to contract application guidelines issued by the executive director.

(1) Contracts for operation of multipurpose service centers during the ~~((1987-89))~~ 1989-91 biennium may cover operations beginning as early as ~~((October 1, 1987))~~ July 1, 1989, and ending June 30, ~~((1989))~~ 1991.

(2) Contracts for operation of programs of services during the ~~((1987-89))~~ 1989-91 biennium may cover operations beginning as early as ~~((October 1, 1987))~~ July 1, 1989, and ending June 30, ~~((1989))~~ 1991.

AMENDATORY SECTION (Amending Order 4-87, Resolution No. 87-57, filed 6/31/87 [7/31/87])

WAC 250-44-130 CALENDAR AND CLOSING DATES FOR LETTERS OF INTENT, APPLICATIONS AND AWARDS. (1) Sponsoring organizations wishing to apply for contracts to operate multipurpose service centers, shall submit to the executive director a letter of intent, accompanied by appropriate documentation of non-profit status in the case of nonpublic applicants, by ~~((Friday, August 21, 1987))~~ Monday, March 6, 1989, as specified in the contract application guidelines.

(2) The executive director or the director's designee will screen the letters of intent for multipurpose service centers, prepare a list of all eligible sponsoring organizations which filed letters of intent and distribute the list to all organizations on the list, by ~~((Friday, August 28, 1987))~~ Monday, March 13, 1989, or seven days from the filing date for letters of intent as specified in the contract application guidelines.

(3) Applications for contracts for multipurpose service centers may be submitted by sponsoring organizations on the list pursuant to subsection (2) of this section. The closing dates for such applications by ~~((Friday, September 18, 1987))~~ Wednesday, April 5, 1989, as specified in the contract application guidelines.

(4) Sponsoring organizations wishing to apply for contracts to operate programs of service and a state-wide outreach and information services program shall submit to the executive director a letter of intent, accompanied by appropriate documentation of non-profit status in the case of nonpublic applicants, by ~~((Friday, August 21, 1987))~~ Monday, March 6, 1989.

(5) The executive director or the director's designee will screen the letters of intent for programs of service and a state-wide outreach and information services program, prepare a list of all eligible sponsoring organizations which filed letters of intent, and distribute the list to all

organizations on the list, by ~~((Friday, August 28, 1987))~~ Monday, March 13, 1989, or seven days from the filing date for letters of intent as specified in the contract application guidelines.

(6) Applications for contracts for programs of service and a state-wide outreach and information services program may be submitted by sponsoring organizations on the list pursuant to subsection (5) of this section by ~~((Friday, September 18, 1987))~~ Wednesday, April 5, 1989, as specified in the contract application guidelines.

(7) The executive director of the board will approve awards of contracts, provided qualifying applications were received by the closing dates specified in this section and in the guidelines.

(8) In the event that available funds for contracts under the act are not fully utilized after approval of contracts the executive director may either establish a new calendar for further consideration of applications and award of contracts or award supplemental funds to existing centers and programs by amendment of contracts in effect.

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

WSR 89-04-049
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 1, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Agriculture intends to adopt, amend, or repeal rules concerning wheat, chapter 16-528 WAC;

that the agency will at 1 p.m., Wednesday, March 15, 1989, in the Wheat Commission Office, West 905 Riverside 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 March 29, 1989.

The authority under which these rules are proposed is chapters 15.66 and 43.03 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1989.

Dated: February 1, 1989
By: J. Allen Stine
Assistant Director

STATEMENT OF PURPOSE

Title: Chapter 16-528 WAC, Wheat.

Description of Purpose: To reference within the Wheat Commission's body of rules daily allowance rate, subsistence, lodging and mileage expense allowances to the appropriate state laws authorizing such payments.

Statutory Authority: Chapters 15.66 and 43.03 RCW.

Summary of Rule: The proposed rule will reference the specific Washington RCW that allows the maximum amount the commission may authorize to pay commissioners for daily allowance, lodging, subsistence and mileage.

Reasons Supporting Proposed Activities: The proposed rule will clearly reference the state laws that govern the payments to commissioners for their daily allowance, subsistence, lodging and mileage payments made to commissioners when conducting commission business. The rule reinforces the commission's intent to operate within state laws and rules relating to these allowances as currently enacted or as may be amended in the future.

Agency Personnel Responsible: Wayne Klindworth, Chairman, Washington Wheat Commission, 404 Great Western Building, West 905 Riverside Avenue, Spokane, WA 99201, phone (509) 456-2481.

Person or Organization Proposing Rule, Whether Public, Private or Governmental: Washington Wheat Commission.

Agency Comments: None.

These rules are not made necessary as a result of federal law or federal or state court action.

Small Business Economic Impact Statement: This agency has determined that there will be no economic impact upon small businesses in the state of Washington by the adoption of these new rules.

AMENDATORY SECTION (Amending Marketing Order, Article II, effective 4/30/58)

WAC 16-528-020 WHEAT COMMISSION—STRUCTURE—POWERS, DUTIES—PROCEDURE. (1) Establishment and membership. A wheat commission is hereby established to administer this marketing order and shall be composed of five members who shall be producers elected as provided in this section and two members who shall be appointed by the elected producer members. In addition, the director shall be an ex officio member of the commission.

(2) Representative districts. The affected area shall be divided into the five following districts:

District I—One commission member

Ferry County
Lincoln County
Pend Oreille County
Spokane County
Stevens County

District II—One commission member

Whitman County

District III—One commission member

Asotin County
Columbia County
Garfield County
Walla Walla County

District IV—One commission member

Adams County
Chelan County
Douglas County
Grant County
Okanogan County

District V—One commission member

Benton County
Franklin County
Kittitas County
Klickitat County
Yakima County

Each district shall nominate one or more nominees but elect one commission member only.

(3) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of twenty-five years. Producer members of the commission shall be producers of wheat in the district in and for which they are nominated and elected. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(4) Term of office—Initial commission. The term of office of commission members shall be three years from the date of their election and until their successors are elected and qualified. The terms of office for the initial commission members shall be as follows:

Districts I and II shall terminate December 31, 1958.

Districts III and IV shall terminate December 31, 1959.

District V shall terminate December 31, 1960.

One appointed member's term shall terminate December 31, 1959.

The second appointed member's term shall terminate December 31, 1960.

The appointed members of the initial commission shall be elected by a majority of the elected commissioners at the first meeting.

(5) Nomination and election of commission members.

(a) Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(i) Nominating petitions shall be sent not earlier than September 17th and not later than October 2nd of each year in the district wherein a vacancy will occur. Nominating petitions shall be signed by not less than five affected producers of the district from which such a candidate will be elected.

(ii) Filing of nominating petitions shall be mailed to the director not earlier than October 8th and not later than October 13th of each year.

(iii) Ballots will be mailed to all producers in the district wherein a vacancy will occur, not earlier than October 18th and not later than November 2nd of each year.

(iv) Ballots shall be returned not later than December 2nd of such year.

(b) With respect to the initial wheat commission, the director shall call for nominations with the notice of his final decision following the hearing. The ballot for the election of commissioners shall be secret and shall be forwarded to the producers at the same time the director's proposed marketing order is mailed to the producers for their assent.

(6) Vacancies.

(a) To fill any vacancy occasioned by the failure to qualify of any person elected by the producers as a member of the commission, or in the event of the death, removal, resignation or disqualification of any member, the director shall call for nominations and conduct such election within the district wherein the vacancy occurred, in the manner provided in subsection (5) of this section.

(b) To fill nonelective vacancies caused by other reasons than the expiration of the term, the new members shall be elected by the commission at its first meeting after the occurrence of the vacancy.

(7) Powers and duties of commission. The commission shall have the powers and duties, as specified under RCW 15.66.140, and shall include but not be limited to the following:

(a) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with, and to effectuate the purposes of the act, and this marketing order.

(b) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year.

(c) To accept and receive gifts and grants and expend same.

(8) Procedure for commission.

(a) The commission shall, by resolution, establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by the resolution of the commission.

(c) The commission shall hold an annual meeting at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the wheat commission at least ten days prior to the meeting, through the regular wire news services and radio-television press.

(d) The commission shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: PROVIDED, HOWEVER, That the notice of any special meeting may be waived by a waiver thereof signed by each member thereof.

(e) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(f) A quorum of the commission shall consist of at least five members.

(g) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall receive an amount not to exceed (~~(\$20.00 per day)~~ the amount as allowed in RCW 43.03.230, as it exists now or as hereafter amended, for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence, lodging, and (travel) mileage expense allowed by ((law to state employees)) RCW 43.03.050 and 43.03.060 as authorized by RCW 15.66.130, the Enabling Act of 1955.

WSR 89-04-050

ADOPTED RULES

DEPARTMENT OF GENERAL ADMINISTRATION
(Division of Savings and Loan Associations)

[Order 89-1—Filed February 1, 1989]

I, Betty Reed, supervisor of the Division of Savings and Loan Associations, do promulgate and adopt at Olympia, Washington, the annexed rules relating to member business loans for state-chartered credit unions.

This action is taken pursuant to Notice No. WSR 88-22-047 filed with the code reviser on October 31, 1988. 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 31.12.015 and is intended to administratively implement that statute.

This rule is promulgated under the general rule-making authority of the Supervisor, Division of Savings and Loan Associations as authorized in RCW 31.12.535.

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

APPROVED AND ADOPTED February 1, 1989.

By Betty Reed
Supervisor

Chapter 419-64 WAC

CREDIT UNION MEMBER BUSINESS LOANS

WAC

419-64-010	Purpose
419-64-020	Definitions
419-64-030	Policy Requirements
419-64-040	Underwriting Review Requirements
419-64-050	Loans to One Member
419-64-060	Allowance for Loan Losses
419-64-070	Minimum Reserves-to-Assets Ratio
419-64-080	Prohibitions, Director and Employee Loans
419-64-090	Prohibitions, Other

NEW SECTION

WAC 419-64-010 PURPOSE. This chapter is adopted by the supervisor for the purpose of setting guidelines for credit unions to make member business loans. The objective of this chapter is to ensure that member business loans are made in such a way as to minimize the risk inherent in this type of lending. The supervisor's goal is to provide the basis for a system of member business lending that is consistent with safe and sound credit union practices. This chapter does not change the restrictions on loans to nonpersons outlined in RCW 31.12.406(1).

NEW SECTION

WAC 419-64-020 DEFINITIONS. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial business or agricultural purpose, except the following, which shall not be considered a member business loan for the purposes of this chapter:

(a) A loan which is fully secured by a first or second lien on a one-to-four unit dwelling that is the member's primary or secondary residence.

(b) A loan which is fully secured by shares in the credit union or by perfected security interests in deposits in other financial institutions.

(c) A loan, the repayment of which is fully guaranteed or insured by the federal government or by the state of Washington or any of its political subdivisions. A binding advance commitment to purchase a member business loan in full by any such entity shall be considered a guarantee for the purposes of this paragraph.

(d) A loan which, when added to all other loans (excluding loans described in paragraphs (a), (b), and (c) of this subsection) to the borrower totals less than twenty thousand dollars.

(2) "Reserves" means the regular reserve, undivided earnings or surplus, and any other unencumbered reserves.

(3) "Affiliated company" means a partnership, corporation, or other entity, fifteen per cent of which is owned by any one director, officer, agent, or employee of the credit union or twenty-five per cent of which is owned by any combination of directors, or employees of the credit union.

(4) "Borrower" means any individual member of the credit union or other entity such as a partnership, corporation, or any other business combination in which the member has a financial interest.

NEW SECTION

WAC 419-64-030 POLICY REQUIREMENTS. A credit union may make member business loans only in accordance with the following requirements unless prior written approval is obtained from the supervisor:

(1) Written commercial lending policies. Credit unions presently involved in member business loans must adopt specific commercial loan policies within sixty days of the effective date of this chapter and must review them at least once every twelve months and certify in the minutes of the board meeting that the review occurred. Amendments to these policies also must be approved by the board. Other credit unions must adopt similar policies in accordance with this chapter prior to implementing a member business loan program.

These policies and any amendments thereto must be submitted to the supervisor for review at least thirty days prior to the proposed date of implementation of the member business loan program or the amendment. These formal written policies shall at a minimum appropriately address the following:

(1) The types of business loans that will be made.

(2) The credit union's market area for business loans.

(3) The maximum amount of the credit union's assets in relationship to reserves that will be invested in member business loans. In no case will this ratio exceed three hundred percent.

(4) The maximum amount of the credit union's assets in relationship to reserves that will be loaned under this program to any one member, not to exceed the amount set in WAC 419-64-050.

(5) The qualifications and experience of personnel involved in making and administering member business loans.

(6) Collateral requirements for these loans which shall include loan-to-value ratios based on type of loan and type of security, title and casualty insurance requirements, and valuation cycles to regularly determine marketability of collateral.

(7) Schedules of interest rates and terms for each category of member business loan and on what basis these will be adjusted.

(8) Procedures for loan monitoring, servicing, and follow-up procedures, including collection activities.

NEW SECTION

WAC 419-64-040 UNDERWRITING REVIEW REQUIREMENTS. A written analysis of the borrower's ability to repay member business loans shall be made based on the following underwriting areas at a minimum:

(1) Present financial status based on a current balance sheet and income and expense statement, supported by appropriate tax returns, credit information, and historical data.

(2) Pro-forma financial statements showing the impact of the loan on the borrower's capacity to repay.

(3) A feasibility analysis of the project considering local economic conditions and comparative industry trends for the type of venture involved.

(4) Capacity of the borrower to repay from assets not related to the venture in case of failure.

(5) Certification by the appropriately designated loan officer or credit committee that the loan under consideration meets all applicable credit union and statutory requirements.

NEW SECTION

WAC 419-64-050 LOANS TO ONE BORROWER. The aggregate amount of outstanding member business loans to any one borrower shall not exceed twenty percent of the credit union's reserves. If any portion of a member business loan is fully secured by shares in the credit union or a perfected security interest in deposits in another financial institution, such portion shall not be calculated in determining the twenty percent limitation. The supervisor may waive this limitation upon application in writing from a credit union prior to the making of the loan in question. The application for waiver must include the total amount sought, the reason for the waiver request, and other such information as the supervisor may require to evaluate the request.

NEW SECTION

WAC 419-64-060 ALLOWANCE FOR LOAN LOSSES. Under RCW 31.12.475, the supervisor may require the write-off of losses or the establishment of such reserves for weak assets as is deemed appropriate by the supervisor. Member business loans may be classified as performing, substandard, doubtful, or loss, depending on various factors not limited to the delinquency of the loan. Insufficient collateral or unreasonable collateral appraisals, inadequate documentation, and uncertain source of repayment are among the primary weaknesses that will be considered grounds for asset classification. Member business loans adversely classified (substandard, doubtful, or loss) shall be reserved as follow:

(1) Loss loans shall be charged off or reserved at one hundred per cent of the outstanding principal balance.

(2) Doubtful loans shall be reserved at fifty per cent of the outstanding principal balance.

(3) Substandard loans shall be reserved at ten per cent of the outstanding principal balance.

The supervisor may require establishment of reserves of greater or lesser amounts.

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

NEW SECTION

WAC 419-64-070 MINIMUM RESERVES-TO-ASSETS RATIO. Because of the higher risk associated with member business loans, a credit union must have a reserves-to-assets ratio of not lower than four per cent to make such loans. The Supervisor may waive the requirements of this section in writing.

NEW SECTION

WAC 419-64-080 PROHIBITIONS, DIRECTOR AND EMPLOYEE LOANS. Any loan or loans to directors, agents, employees, supervisory or credit committee members, members of their immediate families, or an affiliated company must be made on no more favorable terms and conditions and must not present greater risk to the credit union than similar loans available at that time to other members.

The board of directors shall specifically review each member business loan made to the entities listed in the preceding paragraph and shall certify in writing that the terms, conditions, and elements of risk of each loan(s) meet the requirements stated.

NEW SECTION

WAC 419-64-090 PROHIBITIONS, OTHER. A credit union shall not grant a member business loan where it receives any portion of profits from the venture other than the contractual payment of principal, interest, and normal fees as set forth on the debt instrument.

WSR 89-04-051
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Filed February 1, 1989]

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

Amd ch. 173-220 WAC National pollutant discharge elimination system permit program.
 Amd ch. 173-216 WAC State waste discharge permit program;

that the agency will at 10:00 a.m., Tuesday, March 8, 1989, in the Evergreen State College Library, Room 4300, Olympia, and at 2:00 p.m., Wednesday, March 9, 1989, in the Spokane Center, Eastern Washington University, 4th Floor Mall, West 705 First at Wall, Spokane, conduct public hearings on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 2, 1989.

The authority under which these rules are proposed is chapter 43.21A RCW.

The specific statute these rules are intended to implement is RCW 43.21A.230.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 20, 1989.

Dated: January 31, 1989

By: Carol Jolly
 Assistant Director
 Water and Shorelands

STATEMENT OF PURPOSE

Title: Chapter 173-220 WAC, National pollutant discharge elimination system permit program; and chapter 173-216 WAC, State waste discharge permit program.

Description of Purpose: To implement a program for accreditation of environmental laboratories which conduct tests for or prepare data pursuant to chapter 173-220 or 173-216 WAC for submittal to the Department of Ecology.

Statutory Authority: RCW 43.21A.230.

Summary of Rule: The Department of Ecology proposes to implement a program to accredit environmental laboratories which conduct tests for or prepare data pursuant to either chapter 173-220 or 173-216 WAC for submittal to the Department of Ecology. The Department of Ecology is concurrently proposing regulations to establish a program to accredit environmental laboratories (chapter 173-50 WAC).

Current provisions are not adequate to assure that laboratories have the capability to accurately analyze environmental samples in accordance with wastewater discharge permits and other regulatory requirements. Proposed chapter 173-50 WAC will assure that laboratories have such a capability. The proposed amendments to chapters 173-220 and 173-216 WAC will implement proposed chapter 173-50 WAC by requiring submittal of data from accredited laboratories. Implementation will improve the analytical data submitted by environmental laboratories to the department and will result in improved decision-making based on that data.

Proposed chapter 173-50 WAC establishes the process through which laboratories may become accredited. That process will emphasize quality assurance and quality control. The proposed amendment to chapter 173-220 WAC requires that National Pollutant Discharge Elimination System (NPDES) permittees in the indicated categories submit monitoring data from laboratories accredited under the provisions of the proposed chapter 173-50 WAC no later than the dates below:

July 1, 1991 Major NPDES permittees and minor NPDES permittees which are identified as primary industries in 40 CFR Part 122 Appendix A

July 1, 1992 All other minor NPDES permittees

July 1, 1993 All general NPDES permittees

Likewise, the proposed amendment to chapter 173-216 WAC requires that state waste discharge permittees in the indicated categories submit monitoring data from laboratories accredited under the provisions of the proposed chapter 173-50 WAC no later than the dates below:

July 1, 1991 State permittees which are identified as primary industries in 40 CFR Part 122 Appendix A

July 1, 1993 All other state permittees

July 1, 1993 All permittees issued permits by publicly-owned treatment works (POTWs) with approved pretreatment programs

Under both proposed amendments, flow, temperature, and process control parameters need not be accredited. Process control parameters are defined as those parameters which are used solely for internal wastewater treatment process control and which are not priority pollutants listed in 40 CFR Part 122 Appendix D, Table II and III. Accreditation of process control parameters may be required on a case-by-case basis as a permit condition.

Reasons Supporting Proposed Action: Recommendation of Puget Sound Water Quality Authority as proposed in the 1987 Puget Sound water quality management plan; and assures capability of accredited laboratories to submit accurate environmental data to the Department of Ecology.

Agency Personnel Responsible for Drafting: Nancy L. Winters, mailstop PV-11, 438-7036; Implementation: Stan Springer, mailstop PV-11, 438-7040; and Enforcement: Same.

Person or Organization Proposing Rule, and Whether Public, Private or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: None.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: Implementation of the environmental laboratory accreditation program, chapters 173-50*, 173-216 and 173-220 WAC.

* Chapter 173-50 WAC establishes a program for accreditation of environmental laboratories. Revisions to chapters 173-216 and 173-220 WAC require wastewater discharge permit holders to submit monitoring data from accredited laboratories.

The Regulatory Fairness Act, chapter 19.85 RCW, requires that rules having an economic impact on more than 20% of all industries or more than 10% of the businesses in any one industry be reviewed and altered to minimize their impact upon small businesses. Further, the Economic Policy Act, chapter 43.21H RCW, suggests consideration of economic values in general during the rule-making process. The regulatory proposals in promulgating chapter 173-50 WAC, Accreditation of environmental laboratories and in revising chapter 173-216 WAC, permits to discharge commercial and industrial wastes and chapter 173-220 WAC, NPDES permit system have been reviewed in light of both requirements. Conclusions of that review are summarized in this economic impact statement which is designed to satisfy the intent of chapter 43.21H RCW while concentrating on the specific requirements of chapter 19.85 RCW.

The statement deals primarily with laboratories operated within the private sector of the economy. These are addressed in Section I. Some laboratories affected by the rule are also operated by government entities (cities, counties, water and sewer districts, publicly-owned utilities, and state agencies). The impact of fees on these government entities is examined in Section II. Sections I and II address impact of fees imposed by chapter 173-50 WAC which will be a continuing impact. Section III addresses associated (indirect) costs which may be incurred by some activities in preparation for accreditation of their laboratories. Generally, these costs will impose a noncontinuing (one-time) impact.

Fees imposed by the environmental laboratory accreditation program are not expected to have a significantly adverse affect on any particular business in the state. While the fees do tend to place a proportionally higher burden on smaller business within a given industry, the burden is not so significant that it will reduce competition, reduce employment, reduce new employment opportunities, reduce innovation, or threaten the existence of any small businesses. Accreditation is expected to be an economic benefit to most commercial testing labs.

Laboratory accreditation fees are not expected to have a significantly adverse economic effect on any government entity including small municipalities. The very smallest municipalities are likely to have their wastewater analyzed by a commercial laboratory or another larger municipality and will not be directly affected by the laboratory accreditation fee. They may be indirectly affected if the servicing laboratory increases its charges as a result of its own requirement to pay fees. The \$150 fee for an average small municipality which is likely to do its own analyses (e.g., a town of 2000 residential equivalents) would represent a burden of only \$0.08 per residence per year. The maximum \$1250 fee anticipated for METRO West Point with approximately 231,000 residential equivalents would represent a burden of approximately one cent (\$0.005) per residence per year. In neither case is the fee considered an undue burden.

Associated (i.e., nonfee) costs are not readily quantifiable and not justifiably attributable to the laboratory accreditation program. Associated costs will be imposed on activities whose laboratories are not currently meeting acceptable standards. Associated costs will also be felt by dischargers who choose to contract with commercial laboratories.

SECTION I - IMPACT ON BUSINESSES

As required by RCW 19.85.040, this analysis compares the cost of complying with the rule for small businesses (those employing fewer than 50 people) to the cost of compliance for large businesses. To do this, it is necessary to distinguish between two types of laboratories which will participate in the accreditation program. One type is a commercial laboratory (i.e., a laboratory which performs analytical services for hire). As of the writing of this statement, 68 commercial laboratories have been identified in the state which could be involved in the accreditation program. Businesses in this category are generally small although two large laboratories have been identified. This analysis will compare costs for large and small businesses within this grouping of businesses. (RCW 19.85.040 does not require the comparison since commercial testing laboratories are technically not an "industry" as defined in the code, i.e., they are not represented by a three-digit SIC (Standard Industrial Classification) code.)

The other type of laboratory is operated by businesses which are required to report environmental data in compliance with a permit issued by the Department of Ecology. Some of these businesses hire commercial laboratories to perform all or some of their required analyses, while others conduct the analyses in their own laboratories. As of this writing, 585 businesses, all permitted wastewater dischargers, have been identified which could be operating laboratories to be affected by laboratory accreditation.

Wastewater dischargers not operating their own laboratories may be affected by the fees imposed by the accreditation program. The commercial laboratories to which they send their samples for analysis may pass on their costs of being accredited. A basic assumption of this analysis is that all affected businesses will pay a fee. The fee will be direct if they operate their own laboratory, or indirect if the commercial laboratories they contract increase their charges for analyses. From a standpoint of economic impact on businesses, this assumption presents a worst case situation. A best case situation would involve no indirect fee charges. The actual impact will probably be closer to the best case situation than to the situation presented in this statement.

Eventually the lab accreditation rule will affect businesses involved in environmental fields other than water quality such hazardous waste characterization and air sampling. Economic impacts on such businesses are expected to be comparable in proportion and magnitude to those addressed here.

Having nothing more recent from which to draw data, the *1982 Census of Manufacturers: Washington*, the *1982 Census of Service Industries: Miscellaneous Subjects*, and the *1982 Census of Wholesale Trade*:

Washington (all United States Department of Commerce, Bureau of the Census, 1985) were used to estimate average sales to payroll ratios. The *1987 Employment and Payrolls in Washington State by County and Industry* (Washington State Department of Employment Security, 1988) was used to determine average number of employees and total 1987 wages paid per industry. The average wages paid within a business and the sales to payroll ratio were used to estimate the average sales. From these, estimates were made of the fee imposed by this rule as a percentage of sales (one of the methods of estimating economic impact allowed by RCW 19.85.040).

The intent of the laboratory accreditation rule as stated in WAC 173-50-190(1) is for the department to recover only the costs of administering the accreditation program as authorized by RCW 43.21A.230, enabling legislation for the accreditation program. Laboratory accreditation fees were determined primarily by estimating the overall annual cost of administering the program to include salaries, equipment, supplies, and travel costs as well as other overhead costs. The total cost was then apportioned as equitably as possible among the affected laboratories based on the anticipated effort required of the department for accrediting each type of laboratory.

The accreditation process involves: Submittal by each laboratory of a comprehensive application, a quality assurance (QA) manual, and performance evaluation sample analysis results; and an on-site audit. The cost of reviewing the application, the laboratory's accreditation manual, and the results of the performance evaluation sample analysis were considered in determining the cost to the department.

The primary factor in determining cost to the department, however, is the system audit, or on-site inspection, which must be conducted at each laboratory prior to accreditation and periodically thereafter. Generally, the effort required of the department in conducting the system audit is directly proportional to the scope of the laboratory's analytical operations. The accreditation fee is therefore directly determined by the number and complexity of analytical parameters for which the laboratory seeks accreditation. Within the commercial testing laboratory industry (SIC 7293), small laboratories will analyze fewer numbers of parameters and consequently be charged proportionally smaller fees. Larger, multidiscipline laboratories will be charged higher fees commensurate with the increased effort required in the accreditation process. For other businesses, the fee is also proportional to the scope (and size) of the laboratory, but not necessarily to the size of the business. Large businesses discharging few potentially harmful materials into the environment may be required to analyze only a few parameters and would therefore have a small laboratory and pay a small fee. However, within each business there is a direct correlation between business size and the fee imposed by this rule. This will be shown in the analysis for each industry.

Potentially, each business which discharges wastewater in accordance with permits issued pursuant to chapters 173-220 and 173-216 WAC (NPDES and

state wastewater discharge permit regulations, respectively) could be affected by the fees imposed in the accreditation program. The impact on affected industries in the state is discussed in the remainder of this section and summarized in Table 1 shown below. The Permit Writers' Procedures Manual and Monitoring Guidelines, currently under development by the department, will generally increase the number and complexity of parameters required in discharge permits. The impact of those changes can only be estimated at this time since the guidelines are not completed. Such estimates are also included in Table 1.

Within most industries (e.g., pulp and paper), essentially all businesses in the industry are impacted by these rules because all are wastewater discharge permit holders. Some permitted dischargers will not be affected by chapter 173-50 WAC because their permits do not require reporting of creditable analytical data (e.g., some report only temperature and/or flow, neither of which require accreditation). The majority of industries in the state as defined in chapter 19.85 RCW will not be affected directly or indirectly by the accreditation program.

Throughout this analysis, where the fee as a percent of sales cannot be rounded up to at least 0.001 percent (i.e., anything less than 0.0005%). The statement is made that the fee is "less than 0.001%" of sales. This does not imply that a more precise figure is not known but rather that anything less than 0.001% would be insignificant. Following is an industry-by-industry discussion of the anticipated impact of fees imposed by chapter 173-50 WAC in order of increasing impact on small businesses (except for the first five industries where there are no small businesses).

Aircraft Manufacturers: Aircraft manufacturers (SIC 3721) which are anticipated to be involved in the lab accreditation program are all large. While there is only one company involved, there are eight separate plants and eight labs, all of which are considered large for the purposes of this statement. Fees for the various labs range from \$250 to \$1500. Because aircraft sales are so large (estimated at \$13.2 billion in 1987), the average fee represents much less than 0.001% of sales (0.000091%).

Aluminum Producers: Aluminum producers (SIC 3334) currently are required by their wastewater discharge permits to monitor and report several complex parameters. Consequently, accreditation fees for this category are relatively high. Fees are expected to range from \$500 to \$650 representing 0.001 percent of sales for the average business. There are no small aluminum producers.

Primary Metal Producers: All other primary metal producers (SIC 33, exclusive of aluminum producers) expected to be in the lab accreditation program are large. Fees range from \$350 to \$550. The average fee of \$400 represents 0.002% of sales.

Sawmills: All potentially affected sawmills (SIC 2421) are large. Fees will range from \$200 to \$350 representing 0.004% of sales for the average sawmill.

Petroleum Refineries: Petroleum refineries (SIC 2911) report a large number of parameters with accreditation

fees anticipated to range from \$400 to \$500. Because refinery sales are high, the fees represent less than 0.001 percent of sales. There are no potentially affected small businesses in SIC 2911.

Petroleum Sales: Petroleum wholesalers (SIC 517) are expected to pay fees ranging from zero to \$400. The average for small businesses is \$100, and for large businesses the average fee is \$250. Of the businesses in this industry, 96% are small. For the average small business in SIC 517, the fee will be 0.001 percent of sales; for the average large business, it will be less than 0.001 percent.

Food Processors: Food processors (SIC 20) include meat, poultry, and seafood packers, fruit and vegetable canners, processors of dairy products, and flavor extract manufacturers. Approximately 123 businesses in SIC 20 may be affected by the laboratory accreditation program, 74 percent of which are small. Some businesses in SIC 20 are not required to monitor their wastewater for any parameters which will require use of an accredited laboratory. Consequently, those businesses will not be affected by this fee program. Others are required to report data for one, two or three accreditable parameters for which the fee would be \$50, \$100, or \$150, respectively. The number of parameters reported, and hence the fee, is directly related to the type of pollutants potentially found in the wastewater discharge and not necessarily related to the size of the business. Generally, however, the larger businesses will pay the larger fee.

The fee (\$50-\$150) is small for this category. Sales for the larger businesses are much higher than for small businesses. Therefore, the fee as a percentage of sales is smaller for the larger business than for the small business. This trend is true throughout this analysis for all industries having large and small businesses. The fee for any business in this industry (and all other industries except, perhaps, for some commercial testing labs) is a very small percentage of sales.

Because SIC 20 has several potentially affected industries, it is broken down into smaller categories. Most processors of fish (SIC 2092) and other seafoods such as oysters (SIC 2091) report zero or one accreditable parameter and will pay accreditation fees of either nothing or \$50. The \$50 fee would represent less than 0.001% of sales for affected businesses. All of these are small. Processors of fruits and vegetables (SIC 203) would pay from zero to \$100 with the average being approximately \$60, less than 0.001% of sales for both large and small businesses. Producers of flavor extracts (mint and hop growers, SIC 2087) do not report accreditable parameters under current discharge permits and will not be involved in the accreditation program. Other food processors (remainder of SIC 20) include both large and small businesses. Small businesses involved in accreditation will pay an average fee of \$50 representing 0.003% of average sales while large businesses would average \$75 representing less than 0.001% of sales.

Hydroelectric Plants: The electrical power plants (SIC 4911) which will be required to submit data from an accredited laboratory include both small and large businesses. Fees are anticipated to range from \$100 to \$300

representing 0.002% and 0.001% of sales for small and large businesses, respectively.

Pulp and Paper: Businesses involved in the pulp and paper industry (SIC 26) are required in their wastewater discharge permits to report several parameters. Of the SIC 26 businesses expected to be involved in the accreditation program, only one is small. Fees will range from \$250 to \$350 representing 0.004 and less than 0.001 percent of sales for small and large businesses, respectively.

Shipyards: (SIC 3731) expected to be in the accreditation program are large but are required to report few parameters. They will therefore be charged relatively small fees. Fees are expected to average \$200 for small business in this category and \$250 for large businesses. This represents 0.006 and 0.001 percent of sales, respectively.

Cement and Glass Manufacturers: Cement and glass manufacturers (SIC 32) are expected to pay fees ranging from \$50 to \$200 representing 0.007 percent of sales for the average business. There are no large cement and glass manufacturers expected to be in the lab accreditation program.

Hatcheries: A few privately owned hatcheries (SIC 0921) will be involved in lab accreditation, and all are small. The average fee is expected to be \$100 representing 0.010 percent of sales.

Wood Preservers: Wood preservers (SIC 2491) tend to be small businesses. Sixty-eight percent have less than 50 employees. Fees will range from \$200 to \$350 representing 0.012 and 0.003 percent of sales for small and large businesses, respectively.

Chemical Manufacturers: Potentially affected chemical manufacturers (SIC 28) are divided among small and large businesses. Fees will range from \$150 to \$300, representing 0.011 percent of sales for the average small business and 0.002% for large.

Crop Preparation Services: The laboratory accreditation program may affect a large number of businesses (approximately 140) involved in crop preparation services, SIC 0723. These businesses sort, grade, and pack vegetables and fruits. Most of the businesses in this group are small (86% of the businesses in SIC 072 employ less than 50 workers). The average small business in SIC 0723 is anticipated to pay a fee representing 0.029% of sales or less; large businesses, 0.006% or less.

Water Plants: Water plants are included in SIC 495 (sanitary services). All those which will be affected by the laboratory accreditation program are small. Fees are expected to average \$250 representing 0.018 percent of sales for the average business.

Plywood Plants: The majority (76%) of plywood plants (SIC 2436) are large. Generally the number of parameters such plants are required to report is related to size. Therefore, small plants are expected to pay an accreditation fee averaging \$200 and large plants may pay \$400. Such fees would represent 0.022 and less than 0.002 percent of sales for small and large businesses, respectively.

Sand and Gravel Companies: Sand and gravel companies fall in the category which includes quarriers of non-metallic minerals (SIC 14). Of the 27 potentially affected businesses in SIC 14, 96% are small. For small businesses, the average fee is anticipated to be 0.023 percent of sales; for large businesses, 0.001 percent.

Electroplaters: All potentially affected electroplaters (SIC 3471) are small businesses. Electroplaters are required by their discharge permits to report a relatively large number of parameters. Since they are small businesses, the average fee of \$250 (range, \$200 to \$300) is anticipated to represent a relatively high percentage (0.028%) of sales.

Commercial Testing Laboratories: Thus far, this statement has addressed impact of the lab accreditation program only on wastewater dischargers who either conduct analyses in their own laboratory or contract a commercial testing laboratory to do the work (or a combination of both). This part of the statement analyzes the impact of the program on the industry whose primary function is to analyze materials, the commercial testing laboratory (SIC 7397).

Not all laboratories in SIC 7397 will be affected by the accreditation program. There are several which test materials other than those of interest to the Department of Ecology, such as construction materials, food, and other products. However, the majority test environmental materials (e.g., water, hazardous waste) and submit data to the department.

1985 County Business Patterns: Washington lists 47 commercial testing laboratories in the state with only two identified as employing more than 50 people. The majority of laboratories (32) have nine or fewer employees. *Employment and Payrolls in Washington State by County and Industry*, showing 1987 annual averages, lists 63 laboratories in this rapidly growing industry. Collectively, they employed 683 people at year's end. Even this figure is evidently low as a total of 68 commercial testing laboratories which submit data to the Department of Ecology were identified during planning of the accreditation program.

Accreditation fees are directly proportional to the number and complexity of analytical parameters for which a laboratory is to be accredited and therefore are directly related to the size of the laboratory. Small laboratories with limited capabilities will be able to analyze few parameters and will therefore be charged a relatively small fee while large, multifunctional laboratories will be charged larger fees. The minimum possible fee for a given laboratory is \$30, although no such unifunctional laboratory was identified during planning. A more probable minimum fee is \$300 which would be the fee for a laboratory conducting limited bioassay tests. At least one such laboratory exists in the state. The maximum possible fee is \$2250. Here again, it is unlikely such an omnifunctional laboratory exists although some come close. The most probable maximum fee is \$2150.

The fee estimated for an average small (ten employees) commercial testing laboratory is \$850 for a fee to sales percentage of 0.191. Only two large laboratories (those with more than 50 employees) were identified

during planning, averaging 61 employees. The fee anticipated from each is \$2150 which results in a fee to sales percentage of 0.083. This apparent bias in favor of the large laboratories is unavoidable. Fees for the smaller laboratories are in accordance with the effort required of WDOE in the accreditation process. These fees cannot be reduced if the program is expected to be self supporting. Fees for the large laboratories cannot be equitably increased without also increasing fees for the smaller laboratories.

Neither group's fee is considered to be excessive, however, considering the economic value of the accreditation itself. For a commercial laboratory, the ability to produce quality data, and evidence attesting to that fact (i.e., an accreditation) is a marketable commodity. Furthermore, most of the laboratories, and particularly the smaller laboratories, should benefit in terms of increased efficiency. Thereby, they should increase their productivity by going through the accreditation process.

Impact of New Monitoring Guidelines

The Department of Ecology is currently preparing a Permit Writers' Procedures Manual. The manual will include monitoring guidelines to help permit writers establish monitoring requirements for permittees. The guidelines are being developed with both internal and external review and comment. The guidelines could result in permits requiring monitoring of a greater number of parameters. Businesses both large and small (other than commercial testing labs) will feel the impacts of more monitoring requirements. As these requirements have not yet been developed (anticipated completion is June 1989), estimates of their impact on businesses are provided in Table 1.

To obtain the estimates, the maximum number of parameters which could reasonably be required of a particular industry was assumed. However, in some cases monitoring of more parameters could be required. This could occur if a particular pollutant has been a problem in a business's discharge or if the receiving environment is particularly sensitive.

These estimates did not consider the requirement of some industries for performance of three-species bioassays. Because establishment of a capability to perform bioassays is costly, businesses will likely contract this work to commercial laboratories. In that case, industrial dischargers would only realize the indirect costs passed on by the commercial labs. Those indirect costs should be minimal since the monitoring guidelines will have no effect on fees charged to commercial testing laboratories.

Table 1 summarizes anticipated impact of fees on various industries, listed in order of increasing impact on small businesses. Fees based on current permits are calculated while fees projected in anticipation of the Permit Writers' Procedures Manual and monitoring guidelines are estimated.

Impact of Fees on Profits

Laboratory accreditation fees are not taxes on profits but rather a cost of doing business which may be incorporated into the price of a laboratory's (or its parent organization's) output. Because the fees are generally such

a small percentage of sales, large businesses and most small businesses will probably not find it necessary to raise prices significantly. They should be able to maintain profit margins. For example, Boeing's eight labs combined are expected to pay a fee of approximately \$5400 annually. With 1987 sales estimated to exceed \$13 billion, of which the fee represents 0.000091%, Boeing could raise the price of each airplane produced by a few dollars to recover cost of fees if they desired. Such an increase would go unnoticed in the marketplace and would not adversely affect Boeing's competitiveness.

Even the smallest business in the industry with the highest fee-to-payroll percentage (other than commercial labs), electroplaters at 0.028%, can pass on costs to customers with little noticeable effect. For example, a product normally selling for \$100.00 would sell for \$100.03 to recover cost of fees. This is hardly an increase which would cause unfair hardship on any given business, especially since other businesses in the same industry would be equally affected. It is unlikely any business, other than as noted in the following paragraph, would find it necessary to increase prices for goods or services sold because of the laboratory accreditation fee. For those that choose to do so, the increase will be insignificant.

The exception mentioned above is within the commercial testing laboratory industry (SIC 7397). For most commercial laboratories, the cost of accreditation fees can be passed on to customers in the form of increased prices for analytical services. Since all labs in the state performing environmental analyses will be affected by the fees, in a manner designed to be as equitable as possible, the economic impact will affect most labs equally. The exception could be the very small lab that performs a specialized type of analysis (e.g., bioassay). Because the fee for such a lab could be a significant percentage of sales, the lab might be forced to increase prices significantly to recover costs. Larger, multidiscipline labs performing the same type of analysis would not be required to increase prices for bioassays to the same extent the smaller, unidiscipline lab. This may appear to give the larger lab an unfair advantage. The advantage is already enjoyed because the larger lab is more likely to have the latest equipment and otherwise be operating more efficiently and charging less than the small lab. However, it is perceived that there is more analytical work to be done than can be accomplished only by the larger labs. This workload has resulted in the recent establishment of many new labs and significant growth of existing labs. This trend is expected to continue. Because of this trend, small labs should not be adversely affected even if they increase charges for analysis beyond those of their larger competitors.

A significant portion of the analytical work performed by commercial testing labs involved in this fee program is contract work for ecology. The department will publish policy statements and promulgate rules which will require use of accredited labs once the fee program is fully implemented. One could expect other state agencies and private concerns, including out-of-state activities, to

require (or at least prefer) use of ecology-accredited labs to do their environmental analyses. These requirements should result in increased sales for accredited labs. Because neither of our neighboring states have environmental lab accreditation programs, Washington commercial testing labs will be better able to compete against neighboring state labs for environmental analyses. Additionally, most labs will realize enhanced efficiency and consequent reduction in sample turn-around time and increased sales as a result of going through the accreditation process. For all these reasons, accreditation is expected to become an economic benefit for the accredited commercial lab. The benefit should exceed any adverse impact of increased charges for analysis to recover fees. Realizing this, many labs may opt to initially absorb accreditation costs within their profit margin, anticipating that the profit margin will eventually increase as a result of accreditation.

TABLE 1 - SUMMARY OF ECONOMIC IMPACT ON WASHINGTON INDUSTRIES

INDUSTRY	SIC	1987 SALES (\$B)**	AVERAGE FEES BASED ON CURRENT PERMITS				FEE ESTIMATES BASED ON MONITORING GUIDELINES IN PERMIT WRITERS PROCEDURE MANUAL				
			SMALL BUSI-NESS (\$)	LARGE BUSI-NESS (\$)	FEE AS PERCENT OF SALES	SMALL	LARGE	FEE AS PERCENT OF SALES	SMALL	LARGE	
Aircraft	3712	13,173	NA**	450	NA	<0.001	NA	600	NA	<0.001	NA
Aluminum	3334	1,038	NA	600	NA	0.001	NA	600	NA	0.001	NA
Primary Metals	33	2,208	NA	400	NA	0.002	NA	650	NA	0.003	NA
Smelting	2421	1,778	NA	300	NA	0.004	NA	320	NA	0.004	NA
Petroleum Refine	2911	5,157	NA	500	NA	<0.001	NA	710	NA	<0.001	NA
Petroleum Sales	517	4,502	100	250	0.001	<0.001	100	250	0.001	<0.001	0.001
Food Processors											
Flavor Extracts	2087	113	0	NA	0.000	NA	50	NA	<0.001	NA	NA
Fruits/Veg	203	1,935	50	60	0.001	<0.001	200	400	0.004	0.002	0.002
Dairy	202	100	100	NA	0.001	NA	150	NA	0.002	NA	NA
Seafoods	2091	302	50	NA	0.001	NA	150	NA	0.003	NA	NA
Flah	2092	455	50	NA	0.001	NA	200	NA	0.003	NA	NA
Meat Packers	201	553	100	200	0.002	0.001	250	300	0.006	0.002	0.002
Other	20	3,565	50	75	0.003	<0.001	150	300	0.008	<0.001	0.001
Hydroelectric	4911	1,142	100	300	0.002	0.001	0	250	0.000	0.001	0.001
Pulp and Paper	26	2,873	250	350	0.004	<0.001	450	790	0.006	0.001	0.001
Shipyards	3731	410	200	250	0.006	0.001	240	540	0.007	0.002	0.002
Cement/Glass Mfg	32	672	150	NA	0.007	NA	150	NA	0.007	NA	NA
Hatcheries	0921	833	100	NA	0.010	NA	100	NA	0.010	NA	NA
Wood Preservers	2491	82	250	350	0.012	0.003	250	390	0.012	0.004	0.004
Chemical Mfg	28	1,707	175	250	0.012	0.002	650	950	0.044	0.009	0.009
Crop Prep Svcs	0723	110	50	100	0.015	0.004	50	150	0.015	0.006	0.006
Water Plants	495	144	250	NA	0.018	NA	100	NA	0.007	NA	NA
Plywood Plants	2436	354	200	400	0.022	0.002	50	200	0.005	0.001	0.001
Sand/Gravel	14	122	100	150	0.023	0.001	50	200	0.011	0.002	0.002
Electroplaters	3471	35	250	NA	0.028	NA	1100	NA	0.121	NA	NA
Commercial Labs	7397	29	850	2150	0.191	0.083	850	2150	0.191	0.083	0.083

* Estimated based on 1987 wages and 1982 (most current available) sales-to-payroll ratios.

** Not applicable. No small (or large, as appropriate) businesses in this industry in the state.

Section I Summary

Fees imposed by the environmental laboratory accreditation program are not expected to have a significantly adverse affect on any particular business in the state. While the fees do tend to place a proportionally higher burden on smaller business within a given industry, the burden is not so significant that it will reduce competition, reduce employment, reduce new employment opportunities, reduce innovation, or threaten the existence of any small businesses. Accreditation is expected to be an economic benefit to most commercial testing labs.

SECTION II - IMPACT ON GOVERNMENT ENTITIES

Municipalities and other government entities (e.g., county sewer districts, public utility districts, and state parks, salmon hatcheries, and correctional facilities) which discharge wastewater are required by their discharge permits to report analytical data to ecology. They will thus be affected by chapter 173-50 WAC. Fees for these government entities will vary from \$50 (some report only one parameter) to \$1000 for the activities reporting the largest number of parameters (e.g., METRO West Point which, in addition to monitoring for conventional pollutants, must report priority pollutant scans). Generally, the larger the activity, the more complex their wastewater discharge and therefore the larger their accreditation fee. The fee is therefore generally proportional to the tax base from which the government entities have the opportunity to recover the cost of participating in the laboratory accreditation program. To assure small municipalities do not pay a disproportionately high fee, a special fee ceiling is established in chapter 173-50 WAC for small municipalities. This category applies to permitted discharges of less than one million gallons per day.

To examine the economic impact of the accreditation program on government entities, those activities for which fees have been projected are divided into four groups: State activities, publicly owned treatment works (POTWs) with permitted discharge flows of five million gallons per day (5 MGD) or more, POTWs with permitted discharges between 1 and 5 MGD, and POTWs with permitted flows of less than 1 MGD. For each group, the average fee was calculated for analytical parameters required by current discharge permits. Additionally, the impact of a reduced fee for municipalities having permitted discharges of less than one million gallons per day is examined and summarized in Table 2.

State Activities

State owned dischargers include salmon and trout hatcheries, rearing and holding ponds, correctional facilities, and state parks. Fees projected for the fish-related activities under current discharge permit rules would be \$50 (all report only one accreditable parameter, total suspended solids). The correctional facilities and state parks would pay fees of either \$300 or \$350 depending on the nature of their discharge.

POTWs (Greater than 5 MGD)

Twenty-four POTWs have permitted discharges of five million gallons or more. Many of these are required to perform priority pollutant scans involving many complex analytical parameters. Laboratory accreditation fees for these POTWs will average \$900. The average is expected to increase to \$1210 under new monitoring guidelines.

POTW's (1 to 5 MGD)

Fifty POTWs have permitted discharges of between one and five million gallons per day. They would pay an average fee of \$380 with a range from \$200 to \$670.

Under proposed monitoring guidelines and correspondingly revised permits, the average fee may increase to \$400, ranging from \$300 to \$670.

POTWs (Less Than 1 MGD)

One hundred forty-eight POTWs have permitted discharge flows of less than one million gallons per day. They would pay fees averaging \$330 if they were on the same fee schedule as other activities in the accreditation program. However, the special fee established by chapter 173-50 WAC for this category is \$150, a significant savings for the smaller communities in the state. Being independent of the number of analytical parameters reported to ecology, the fee would remain \$150 under discharge permits revised in accordance with proposed monitoring guidelines.

Average fees for government entities are summarized in Table 2.

TABLE 2 - SUMMARY OF ECONOMIC IMPACT ON GOVERNMENT ENTITIES

CATEGORY	AVG FEE UNDER EXISTING DISCHARGE PERMITS	AVG FEE UNDER PROPOSED MONITORING GUIDELINES
Fish-related Activities	\$50	No Change
Correctional Facilities/Parks	\$325	No Change
POTWs (5 MGD or More)	\$900	\$1210
POTWs (1 to 5 MGD)	\$380	\$400
POTWs (Less Than 1 MGD)	\$150 *	\$150 *

* Would be \$330 and \$370 if not for special category.

Section II Summary

Fees imposed by the environmental laboratory accreditation program are not expected to have a significantly adverse economic effect on any government entity including small municipalities. The very smallest municipalities (e.g., Stella with seven residential equivalents) are likely to have their wastewater analyzed by a commercial laboratory or another larger municipality and will not be directly affected by the laboratory accreditation fee. They may be indirectly affected if the servicing laboratory increases its charges as a result of its own requirement to pay fees. The \$150 fee for an average small municipality which is likely to do its own analyses (e.g., a town of 2000 residential equivalents) would represent a burden of only \$0.08 per residence per year. The maximum \$1250 fee anticipated for METRO West Point with approximately 231,000 residential equivalents would represent a burden of approximately one cent (\$0.005) per residence per year. In neither case is the fee considered an undue burden.

SECTION III - IMPACT OF ASSOCIATED (INDIRECT) COSTS

The principal cost of complying with chapter 173-50 WAC is the annual fee charged by the Department of Ecology. In addition to paying the fee, participating laboratories will be required to obtain and analyze performance evaluation samples and report the results of analyses to the department. These samples are available at no charge from the Environmental Protection Agency.

The cost of their analysis should be considered a normal cost of proper operations for each laboratory (part of their internal quality assurance program). Additionally, each participating laboratory will be required to submit a quality assurance manual for review by the department. Such manuals should already exist in environmental laboratories. For those which must prepare a manual to comply with this rule, assistance will be available from the department to minimize cost of preparation.

Associated costs (indirect costs other than fees) for laboratories currently practicing what would normally be considered acceptable laboratory procedures will be minimal. These costs will consist primarily of costs associated with completing the accreditation application and time lost in undergoing the on-site audit. Such well-prepared labs would already be analyzing performance evaluation samples, would have a formal quality assurance (QA) program as documented in a QA manual, would need no new equipment or additional personnel or training, would be performing QA tests such as duplicate and spiked samples, and would be keeping adequate QA records.

Other laboratories will lack some or all of these elements of good laboratory practices, necessitating expenditures to bring the laboratory up to acceptable standards. The extent of the expenditures will vary depending upon the requirements. The associated costs cannot be readily quantified or even estimated without knowing the status of an individual laboratory. The most common deficiency is likely to be lack of a formal QA program as documented in a QA manual. To minimize expense to deficient laboratories assistance will be available from ecology in preparation of such manuals and in training laboratory personnel in QA procedures. Laboratories most likely to be deficient are those operated by small municipalities and small industries. Generally, such laboratories are scheduled for accreditation in chapters 173-216 and 173-220 WAC in FY92 giving them two to three years to prepare.

Some businesses and government entities may choose to discontinue use of their own laboratories and instead contract with an accredited commercial testing laboratory. This would save them the expense and effort of upgrading their own laboratory. Since upgrade costs are generally a one-time cost and laboratory service charges would extend indefinitely, this option may not be cost effective. Nevertheless, it may be an option chosen because of its short term beneficial effect.

Another potential associated cost to any lab participating in the accreditation program is the cost of purchasing performance evaluation (PE) samples. As mentioned above, PE samples are provided free of charge by EPA. If EPA chooses to charge for PE samples in the future, labs would have the option of purchasing samples from EPA or another vendor. At current prices such purchases would cost the average laboratory (e.g., a wastewater discharger lab with flow less than one MGD) approximately \$200 annually. If this happens, ecology will reassess performance audit requirements to reduce the economic impact.

Section III Summary

Associated costs are not readily quantifiable and not justifiably attributable to the laboratory accreditation program. Associated costs will be imposed on activities whose laboratories are not currently meeting acceptable standards. Associated costs will also be felt by dischargers who choose to contract with commercial laboratories.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-210 MONITORING, RECORDING AND REPORTING. (1) Monitoring.

(a) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the department, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include:

(i) Flow (in gallons per day);
 (ii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;

(iii) Pollutants which the department finds could have a significant impact on the quality of surface waters; and

(iv) Pollutants specified by the administrator, in regulations issued pursuant to the FWPCA, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(c) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required when determined necessary by the department to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the surface waters of the state.

(2) Recording of monitoring activities and results. Any permit which requires monitoring of the authorized discharge shall require that:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his permit;

(b) Any records of monitoring activities and results shall include for all samples:

- (i) The date, exact place, and time of sampling;
- (ii) The dates analyses were performed;
- (iii) Who performed the analyses;
- (iv) The analytical techniques/methods used; and
- (v) The results of such analyses; and

(c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the department or regional administrator.

(3) Reporting of monitoring results.

(a) The permittee shall periodically report (at a frequency of not less than once per year) on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a permit. In addition to the required reporting form, the department at its discretion may require submission of such other results as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, by a responsible corporate officer or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

(ii) In the case of a partnership, by a general partner.

(iii) In the case of a sole proprietorship, by the proprietor.

(iv) In the case of a municipal, state or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Use of accredited laboratories.

(a) Except as established in (b) of this subsection, monitoring data submitted to the department in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC no later than indicated by the appropriate date below:

July 1, 1991	Major NPDES permittees
July 1, 1991	Minor NPDES permittees which are identified as primary industries in 40 CFR Part 122 Appendix A
July 1, 1992	All other minor NPDES permittees
July 1, 1993	All general NPDES permittees

These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as conditions of a permit.

(b) The following parameters need not be accredited:

- (i) Flow;
- (ii) Temperature; and
- (iii) Parameters which are used solely for internal wastewater treatment process control and which are not priority pollutants as listed in 40 CFR Part 122 Appendix D Tables II and III. Accreditation for process control parameters may be required by the department on a case-by-case basis as a permit condition.

NEW SECTION

WAC 173-216-125 MONITORING. Use of accredited laboratories.

(1) Except as established in subsection (2) of this section, monitoring data submitted to the department in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC no later than indicated by the appropriate date below:

July 1, 1991	All state permittees which are identified as primary industries in 40 CFR Part 122 Appendix A
July 1, 1993	All other state permittees
July 1, 1993	All permittees issued permits by POTWs with approved pretreatment programs

These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as conditions of a permit.

(2) The following parameters need not be accredited:

- (a) Flow;
- (b) Temperature; and
- (c) Parameters which are used solely for internal wastewater treatment process control and which are not priority pollutants listed in 40 CFR Part 122 Appendix D Tables II and III. Accreditation for process control parameters may be required by the department on a case-by-case basis as a permit condition.

WSR 89-04-052
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Filed February 1, 1989]

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 accreditation of environmental laboratories, adopting chapter 173-50 WAC;

that the agency will at 10:00 a.m., Tuesday, March 8, 1989, in the Evergreen State Library, Room 4300, Olympia, and at 2:00 p.m., Wednesday, March 9, 1989, in the Eastern Washington University Spokane Center, 4th Floor Mall, Spokane, conduct public hearings on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on April 11, 1989.

The authority under which these rules are proposed is chapter 43.21A RCW.

The specific statute these rules are intended to implement is RCW 43.21A.230.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 20, 1989.

Dated: January 30, 1989
 By: Steve Hunter
 Assistant Director
 Central Programs and Enforcement

STATEMENT OF PURPOSE

Title: Chapter 173-50 WAC, Accreditation of environmental laboratories.

Description of Purpose: To establish a state program for accreditation of environmental laboratories which conduct tests for or prepare data for submittal to the Department of Ecology.

Statutory Authority: RCW 43.21A.230.

Summary of Rule: The Department of Ecology proposes to establish a program to accredit environmental laboratories which conduct tests for or prepare data for submittal to the Department of Ecology.

Currently, no mechanism exists to assure such labs have the capability to accurately analyze environmental samples in accordance with wastewater discharge permits and other regulatory instruments. This rule will assure accredited laboratories have such a capability. It will be complemented by other Department of Ecology policy statements and rules which require submittal of data from accredited laboratories in a phased manner starting with commercial labs analyzing water quality samples. Implementation will raise confidence levels in making decisions concerning the environment based on analytical data submitted by environment labs.

Chapter 173-50 WAC establishes the process through which laboratories may become accredited. That process will emphasize quality assurance and quality control and includes: Submission of a comprehensive application detailing lab capabilities; review of the lab's quality assurance manual (or plan); reporting by the lab of the analysis of performance evaluation samples (performance audit); a system (on-site) audit by the department; and payment of fees based on the number and complexity of parameters for which the lab is accredited.

The performance audit will be required twice annually for each analytical parameter of interest to the department. The audit maximizes use of EPA-prepared samples, currently provided free of charge.

The system audit will verify capabilities of personnel, equipment, and facilities, and review the lab's organizational structure, QA program, analytical methods, and sample management procedures. The target for conduct of an on-site audit is every three years.

The proposed rule provides for provisional accreditation if there is a problem with the lab which does not affect data quality (e.g., insufficient documentation of a formal quality assurance program). It also provides for interim accreditation if there is a problem with the department in completing the accreditation process (e.g.,

an on-site audit cannot be scheduled in a timely manner).

In accordance with language in the enabling legislation, the proposed rule provides for exemption of wastewater dischargers participating in an EPA-administered quality assurance program.

Accreditation will be granted for analytical parameters grouped in accreditation categories as follows: Chemistry I (general, e.g., pH, hardness, ammonia, chlorine, nitrogen); Chemistry II (trace metals, e.g., copper, iron, lead, nickel, zinc); Organics I (GC/HPLC methods, e.g., phenols, pesticides, PCBs); Organics II (GC/MS methods, e.g., dioxin, volatiles); Radiological (e.g., alpha, beta, radium); Microbiological (e.g., fecal coliform, enterococci, E. coli); Bioassay (e.g., fish, amphipod, microtox); and Limited Municipal Wastewater Treatment, a special category for municipalities with permitted flow less than 1,000,000 gallons per day.

The fee structure, designed to just recover costs of managing the program, is as shown:

Category	Fee per Parameter	Max Fee per Category
Chemistry I	\$50	\$600
Chemistry II	30	400
Organics I	50	250
Organics II	100	250
Radiological	50	100
Microbiological	100	250
Bioassay	100	400
Limited Municipal Wastewater Treatment	N/A	150

Phasing of the actual accreditations, controlled by other department policy statements and rules, will be as follows:

Type Lab	1989		1990		1991		1992		1993	
	Jul	Jan	Jul	Jan	Jul	Jan	Jul	Jan	Jul	
Commercial Labs	o-----o									
Major NPDES and priority pollutant (Table 3, WAC 173-223) dischargers	o-----o									
Minor NPDES (non-Table 3) dischargers	o-----o									
State-permitted dischargers (non-Table 3)	o-----o									
Labs supporting other environmental programs (e.g., hazardous waste)	o-----o									

Reasons Supporting Proposed Action: Recommendation of Puget Sound Water Quality Authority as proposed in the 1987 Puget Sound Water Quality Management Plan; and assures capability of accredited laboratories to submit accurate environmental data to the Department of Ecology.

Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cliff J. Kirchmer, Quality Assurance Section, P.O. Box 488, Manchester, WA 98353, (206) 895-4649.

Person or Organization Proposing Rule, and Whether Public, Private, or Governmental: Department of Ecology, state government.

Agency Comments or Recommendations Regarding Statutory Language, Implementation, Enforcement, Fiscal Matters: None.

Whether Rule is Necessary as a Result of Federal Law or Federal or State Court Action: No.

Small Business Economic Impact Statement: [See Small Business Economic Impact Statement shown in WSR 89-04-051.]

Chapter 173-50 WAC
ACCREDITATION OF ENVIRONMENTAL LABORATORIES

WAC

173-50-010	Purpose.
173-50-020	Scope.
173-50-030	Objectives.
173-50-040	Definitions.
173-50-050	Responsibilities.
173-50-060	Requirements for accreditation.
173-50-070	Performance audit.
173-50-080	System audit.
173-50-090	Evaluation and issuance of certificate.
173-50-100	Interim accreditation.
173-50-110	Provisional accreditation.
173-50-120	Accreditation categories.
173-50-130	Requirements for maintaining accreditation status.
173-50-140	Denying accreditation status.
173-50-150	Revoking accreditation status.
173-50-160	Reciprocity.
173-50-170	Third-party accreditation.
173-50-180	Exemptions.
173-50-190	Fee structure.
173-50-200	Appeals.
173-50-210	Enforcement.

NEW SECTION

WAC 173-50-010 PURPOSE. The purpose of this chapter is to establish a state program for accreditation of environmental laboratories which conduct tests for or prepare data for submittal to the department of ecology. The accreditation program implemented under this chapter is designed to satisfy the intent of RCW 43.21A.230.

NEW SECTION

WAC 173-50-020 SCOPE. The environmental laboratory accreditation program applies to laboratories, within or outside the state, which conduct tests for or prepare analytical data for submittal to the department. Federal laboratories may participate in the accreditation program on a voluntary basis.

NEW SECTION

WAC 173-50-030 OBJECTIVES. The primary objective of the accreditation program is to assure accredited laboratories have a demonstrated capability to accurately analyze environmental samples. A secondary objective is to assist environmental laboratories in improving their quality assurance/quality control procedures. Accreditation does not guarantee validity of analytical data submitted by the laboratory subsequent to accreditation.

NEW SECTION

WAC 173-50-040 DEFINITIONS. Definitions set forth in this section shall apply throughout this chapter, unless context clearly indicates otherwise.

(1) "Accreditation" means the formal recognition by the department that an environmental laboratory is capable of producing accurate analytical data, signified by the issuance of a written certificate accompanied by a scope of accreditation indicating those parameters for which the laboratory has been accredited. The term "accredit" as used in this chapter is intended to have the same meaning as the term "certify" as used in RCW 43.21A.230. Any laboratory accredited under this chapter shall be deemed to have been certified under RCW 43.21A.230. The department does not, by certifying or accrediting any laboratory pursuant to this chapter, vouch for or warrant the accuracy of any particular work done or report issued by the laboratory.

(2) "Analytical data" means the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiological, or other scientific determination.

(3) "Department" means the state of Washington department of ecology.

(4) "Environmental laboratory" means any facility under the ownership and technical management of a single entity in a single geographical locale, where scientific examinations are performed on samples taken from the environment, the data from which is submitted to the department under the provisions of a department regulation, permit, or contractual agreement.

(5) "Mandatory analytical method" means a recognized written procedure for acquiring analytical data which is required by law or a regulatory agency of the federal or state government.

(6) "Matrix" means the substance from which a material to be analyzed is extracted, such as ground or surface water, wastewater, air, solid waste, nuclear waste, and hazardous waste.

(7) "Parameter" means a single determination or group of related determinations using a specific written method chosen by an applying laboratory.

(8) "Performance audit" means evaluation of the results of analyses of unknown samples whose true values are unknown to the laboratory conducting the analyses and which are provided by a source external to the environmental laboratory. Such samples may be referred to as performance evaluation samples.

(9) "Quality control" means those activities designed to assure analytical data produced by an environmental laboratory meet data quality objectives for accuracy. Those activities include routine application of statistically based procedures to evaluate and control the accuracy of analytical results.

(10) "Quality assurance (QA)" means those activities whose purpose is to assure that a quality control program is effective. A quality assurance program is a totally integrated program for assuring reliability of measurement data.

(11) "Quality assurance manual" means a written record of the policies, organization, objectives, and specific quality control and quality assurance activities established for use in an environmental laboratory to assure accuracy of analytical results. Volume and scope of quality assurance manuals vary with complexity of laboratory mission.

(12) "Recognized analytical method" means a documented analytical procedure for analysis of an environmental sample which was developed through collaborative studies by organizations or groups recognized by the department.

(13) "System audit" means an on-site inspection of laboratory capabilities by an agency external to the laboratory.

NEW SECTION

WAC 173-50-050 RESPONSIBILITIES. (1) The department shall require persons and organizations submitting analytical data to the department under the purview of department programs to use environmental laboratories which are accredited under the provisions of this chapter.

(2) The department shall not require use of accredited laboratories for determination of analytical parameters for which no suitable accreditation process can be reasonably devised as determined by the quality assurance section.

(3) The department shall develop a procedural manual describing specifics of the accreditation process. As a minimum, the procedural manual shall describe in detail the procedures to be followed for: Submitting an application; system (on-site) audits; performance audits; accreditation of out-of-state laboratories; determination and payment of fees; issuance, denial, and revocation of accreditation; and methods for notifying laboratories and authorized department officials of accreditation actions. The procedural manual shall be made available to all interested persons.

(4) Managers of environmental laboratories desiring accreditation shall submit an application along with appropriate fees to the department fiscal officer, submit results of performance evaluations, a quality assurance manual and other required documentation to the quality assurance section, and assist/accommodate department personnel during system audits as required.

NEW SECTION

WAC 173-50-060 REQUIREMENTS FOR ACCREDITATION. (1) Managers of environmental laboratories desiring accreditation shall submit to the department fiscal officer an application and pay required fees as predetermined by coordination with the quality assurance section. Concurrently, the laboratory manager shall submit a copy of their laboratory quality assurance manual to the quality assurance section and arrange with the quality assurance section for completion of a performance audit and system audit.

(2) Through the application, laboratory managers shall request accreditation in applicable parameters and provide evidence that sufficient personnel, equipment, and facilities are available to successfully perform analytical methods as specified in the application. The quality assurance manual submitted concurrently with the application shall be

in detail and scope commensurate with the size and mission of the laboratory.

NEW SECTION

WAC 173-50-070 PERFORMANCE AUDIT. (1) The quality assurance section shall advise applying laboratories of specific requirements for performance audits which shall be completed for applicable parameters no more frequently than twice annually (see exception in subsection (4) of this section). Current performance audits conducted under the provisions of other recognized programs may be used to satisfy the accreditation program performance audit requirement. Sufficiency of such audits shall be determined by the quality assurance section.

(2) Submission of raw data along with the report of analysis of the performance evaluation sample may be required at the discretion of the quality assurance section.

(3) Performance audits for certain accreditation parameters may be waived at the discretion of the quality assurance section if performance evaluation samples are not available or for other valid reasons.

(4) Laboratories which fail to accurately analyze a performance evaluation sample may be allowed a second performance audit. If necessitated by a second failure, a third performance audit may be allowed (as an exception to subsection (1) of this section) only after the laboratory has investigated cause for failure in the preceding audits and completed corrective actions.

(5) Applying laboratories shall be responsible for obtaining performance evaluation samples. No fee shall be charged to the department for analysis of performance evaluation samples.

NEW SECTION

WAC 173-50-080 SYSTEM AUDIT. The laboratory shall undergo a system audit by the department to assess critical elements and areas of recommended practices.

(1) Critical elements for accreditation. Those elements of an environmental laboratory's operations which are critical to the consistent generation of reliable, accurate data are critical elements for accreditation. Those critical elements shall be the subject of intense scrutiny throughout the accreditation process and deficiencies in critical elements may be the basis for denial or revocation of accreditation status. Functional areas within which there are critical elements are:

(a) Analytical methods. The system audit shall seek to determine if documentation of mandatory or recognized analytical methods are present at the laboratory, readily available to analysts, and being routinely followed. If a locally-developed method is being followed, the audit may include an evaluation of the adequacy of that method.

(b) Equipment and supplies. The system audit shall seek to determine if sufficient equipment and supplies are available, being adequately maintained, and are in a condition to allow successful performance of applicable analytical procedures.

(c) Quality assurance. The laboratory quality assurance manual shall be reviewed for adequacy prior to the system audit. The system audit shall include a review of quality assurance plans and quality assurance/quality control records for programs/projects within which the laboratory is generating analytical data for submission to the department.

(d) Sample management. The system audit shall include a review of applicable procedures for receipt, preservation, transportation, and storage of samples. The laboratory shall be held responsible only for those elements of sample management over which it has direct control.

(e) Personnel. The system audit shall seek to determine if managerial, supervisory, and analytical personnel have adequate training and experience to allow satisfactory completion of analytical procedures and compilation of reliable, accurate data. Minimum recommended education and experience criteria for laboratory personnel shall be specified in the program procedural manual.

(2) Recommended practices. Those elements of laboratory operations which might affect efficiency, safety, and other administrative functions, but do not normally affect quality of analytical data, shall be brought to the attention of laboratory management under the heading of "recommended practices" and individually, shall not normally be the basis for denial or revocation of accreditation status. Functional areas within which recommended practices may be noted are:

(a) Facilities. The system audit shall seek to determine if laboratory facilities allow efficient generation of reliable, accurate data in a safe environment.

(b) Safety. The system audit shall note laboratory safety problems, those judged serious, shall be referred to appropriate state or federal agencies.

NEW SECTION

WAC 173-50-090 EVALUATION AND ISSUANCE OF CERTIFICATE. Following receipt of an application and completion of a performance audit and system audit, the quality assurance section shall submit a report to the affected laboratory concerning the results of the overall accreditation process. The report shall list findings, assess the importance of each finding, and make recommendations concerning actions necessary to ensure resolution of problems. After completing the accreditation review, the quality assurance section shall decide whether accreditation should be granted. If this decision is affirmative, a certificate shall be issued authorizing the affected laboratory to submit analytical data to the department as specified on an accompanying scope of accreditation. The certificate shall remain the property of the department and shall be surrendered to the department upon revocation of accreditation status. If accreditation is not justified, the department shall issue a report specifying areas of deficiency and steps necessary to upgrade the laboratory to accredited status. In such cases, the laboratory shall be allowed thirty days in which to provide documentation that the specified deficiencies have been corrected. Based on such documentation the department shall decide whether to grant, renew, deny, or revoke accreditation.

NEW SECTION

WAC 173-50-100 INTERIM ACCREDITATION. If for valid reasons based on a deficiency in the department and not the laboratory, the quality assurance section cannot conduct a complete assessment of laboratory capabilities within six months of receipt of an application, an interim accreditation may be granted based on submission of an application and fees by the laboratory, completion of a performance audit where appropriate, and an update of the laboratory's quality assurance manual.

NEW SECTION

WAC 173-50-110 PROVISIONAL ACCREDITATION. Laboratories which have deficiencies requiring corrective action but can produce valid analytical data as determined by the quality assurance section may be given a provisional accreditation. When the laboratory has corrected such deficiencies, it may provide evidence of correction to the quality assurance section, or request reaudit, as appropriate. Upon determining deficiencies have been corrected, the quality assurance section shall take action to award full accreditation as in WAC 173-50-090. Provisional accreditation shall not be renewed for a subsequent accreditation period (fiscal year) unless laboratory management can demonstrate that all reasonable measures to correct deficiencies noted during the initial capability assessment have been exhausted.

NEW SECTION

WAC 173-50-120 ACCREDITATION CATEGORIES. Environmental laboratories shall be accredited within the broad categories Chemistry I (General), Chemistry II (Trace Metals), Organics I (Gas Chromatography (GC), High Pressure Liquid Chromatography (HPLC) Methods), Organics II (Gas Chromatography/Mass Spectrometry (GC/MS) Methods), Radiological, Microbiological, Bioassay, and Limited Municipal Wastewater Treatment. Within those broad categories, laboratories shall specifically be accredited to perform within the well-defined parameters identified in WAC 173-50-190 or as requested by the applying laboratory, using specific, recognized analytical methods chosen by the applying laboratory. Additional parameters may be designated in the program procedural manual without amendment of this chapter if required to allow more efficient execution of the accreditation program.

NEW SECTION

WAC 173-50-130 REQUIREMENTS FOR MAINTAINING ACCREDITATION STATUS. Accreditation shall be granted for a given fiscal year and shall expire at the end of each fiscal year (last day of June). Renewal shall require submission of an application and appropriate fees, an update of the laboratory's quality assurance manual, and successful completion of a new performance audit. System audits shall be required for renewal of accreditation at the discretion of

the quality assurance section, but at periods not to exceed three years from the previous system audit.

NEW SECTION

WAC 173-50-140 DENYING ACCREDITATION STATUS. A laboratory may be denied accreditation for failing to comply with standards for critical elements of the system audit, for misrepresenting its capabilities or failing to disclose pertinent information in the application, for falsifying analytical data, or for failing to render appropriate fees. Additionally, a laboratory may be denied accreditation for a specific parameter for unsatisfactory analysis of that parameter in the performance audit. Laboratories denied accreditation may appeal under the provisions of WAC 173-50-200 or, following correction of deficiencies, may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

NEW SECTION

WAC 173-50-150 REVOKING ACCREDITATION STATUS. Accreditation status may be suspended or revoked if the laboratory violates a state rule relative to the analytical procedures for which it is accredited, misrepresents itself to the department, fails to submit an application and associated fees for renewal, falsifies reports of analysis, or engages in unethical or fraudulent practices concerning the generation of analytical data. Additionally, an accredited laboratory may be reaudited for cause and, if found to be deficient in its ability to provide accurate analytical data, may have its accreditation suspended or revoked.

NEW SECTION

WAC 173-50-160 RECIPROCITY. The department may recognize accreditation (or certification, registration, licensure, approval) of an out-of-state laboratory by another state with which the department has established a reciprocity agreement. In such cases, the out-of-state laboratory shall submit an application and associated fee to offset administrative costs of processing its application (see WAC 173-50-190(5)), and a copy of their accreditation documentation including scope of accreditation. After review of the application and accreditation to assure compliance with minimum accreditation requirements as stated in this chapter, the laboratory may be recognized as authorized to submit analytical data to the department.

NEW SECTION

WAC 173-50-170 THIRD-PARTY ACCREDITATION. The department may recognize accreditation (or certification, registration, licensure, approval) of a laboratory, including in-state laboratories, by a third party when the accreditation is determined to be equivalent to that described in this chapter. Laboratories applying for recognition of third-party accreditation shall submit an application and associated fee to offset administrative costs (see WAC 173-50-190(5)), and provide documented information demonstrating requirements for accreditation have been fulfilled as a result of accreditation carried out by a third party. After review of the application and accreditation to ensure compliance with minimum accreditation requirements as stated in this chapter, the laboratory may be recognized as authorized to submit analytical data to the department.

NEW SECTION

WAC 173-50-180 EXEMPTIONS. (1) The application form shall provide for wastewater dischargers whose laboratories meet the exemption qualifications of RCW 43.21A.230 to request exemption from the accreditation program. Those laboratories shall be required to submit evidence that they are participating in a federal Environmental Protection Agency Administered Quality Assurance Program including as a minimum the following elements: Current QA program/project plans; performance evaluation audits; system audits; corrective action for audit deficiencies; quality control guidelines and records; and training in quality assurance for laboratory management personnel. The department shall grant exemption from accreditation requirements of this chapter upon receipt of confirmation from Region X of the federal Environmental Protection Agency of such participation by a laboratory.

(2) Exemption shall be granted only for those analytical parameters included in the federal Environmental Protection Agency Quality Assurance Program. The exemption status shall be reviewed annually

based upon submittal by the laboratory of a new application and updated evidence of continued participation in a sufficient quality assurance program.

NEW SECTION

WAC 173-50-190 FEE STRUCTURE. (1) Fees in this chapter are those established for initiation of the accreditation program. The fee structure shall be reviewed annually and modified as necessary to reflect currency value fluctuations or changes in program administration costs. Laboratory directors may request addition of parameters within given categories.

CATEGORY	PARAMETER	FEE/PARAMETER	MAX FEE PER CATEGORY
Chemistry I (General)	Calcium Chloride Fluoride Magnesium pH Potassium Sodium Specific Conductance Sulfate Total Alkalinity Total Dissolved Solids (TDS) Total Hardness Ammonia (NH ₃ -N) Kjeldahl Nitrogen Nitrate (NO ₃ -N) Nitrate-Nitrite (NO ₃ -NO ₂) Nitrite (NO ₂ -N) Orthophosphate Phosphorous (total) Biochemical Oxygen Demand (BOD)/Carbonaceous BOD (CBOD) Chemical Oxygen Demand (COD) Total Organic Carbon (TOC) Acidity Anionic Surfactants (LAS) Bromide Color Cyanide (total) Dissolved Oxygen (DO) Nonfilterable Residue/ Total Suspended Solids (TSS) Oil/grease Phenolics (total) Salinity Silica Sulfide Sulfite Total Residual Chlorine Turbidity	\$50	\$600
	Aluminum Antimony Arsenic Beryllium Cadmium Chromium Cobalt Copper Iron Lead Manganese Mercury Molybdenum Nickel Selenium Silver Strontium Thallium Tin Titanium Vanadium Zinc	\$30	\$400

CATEGORY	PARAMETER	FEE/PARAMETER	MAX FEE PER CATEGORY		
Organics I (GC, HPLC methods)	Acrolein/Acrylonitrile Phenols Purgeable (volatile) Halocarbons Purgeable (volatile) Aromatics Benzidines Phthalate Ester Nitrosamines Chlorinated Hydrocarbon Pesticides and Polychlorinated Biphenyls (PCBs) Nitroaromatics/Isophorone Polynuclear Aromatic Hydrocarbons Haloethers Chlorinated Hydrocarbons	\$50	\$250		
	Organics II (GC/MS methods)	Purgeables (volatiles) Base/Neutrals and Acids (semivolatiles) Dioxin (2,3,7,8-Tetra-chlorodibenzo-p-dioxin)	\$100	\$250	
		Radiological	Alpha Beta Radium	\$50	\$100
			Microbiological	Coliform (fecal) Coliform (total) Fecal streptococci Enterococci E. coli	\$100
	Bioassay			Fish Rat Amphipod Bivalve Larvae Chromosomal abnormality Microtox Daphnid Echinoderm Mysid Algae	\$100
		Limited Municipal Wastewater Treatment		Not Applicable	\$150

(2) Only laboratories owned and operated by municipalities whose discharge as permitted under chapter 173-216 or 173-220 WAC is less than one million gallons per day shall be accredited under the "limited municipal wastewater treatment" category.

(3) Out-of-state laboratories shall coordinate directly with the quality assurance section to determine the anticipated cost of completing the accreditation process. The fee assessed shall be the projected cost of travel and per diem added to the normal fee indicated in WAC 173-50-190(1).

(4) On-site inspections shall not be conducted nor shall interim or provisional or other accreditations be granted until appropriate fees have been received by the department.

(5) The fee to defray costs to the department for recognition of a laboratory under a reciprocity agreement (WAC 173-50-160) or recognition of third-party accreditation (WAC 173-50-170) shall be fifty dollars.

(6) Apart from the fee process, applicant laboratories shall be required to acquire and analyze performance evaluation (PE) samples for parameters specified by the quality assurance section. The source of PE samples, if other than the federal Environmental Protection Agency, shall be approved by the quality assurance section. To the extent feasible as determined by the quality assurance section, performance evaluation samples already being analyzed by the applicant laboratories, shall be used to fulfill performance audit requirements of this chapter.

NEW SECTION

WAC 173-50-200 APPEALS. An environmental laboratory manager may appeal final accreditation actions (awards, denials, revocations) in writing to the director of the department within thirty days of notification of final action.

NEW SECTION

WAC 173-50-210 ENFORCEMENT. The department may enter any premises in which analytical data pertaining to accreditation under the provisions of this chapter are generated or stored, for the purpose of conducting system audits or otherwise enforcing this chapter. Refusal to permit entry for such purposes shall result in denial, revocation, or suspension of accreditation status.

WSR 89-04-053
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
 [Filed February 1, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning community, separate and jointly owned property entitlements, amending WAC 388-28-390;

that the agency will at 10:00, Tuesday, March 7, 1989, in the Auditorium, OB-2, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 8, 1989.

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

The specific statute these rules are intended to implement is chapter 74.08 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 7, 1989.

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

Troyce Warner
 Office of Issuances
 Department of Social and Health Services
 Mailstop OB-33H
 Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by February 21, 1989. The meeting site is in a location which is barrier free.

Dated: February 1, 1989
 By: Leslie F. James, Director
 Administrative Services

STATEMENT OF PURPOSE

Re: WAC 388-28-390.

Purpose of the Rule Changes: Current language is limited to applicants and should include recipients. It also states that persons eligible for reduced benefits from Social Security are ineligible for assistance. However, they are only ineligible for that amount of public assistance that they are otherwise eligible for through another entitlement.

Reason These Rules are Necessary: To make the policy consistent with federal regulations.

Statutory Authority: RCW 74.08.090.

Summary of the Rule Change: Make clear that all clients shall have potential entitlements reviewed, remove gender references, and allow a client eligible for reduced Social Security or any other entitlement to remain eligible for public assistance where need exceeds the entitlement.

Person Responsible for Drafting, Implementation and Enforcement of the Rule Change: Rita Jefferson, Program Manager, Division of Income Assistance, mailstop OB-31C, phone 753-0471.

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

AMENDATORY SECTION (Amending Order 917, filed 3/14/74)

WAC 388-28-390 COMMUNITY, SEPARATE AND JOINTLY OWNED PROPERTY—(~~SOCIAL INSURANCES AND RELATED~~) ENTITLEMENTS. (1) "Entitlement" means any (~~form of~~) claim or interest, payable in cash or in kind, a client may have in the following:

- (a) Benefit((:));
 - (b) Compensation((:));
 - (c) Insurance((:));
 - (d) Pension (retirement, military, etc.)((:));
 - (e) Bonus((:));
 - (f) Allotment((:));
 - (g) Allowance, etc.((, payable in cash or its equivalent in which an applicant may have a claim or interest recognized in law)).
- (2) The (~~local office~~) department shall (~~carefully examine~~):
- (a) Determine the interest (~~an applicant~~) a client may have in any entitlement; and (~~explore all of the facts with him~~;
 - (3) The local office shall discuss with the applicant any potential entitlements, direct him))
 - (b) Refer the client to the proper agency (~~through which clearance may be made and, if necessary,)~~ to apply for such benefits;
 - (c) Assist (~~him~~) the client, when requested to do so, in obtaining such benefits;
 - (d) Deny a client who refuses to establish the existence of an entitlement and its value; and
 - (e) Consider the resource amount which the client may claim in computing the financial need whether or not the client chooses to receive the entitlement.
- ((4) Men who can receive reduced RSI benefits at age sixty-two and women who can do so at age sixty are ineligible for public assistance. Whether or not such person chooses to obtain this reduced benefit is his own decision, but the amount of the resource which he could claim shall be taken into consideration in computing his financial need.))

WSR 89-04-054
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health)

[Filed February 1, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning nursing homes, amending chapter 248-14 WAC;

that the agency will at 10:00 a.m., Tuesday, March 21, 1989, in the Auditorium, OB-2, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 22, 1989.

The authority under which these rules are proposed is RCW 18.51.070 and 74.42.620.

The specific statute these rules are intended to implement is chapters 18.51 and 74.42 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 21, 1989.

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

Troyce Warner
Office of Issuances
Department of Social and Health Services
Mailstop OB-33H
Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by March 7, 1989. The meeting site is in a location which is barrier free.

Dated: February 1, 1989

By: Leslie F. James, Director
Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.025.

Re: WAC 248-14-001, 248-14-090, 248-14-235, 248-14-247, 248-14-285 and 248-14-300.

Purpose of the Rule Change: To clarify regulatory requirements, expand resident rights, and improve the delivery of services to nursing home residents.

Reasons These Rules are Necessary: To comply with the provisions of OBRA 87, implement RCW 18.51.530 and update the regulations in light of improved technology in dialysis services.

Statutory Authority: RCW 18.51.070 and 74.42.620.

Summary of the Rule Changes: WAC 248-14-001 adds definitions of "change of ownership," "dialysis helper," and "end stage renal disease"; redefines "kidney center" and "nursing home"; and deletes the definition "hemodialysis"; WAC 248-14-090 clarifies who is responsible for notifying the department when there is a change of ownership; WAC 248-14-235 requires administrators or their designees to be available at specified times; requires that administrators advise residents of changes in administrators, directors of nursing services, and changes of ownership of the nursing home; requires administrators in Medicaid certified nursing homes to protect residents' rights to apply for payments; and requires residents' families to be allowed to meet in the nursing home; WAC 248-14-247 establishes a resident's right to safe and adequate care; expands a resident's right to information about rights, responsibilities, available services, and how to submit complaints; establishes a resident's right to choose a personal attending physician; establishes a resident's right to notice of a change in room or roommate; requires residents to be sufficiently oriented and prepared for a transfer or discharge; expands a resident's right to manage his or her

financial affairs; and establishes a resident's right to notice of a change of ownership; WAC 248-14-285 clarifies requirements for drug orders and drug administration; and WAC 248-14-300 deletes many requirements for dialysis services in nursing homes; requires all residents receiving dialysis in nursing homes to be patients of a kidney center; specifies who may administer dialysis in a nursing home; and specifies conditions under which dialysis may be administered in a nursing home, including required services and activities.

Person Responsible for Drafting, Implementation and Enforcement of the Rule: Cathy Wiggins, Director, Nursing Home Services, AASA, phone 753-4465, mailstop HB-11.

Person or Organization Other than DSHS who Proposed These Rules: None.

These rules are in part necessary to implement OBRA 87 and RCW 18.51.530.

Reviser's note: The material contained in this filing will appear in the 89-05 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-12-035 or 1-13-035, as appropriate.

WSR 89-04-055 PROPOSED RULES BOARD OF HEALTH [Filed February 1, 1989]

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 WAC 248-100-011 Definitions.
Amd WAC 248-100-206 Special diseases—Sexually transmitted diseases;

that the agency will at 9:00 a.m., Wednesday, March 8, 1989, in the Pine Room of the Westwater Inn, Evergreen Park Drive S.W., Olympia, WA, conduct a public hearing on the proposed rules.

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

The authority under which these rules are proposed is chapter 70.24 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 8, State Board of Health, 112 South Quince, ET-23, Olympia, WA 98504.

Dated: January 25, 1989

By: Paul Trause
Deputy Secretary
Programs

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.045.

Re: Amending WAC 248-100-011 Definitions; and 248-100-206 Special diseases—Sexually transmitted diseases.

Purpose of the Rules: To make editorial amendments to rules implementing the AIDS Omnibus Bill of 1988.

Reason Rules are Necessary: WAC 248-100-011 was filed for permanent adoption in August 1988; and WAC 248-100-206 was filed for permanent adoption in October 1988. After permanent adoption, two spelling errors were discovered. These editorial changes are to correct the misspellings.

Statutory Authority: RCW 70.24.017 and 70.24.340.

Summary: WAC 248-100-011, a spelling error is corrected in subsection (1); and WAC 248-100-206, a spelling error is corrected in subsection (9).

Person Responsible for Drafting and Implementation: Jean Ullom, Section Head, Health Information/Policy Development, ET-24, phone 753-5824.

These rules are proposed by DSHS for adoption by the State Board of Health.

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

AMENDATORY SECTION (Amending Order 317, filed 8/17/88)

WAC 248-100-011 DEFINITIONS. The following definitions shall apply in the interpretation and enforcement of chapter 248-100 WAC:

(1) "Acquired immunodeficiency syndrome (AIDS)" means an illness characterized by the diseases and conditions defined and described by the Centers for Disease Control, U.S. Public Health Services, Morbidity and Mortality Weekly Report ((~~MMR~~) MMWR), August 14, 1987, Volume 36, Number 1S.

(2) "AIDS counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

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

(4) "Carrier" means a person harboring a specific infectious agent and serving as a potential source of infection to others, but who may or may not have signs and/or symptoms of the disease.

(5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(6) "Category A disease or condition" means a reportable disease or condition of urgent public health importance, a case or suspected case of which must be reported to the local or state health officer immediately at the time of diagnosis or suspected diagnosis.

(7) "Category B disease or condition" means a reportable disease or condition of public health importance, a case of which must be reported to the local health officer no later than the next working day following date of diagnosis.

(8) "Category C disease or condition" means a reportable disease or condition of public health importance, a case of which must be reported to the local health officer within seven days of diagnosis.

(9) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(10) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(11) "Contact" means a person exposed to an infected person, animal, or contaminated environment which might provide an opportunity to acquire the infection.

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

(13) "Detention" or "detainment" means physical restriction of activities of an individual by confinement, consistent with WAC 248-100-206(8), for the purpose of monitoring and eliminating behaviors presenting imminent danger to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(14) "Food handler" means any person preparing, processing, handling, or serving food or beverages for people other than members of his or her household.

(15) "Food service establishment" means any establishment where food or beverages are prepared for sale or service on the premises or elsewhere, and any other establishment or operation where food is served or provided for the public with or without charge.

(16) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, boarding home, chapter 18.46 RCW, maternity homes, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(17) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care or medical care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(18) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 248-100-207.

(19) "Infection control measures" means the management of infected persons, persons suspected to be infected, and others in such a manner as to prevent transmission of the infectious agent.

(20) "Isolation" means the separation or restriction of activities of infected persons, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent.

(21) "Laboratory director" means the director or manager, by whatever title known, having the administrative responsibility in any medical laboratory.

(22) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

(23) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.

(24) "Medical laboratory" means any facility analyzing specimens of original material from the human body for purposes of patient care.

(25) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(26) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(27) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;

(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;

(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;

(d) Assessing emotional impact of HIV test results; and

(e) Appropriate referral for other community support services.

(28) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

(a) Helping an individual to understand:

(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;

(ii) The nature, purpose, and potential ramifications of HIV testing;

(iii) The significance of the results of HIV testing; and

(iv) The dangers of HIV infection; and

(b) Assessing the individual's ability to cope with the results of HIV testing.

(29) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

(30) "Quarantine" means the separation or restriction on activities of a person having been exposed to or infected with an infectious agent, to prevent disease transmission.

(31) "Reportable disease or condition" means a disease or condition of public health importance, a case of which, and for certain diseases,

a suspected case of which, must be brought to the attention of the local health officer.

(32) "School" means a facility for programs of education as defined in RCW 28A.31.102 (preschool and kindergarten through grade twelve).

(33) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(34) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

(35) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(36) "Unusual communicable disease" means a communicable disease which is not commonly seen in the state of Washington but which is of general public health concern including, but not limited to, Lassa fever, smallpox, typhus, and yellow fever.

(37) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

AMENDATORY SECTION (Amending Order 322, filed 10/19/88)

WAC 248-100-206 SPECIAL DISEASES—SEXUALLY TRANSMITTED DISEASES. (1) Definitions.

(a) "Behaviors presenting imminent danger to public health (BPID)" means the following activities, under conditions specified below, performed by an individual with a laboratory confirmed HIV infection:

- (i) Anal or vaginal intercourse without a latex condom; or
- (ii) Shared use of blood-contaminated injection equipment;
- (iii) Donating or selling HIV-infected blood, blood products, or semen; and
- (iv) Under the following specified conditions:

(A) The infected individual received post-test counseling as described in WAC 248-100-209 prior to repeating activities in subsection (1)(a)(i) and (ii) of this section; and

(B) The infected individual did not inform the persons, with whom activities described in subsection (1)(a)(i) and (ii) of this section occurred, of his or her infectious status.

(b) "Behaviors presenting possible risk" means:

(i) Actual actions resulting in "exposure presenting a possible risk" limited to:

- (A) Anal, oral, or vaginal intercourse excluding conjugal visits; or
- (B) Physical assault; or
- (C) Sharing of injection equipment or sharp implements; or
- (D) Throwing or smearing of blood, semen, or vaginal fluids; or

(ii) Threatened action if:

- (A) The threatening individual states he or she is infected with HIV; and
- (B) The threatened behavior is listed in subsection (1)(b)(i)(A), (B), (C), and (D) of this section; and
- (C) The threatened behavior could result in "exposure presenting a possible risk."

(c) "Conduct endangering public health" means:

- (i) Anal, oral, or vaginal intercourse for all sexually transmitted diseases;
- (ii) For HIV and Hepatitis B:
 - (A) Anal, oral, or vaginal intercourse; and/or
 - (B) Sharing of injection equipment; and/or
 - (C) Donating or selling blood, blood products, body tissues, or semen; and

(iii) Activities described in subsection (1)(d)(i) and (ii) of this section resulting in introduction of blood, semen, and/or vaginal fluids to:

- (A) Mucous membranes;
- (B) Eyes;
- (C) Open cuts, wounds, lesions; or
- (D) Interruption of epidermis.

(d) "Exposure presenting possible risk" means one or more of the following:

(i) Introduction of blood, semen, or vaginal fluids into:

- (A) A body orifice or a mucous membrane;
- (B) The eye; or
- (C) An open cut, wound, lesion, or other interruption of the epidermis.

(ii) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.

(e) "Reasonably believed" or "reason to believe," in reference to a sexually transmitted disease, means a health officer's belief which:

(i) For the purpose of investigating the source and spread of disease, is based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD; and

(ii) For the purpose of issuing a written order for an individual to submit to examination, counseling, or treatment is based upon:

- (A) Laboratory test results confirming or suggestive of a STD; or
- (B) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or
- (C) Obtaining information directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:

(1) Contact with the infected individual occurred during a period when the disease may have been infectious; and

(II) The contact was sufficient to transmit the disease; and

(III) The infected individual is, in the health officer's judgment, credible and believable.

(f) "Substantial exposure" means physical contact resulting in exposure presenting possible risk, limited to:

(i) A physical assault upon the exposed person involving blood or semen;

(ii) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person;

(iii) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

(2) Health care providers shall:

(a) Report each case of sexually transmitted disease as required in chapter 248-100 WAC, and

(b) Instruct each patient regarding:

(i) Communicability of the disease, and

(ii) Requirements to refrain from acts that may transmit the disease to another.

(c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:

(i) Submission of a blood sample for syphilis to a laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit, and

(ii) Decide whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy.

(3) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying an individual is free from sexually transmitted disease.

(4) Local health officers, health care providers, and others, in addition to requirements in chapter 248-100 WAC, shall comply with the provisions in chapter 70.24 RCW.

(5) Prevention of ophthalmia neonatorum.

(a) Health care providers diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum shall report the case to the local health officer or local health department in accordance with the provisions of this chapter.

(b) The principal health care provider attending or assisting in the birth of any infant or caring for an infant after birth, shall ensure instillation of a department-approved prophylactic ophthalmic agent into the conjunctival sacs of the infant within the time frame established by the department in policy statement of ophthalmia agents approved for the prevention of ophthalmia neonatorum in the newborn, issued June 19, 1981.

(6) State and local health officers or their authorized representatives shall:

- (a) Have authority to conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted disease; and
- (b) Use procedures and measures described in WAC 248-100-036(4) in conducting investigations.
- (7) State and local health officers and their authorized representatives shall have authority to:
- (a) Issue written orders for medical examination, testing, and/or counseling under chapter 70.24 RCW, only after:
- (i) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and
- (ii) Having sufficient evidence to "reasonably believe" the individual to be affected by the order:
- (A) Has a sexually transmitted disease; and
- (B) Is engaging in "conduct endangering public health"; and
- (iii) Investigating and confirming the existence of "conduct endangering public health" by:
- (A) Interviewing sources to assess their credibility and accuracy; and
- (B) Interviewing the person to be affected by the order; and
- (iv) Including in a written order all information required in RCW 70.24.024.
- (b) Issue written orders for treatment under RCW 70.24.022 only after laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease;
- (c) Issue written orders to cease and desist from specified activities, under RCW 70.24.024 only after:
- (i) Determining the person to be affected by the order is engaging in "conduct endangering public health"; and
- (ii) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and
- (iii) Exhausting procedures described in subsection (7)(a) of this section; and
- (iv) Enlisting, if appropriate, court enforcement of the orders described in subsections (7)(a) and (b) of this section; and
- (d) Seek court orders for detention under RCW 70.24.034, only for persons infected with HIV and only after:
- (i) Exhausting procedures described in subsection (7)(a), (b), and (c) of this section; and
- (ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and
- (iii) Having sufficient evidence to "reasonably believe" the person is engaging in "behaviors presenting an imminent danger to public health."
- (8) Conditions for detention of individuals infected with sexually transmitted disease.
- (a) A local health officer may notify the state health officer if he or she determines:
- (i) The criteria for "behaviors presenting imminent danger to public health (BPID)" are met by an individual; and
- (ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.
- (b) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in subsection (8)(a) of this section.
- (c) The requesting local or state health officer or authorized representative shall:
- (i) Notify the department prior to recommending the detention setting where the individualized counseling and education plan may be carried out consistent with subsections (8)(d), (e), and (f) of this section;
- (ii) Make a recommendation to the court for placement of such individual consistent with subsections (8)(d) and (f) of this section; and
- (iii) Provide to the court an individualized plan for education and counseling consistent with subsection (8)(e) of this section.
- (d) State board of health requirements for detention of individuals demonstrating BPID:
- (i) Sufficient number of staff, caregivers, and/or family members to:
- (A) Provide round-the-clock supervision, safety of detainee, and security; and
- (B) Limit and restrict activities to prevent BPID; and
- (C) Make available any medical, psychological, or nursing care when needed; and
- (D) Provide access to AIDS education and counseling; and
- (E) Immediately notify the local or state health officer of unauthorized absence or elopement; and
- (ii) Sufficient equipment and facilities to provide:
- (A) Meals and nourishment to meet nutritional needs; and
- (B) A sanitary toilet and lavatory; and
- (C) A bathing facility; and
- (D) Bed and clean bedding appropriate to size of detainee; and
- (E) A safe detention setting appropriate to chronological and developmental age of detainee; and
- (F) A private sleeping room; and
- (G) Prevention of sexual exploitation.
- (iii) Sufficient access to services and programs directed toward cessation of BPID and providing:
- (A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and
- (B) Psychological and psychiatric evaluation and counseling; and
- (C) Implementation of court-ordered plan for individualized counseling and education consistent with subsection (8)(e) of this section.
- (iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC 275-55-263 (2)(c);
- (v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.
- (e) Washington state board of health standards for an individualized counseling and education plan for a detainee include:
- (i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;
- (ii) Identification of habitual and addictive behavior and relapse pattern;
- (iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;
- (iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;
- (v) Provision of information about acquisition and transmission of HIV infection;
- (vi) Teaching and training of individual coping skills to prevent relapse to BPID;
- (vii) Specific counseling for chemical dependency, if required;
- (viii) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and
- (ix) Designation of a person primarily responsible for counseling and/or education who:
- (A) Completed pretest and post-test counselor training approved by the office on AIDS; and
- (B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and
- (C) Has a post-graduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and
- (D) Completed at least one year clinical experience after post-graduate education with a primary focus on individualized behavior change; and
- (E) Is a certified counselor under chapter 18.19 RCW.
- (x) Designation and provision of a qualified counselor under WAC 275-19-145 when the detainee is assessed to have a drug or alcohol problem.
- (f) The state board of health designates the following settings appropriate for detention provided a setting meets requirements in subsection (8)(d)(i), (ii), (iii), (iv), and (v) of this section:
- (i) Homes, care facilities, or treatment institutions operated or contracted by the department;
- (ii) Private homes, as recommended by the local or state health officer;
- (iii) Boarding homes licensed under chapter 18.20 RCW;
- (iv) Nursing homes licensed under chapter 18.51 RCW;
- (v) Facilities licensed under chapter 71.12 RCW, including:
- (A) Psychiatric hospitals, per chapter 248-22 WAC;
- (B) Alcoholism treatment centers if certified for substance use under chapter 275-19 WAC;
- (C) Adult residential rehabilitation centers, per chapter 248-25 WAC;
- (D) Private adult treatment homes, per chapter 248-25 WAC;
- (E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter 248-23 WAC;
- (vi) A hospital licensed under chapter 70.41 RCW.

(9) Jail administrators may order pretest counseling, post-test counseling, and HIV testing of persons detained in jail according to RCW 70.24.360 only under the following conditions:

(a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident perceived to be actual or threatened "behaviors presenting possible risk"; and

(b) The local health officer:

(i) Determines the documented behavior or behaviors meet the criteria established in the definition of "behaviors presenting a possible risk"; and

(ii) Interviews the detained individual to evaluate the factual basis for alleged actual or threatened behavior; and

(iii) Makes a fact determination, based upon the documented behavior, the interview with the detained individual, and/or ((~~dependent~~)) independent investigation, that sufficient factual evidence exists to support the allegation of actual or threatened "behaviors presenting possible risk"; and

(iv) Arranges for testing of the individual who is the source of the behavior to occur within seven days of the request from the jail administrator; and

(v) Reviews with the detained individual who is the source of the behavior the documentation of the actual or threatened behavior to try to assure understanding of the basis for HIV testing; and

(vi) Provides written approval of the jail administrator's order prior to HIV testing in accordance with subsection (7)(a)(i) of this section.

(c) The jail administrator maintains HIV test results and identity of the tested individual as a confidential, nondisclosable record, as provided in RCW 70.24.105.

(10) When an individual experiences a substantial exposure to another individual's body fluids and requests HIV testing of that other individual, the state and local health officers have authority to order pretest counseling, HIV testing, and post-test counseling of that other individual providing:

(a) The alleged exposure occurred when the individual was employed or acting as an authorized volunteer in one of the following employment categories:

(i) Law enforcement officer;

(ii) Firefighter;

(iii) Health care provider;

(iv) Staff of health care facilities; and

(b) The alleged substantial exposure occurred on the job; and

(c) The request to the health officer for testing and counseling of the individual was made within seven days of the occurrence of the alleged exposure; and

(d) The local health officer:

(i) Determines that the alleged exposure meets the criteria established in the definition of "substantial exposure"; and

(ii) Ensures that pretest counseling of the individual to be tested, or a legal representative, occurs; and

(iii) Arranges for testing of the individual who is the source of the exposure to occur within seven days of the request from the person exposed; and

(e) The exposed individual agrees to be tested for HIV if such testing is determined appropriate by the health officer; and

(f) Records on HIV testing ordered by a health officer are maintained only by the ordering health officer.

(11) For the purpose of RCW 49.60.172 concerning the absence of HIV infection as a bona fide occupational qualification only, "significant risk" means a job qualification which requires person-to-person contact likely to result in direct introduction of blood into the eye, an open cut or wound, or other interruption of the epidermis, when:

(a) No adequate barrier protection is practical; and

(b) Determined only on case-by-case basis consistent with RCW 49.60.180.

repeal rules concerning rules relating to additional restrictions on the use of pesticides in Benton County and portions of Franklin and Walla Walla counties in chapter 16-230 WAC;

that the agency will at 6:00 p.m., Wednesday, February 22, 1989, in the Red Lion Motor Inn, 2525 North 20th, Pasco, WA 99301, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on March 15, 1989.

The authority under which these rules are proposed is chapters 17.21 and 15.58 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before February 22, 1989.

This notice is connected to and continues the matter in Notice No. WSR 89-03-065 filed with the code reviser's office on January 18, 1989.

Dated: February 1, 1989

By: Art Losey
Assistant Director

WSR 89-04-057
NOTICE OF PUBLIC MEETINGS
REAL ESTATE COMMISSION
[Memorandum—February 1, 1989]

The Real Estate Commission will be holding regular meetings on the following dates in the following locations:

March 10, 1989 10:00 a.m.	Ramada Inn 18118 Pacific Highway South Seattle
June 1, 1989 10:00 a.m.	Silverdale on the Bay Resort 3073 Bucklin Hill Road Silverdale
July 28, 1989 10:00 a.m.	Red Lion Inn 2525 North 20th Pasco
September 27, 1989 10:00 a.m.	Red Lion Inn at the Quay 100 Columbia Street Vancouver
December 8, 1989 10:00 a.m.	Ramada Inn 18118 Pacific Highway South Seattle

WSR 89-04-058
PROPOSED RULES
BOARD OF PHARMACY
[Filed February 1, 1989]

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 public records access pursuant to chapter 42.17 RCW;

WSR 89-04-056

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 1, 1989]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Department of Agriculture intends to adopt, amend, or

that the agency will at 10:00 a.m., Wednesday, March 15, 1989, in the St. Joseph's Hospital Conference Room 3, 2901 Squalicum Parkway, Bellingham, 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 42.17.250.

The specific statute these rules are intended to implement is RCW 42.17.250.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before March 15, 1989.

Dated: February 1, 1989

By: John H. Keith
Assistant Attorney General
Board Counsel

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Pharmacy.

Statutory Authority: RCW 42.17.250.

Summary, Purpose of Rule and Reason Proposed: The following rules are amended to update internal references to applicable statutes and to make technical corrections: WAC 360-44-010 Purpose; 360-44-040 Operations and procedures; 360-44-050 Public records available; 360-44-060 Public records officer; 360-44-080 Requests for public records; 360-44-090 Copying; 360-44-100 Exemptions; 360-44-130 Index of public records available; 360-44-140 Address where requests to be directed; and 360-44-990 Appendix A—Form.

Responsible Agency Personnel: The board and the executive secretary of the board have responsibility for drafting, implementing and enforcing these rules. The executive secretary is Donald H. Williams, 319 East Seventh Avenue, W.E.A. Building, FF-21, Olympia, Washington 98504, phone (206) 753-6834.

Proponents of the Proposed Rules: Washington State Board of Pharmacy.

Federal Law or State or Federal Court Requirements: Not necessitated as a result of federal law or state of federal court action.

Small Business Economic Impact Statement: Not necessary since these rules do not impact small businesses as that term was defined by RCW 43.31.920.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-010 PURPOSE. The purpose of this chapter shall be to ensure compliance by the Washington state board of pharmacy with the provisions of chapter ~~((1, Laws of 1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records;))~~ 42.17 RCW and in particular with the sections ((25-32)) of that act~~((:))~~ dealing with public records.

AMENDATORY SECTION (Amending Order 171, filed 12/17/82)

WAC 360-44-040 OPERATIONS AND PROCEDURES. (1) The board of pharmacy consists of ~~((five))~~ seven members, one of whom is designated as a ~~((chairman))~~ chairperson. The members are appointed by the governor for staggered four year terms.

(2) The board meets approximately once a month in various places throughout the state. The time and place of the meeting can be learned by writing or calling the administrative office of the board.

(3) The executive secretary is the board's chief executive. ~~((He))~~ The executive secretary is responsible for carrying out the board's directions and for directing the board's staff.

(4) It is the board's duty to administer the law in chapters 18.64, 18.64A, ~~((18.81;))~~ 69.04, 69.38, 69.40, 69.41, 69.43, 69.45, 69.50, 69.51, and 70.54 RCW.

(a) Chapter 18.64 RCW – Pharmacy Act – creation of board of pharmacy, definition of terms used in pharmacy act, examination and licensing of pharmacists, interns, wholesalers, shopkeepers and vendors, grounds for license suspension or revocation, unlawful practices, prescription labels and records.

(b) Chapter 18.64A RCW – Pharmacy Assistants Law – creation of pharmacy assistants, definition of terms, regulation of classifications and services, limitations on practice, grounds for certificate suspension or revocation, applications, fees, employment of pharmacy assistants, and pharmacists liability and responsibility.

~~((Chapter 18.81 RCW – Prophylactic Law – regulation and licensing of prophylactics and distributors;))~~

~~((d))~~ Chapter 69.04 RCW – Food, Drug and Cosmetic Act. Board has joint responsibility with director of department of agriculture. Board regulates only the drug and devices portion of the act. DMSO sales and use provisions are contained in this law.

(d) Chapter 69.38 RCW – Poisons—Sales and Manufacturing Act – defines poisons, provides for exemptions, requires a poison register with the identification of purchasers, provides for the inspection of poison registers and penalties for failure to maintain a register or for giving false information and provides for licensing poison manufacturers and sellers.

(c) Chapter 69.40 RCW – Poison Act – labeling of drugs incorrectly and selling poisons without labeling.

(f) Chapter 69.41 RCW – Legend Drug Act – definition of terms, prohibited acts, regulation of sale, delivery, or possession of legend drugs, requirements for prescriptions and labels, search and seizure procedures. Penalties for violations are created and rules regarding legend drugs are authorized. The procedures and requirements for substitution of legend drugs, manufacturing standards and liability of pharmacists are outlined. Requirements for identification and labeling marking of legend drugs are created.

(g) Chapter 69.43 RCW – Precursor Drugs Act – requires certain transactions concerning certain described substances to be reported to the board, provides for the reports of out-of-state receipts, creates exemptions, a reporting form, authorizes the board to adopt rules, requires the report of theft or loss of regulated substances, creates penalties and provides for the issuance of a permit and the refusal, suspension, or revocation of permits.

(h) Chapter 69.45 RCW – Drug Samples Act – defines terms, provides for the registration of drug sample manufacturers and the maintenance of records, the storage and transportation of drug samples, the manner of distribution, the disposal of surplus, outdated or damaged samples, registration fees, penalty for violations and the confidentiality of reports.

(i) Chapter 69.50 RCW – Controlled Substances Act – places all narcotics, barbiturates, amphetamines, hallucinogenics and marijuana into five schedules. Sets standards and definitions for the five schedules. Regulates the manufacture, distribution and dispensing of controlled substances. Sets forth offenses, penalties and prohibited acts. Enforcement and administrative provisions include administrative and criminal search warrants.

((H)) (j) Chapter 69.51 RCW – Controlled Substance Therapeutic Research Act – defines terms and provides for the board's regulation of controlled substance therapeutic research programs including a patient qualification review committee, sources and distributions of research marijuana, reports to the governor and rescheduling of cannabis used in approved research.

(k) Chapter 70.54 RCW – Lactrile – board given authority to sample and test lactrile and promulgate rules regarding it.

(5) Information concerning all licenses or registrations issued by the board may be obtained by writing or calling the administrative office of the board.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-050 PUBLIC RECORDS AVAILABLE. All public records of the board, as defined in WAC 360-44-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by ~~((section 31, chapter 1, Laws of 1973))~~ RCW 42.17.255, 42.17.310, and WAC 360-44-100 or any other duty to withhold imposed by other state or federal law.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-060 PUBLIC RECORDS OFFICER. The board's public records shall be in the charge of the public records officer designated by the board. The person so designated shall be located in the administrative office of the board. The public records officer shall be responsible for the following: The implementation of the board's rules and regulations regarding release of public records, coordinating the staff of the board in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter ((~~the Laws of 1973~~)) 42.17 RCW.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-080 REQUESTS FOR PUBLIC RECORDS. In accordance with requirements of chapter ((~~the Laws of 1973~~)) 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the board which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the board's staff, if the public records officer is not available, at the administrative office of the board during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the board's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-090 COPYING. No fee shall be charged for the inspection of public records. The board shall charge a fee of ((~~twenty-five~~)) ten cents per page of copy for providing copies of public records and for the use of the board's copy equipment. This charge is the amount necessary to reimburse the board for its actual costs incident to such copying. The copy machine will be operated by staff persons only.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-100 EXEMPTIONS. (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 360-44-080 is exempt under provisions of ((~~section 31, chapter 1, Laws of 1973~~)) RCW 42.17.310.

(2) In addition, ((~~pursuant to section 26, chapter 1, Laws of 1973~~)) the board reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by ((~~chapter 1, Laws of 1973~~)) RCW 42.17.255. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-130 INDEX OF PUBLIC RECORDS AVAILABLE. (1) The board has available to all persons:

- (a) A current index which provides identifying information concerning all licenses issued by the board;

(b) A current index to all rules and regulations adopted by the board((;

~~(c) A current list of the results of all scientific tests of prophylactics conducted by the board)).~~

(2) Final orders in the adjudication of cases are filed in the investigative file of the subject licensee.

(3) Correspondence and materials referred to therein by and with the board relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is about to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party is filed chronologically, with one copy also filed in a licensee's file, if applicable.

(4) The board has determined that it would be unduly burdensome to maintain an index, except as set forth herein, due to fiscal and personnel limitations and to the general nature and large volume of correspondence of the board.

(5) The board shall not give, sell or provide access to lists of individuals requested for commercial purposes except as authorized by RCW 42.17.260(5).

AMENDATORY SECTION (Amending Order 113, filed 4/27/73)

WAC 360-44-140 ADDRESS WHERE REQUESTS TO BE DIRECTED. All communications with the board including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter ((~~the Laws of 1973~~)) 42.17 RCW and these rules; requests for copies of the board's decisions and other matters, shall be addressed as follows: Washington State Board of Pharmacy, c/o Public Records Officer, 319 East 7th Avenue, Olympia, Washington 98504.

AMENDATORY SECTION (Amending Order 113, Appendix A, filed 4/27/73)

WAC 360-44-990 APPENDIX A—FORM.

WASHINGTON STATE BOARD OF PHARMACY
319 East Seventh Avenue — WEA Bldg.
Olympia, Washington 98504

REQUEST FOR PUBLIC RECORDS

1. Name
.....
Street City State Zip
2. day of 19.. at O'clock
Date and Time of Request
3. Nature of Request:
.....
.....
.....
4. Current Index Reference
5. Record Description if not Indexed
6. Signature of Requestor

FOR AGENCY USE ONLY

Received by Staff Time Expended
Request: Time Completed
No. Pages Copied @((25)) 10¢ a copy — Total

WSR 89-04-059**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
[Memorandum—January 31, 1989]****NOTICE OF INTENTION TO EXPAND THE REDMOND-BEAR
CREEK VALLEY GROUND WATER MANAGEMENT AREA**

The Washington State Department of Ecology (ecology) hereby gives notice of its intention to modify the boundaries and expand the area included within the Redmond-Bear Creek Valley ground water management area (area) located within King County, Washington, in accordance with chapter 173-100 WAC, Ground water management areas and programs. Upon petition by the city of Redmond and King County, the Redmond-Bear Creek Valley ground water management area was designated by order of ecology dated October 7, 1986. The purposes of the designation are to allow the development of comprehensive ground water management programs to protect the quality and quantity of ground water, to meet future water needs while recognizing existing water rights, and to provide for effective and coordinated management of the ground water resources. The program is to be developed by state and local government agencies in conjunction with a local ground water advisory committee.

On January 5, 1989, ecology received from the Seattle-King County Department of Public Health, the lead agency for the area, a petition requesting modification of the boundaries and expansion of the area in order to provide enhanced long term protection of the ground water resources within the area. The petition is supported by the Redmond-Bear Creek Valley ground water advisory committee. Maps of the existing area and the proposed additional area are available from ecology.

Ecology will conduct a public hearing to consider the requested expansion of the area on March 13, 1989, at 7:30 p.m., at the Redmond City Council Chambers, 15670 N.E. 85th Street, Redmond, WA.

It is the intent of ecology to designate the expanded area on April 7, 1989, if no major issues are raised.

Interested persons may request additional information or submit comments in writing before March 24, 1989 to: Doug Rushton, Water Resources Program, Washington State Department of Ecology, Mailstop PV-11, Olympia, Washington 98504-8711.

**WSR 89-04-060
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 1989]**

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington Horse Racing Commission intends to adopt, amend, or repeal rules concerning:

Amd WAC 260-34-010 Primary purpose.

Amd WAC 260-34-020 (~~(Intoxication)~~) use of controlled substances.
Amd WAC 260-34-030 Testing.
Amd WAC 260-34-040 Definitions (~~(of licensee and employees)~~).
Amd WAC 260-34-050 Reasonable suspicion.
Amd WAC 260-34-060 Refusal to test.
Amd WAC 260-34-070 Responsibility to report valid prescriptions.
Amd WAC 260-34-080 Testing procedure.
Amd WAC 260-34-090 A positive test.
Amd WAC 260-34-100 Confidentiality of test results.
Amd WAC 260-34-180 Testing expense.
New WAC 260-34-190 Severability;

that the agency will at 1:00 p.m., Friday, March 10, 1989, in the Sea-Tac Red Lion, 18740 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 67.16.020 and 67.16.040.

Dated: February 1, 1989

By: John Crowley
Executive Secretary

STATEMENT OF PURPOSE

In the matter of adopting the amendments to WAC 260-34-010, 260-34-020, 260-34-030, 260-34-040, 260-34-050, 260-34-060, 260-34-070, 260-34-080, 260-34-090, 260-34-100 and 260-34-180; and the adoption of WAC 260-34-190.

WAC 260-34-010 et seq are proposed for adoption as amended and set out in the notice of intention to adopt rules filed this date with the code reviser. The title of these rules is Drug and alcohol testing of licensees and employees.

Description of Purpose: The primary purposes of and reasons for the adoption of these rules are: Preservation of the integrity of the sport of horse racing in the state of Washington; public safety, the commission seeks to ensure that licensees that participate in racing do not create a threat of harm or actual harm to other participants, nor to those observing races at race tracks in Washington; the protection of the health, safety and welfare of licensees, employees and applicants involved in racing, from exploitation fostered by the illegal use of controlled substances; the public image and perception of the conduct and regulation of horse racing, in furtherance of the public perception that horse racing is conducted in a fair and open manner, the Horse Racing Commission promulgates these rules to ensure that persons with alcohol problems or problems with controlled substance abuse are limited in their involvement with horse racing so as to not diminish the public's perception of horse racing; the commission recognizes that the most effective preventative measures are also measures considered by many to be most invasive of civil liberties, and intends to limit the impact on civil liberties by implementing limited preventative measures. The commission also recognizes that there are limits to the known correlation between the use of drugs, drug levels in bodily fluids and impairment from the presence of those

drugs in the body, but that the known possible impairment and detriment to the integrity of the horse racing industry from the use of drugs warrants appropriate measures to prevent such use.

Statutory Authority: RCW 67.16.020 and 67.16.040.

These rules are being promulgated under the general rule-making authority of the Washington Horse Racing Commission to address a problem identified by the commission as threatening the integrity of the horse racing industry in Washington.

Summary of Rules: The rules which make up this chapter provide the basis for determining the circumstances under which drug testing is proper. The chapter sets out the actual protocol to be followed during and after actual testing. The chapter states the requirements for notice and appeal, in situations of conflict over the results of testing, and commission actions taken in accord with such test results.

Reasons Supporting the Proposed Action: This proposed action should be supported because the illegal use of controlled substances, and the reckless use of alcohol are major societal problems. Problems of such magnitude that if not checked will compromise and destroy the integrity of horse racing in Washington.

John Crowley, executive secretary, and members of the Horse Racing Commission staff are responsible for the drafting, implementation and enforcement of the proposed rules within this proposed chapter.

The proponent of the enactment of these rules is the Washington Horse Racing Commission, Warren Chinn, chairperson.

The Washington Horse Racing Commission recommends adoption of these rules. They have been drafted in consultation with various parties, and the assistance of the attorney general and his assistants, William A. Garling, Jr. and Francois Fischer.

The enactment of these rules is not necessary as the result of action by the legislature or by any court action, federal or state.

This certifies that copies of the statement are on file with the Horse Racing Commission, are available for public inspection, and that three copies of the statement are this date being forwarded to the Secretary of the Senate and to the Chief Clerk of the House of Representatives.

Small Business Economic Impact Statement: The enactments listed above are not anticipated to affect more than 20 percent of all industries nor more than 10 percent of any one industry as defined by section 2(3), chapter 6, Laws of 1982. Therefore, a small business economic impact statement has not been prepared.

Reviser's note: This notice filed by the agency was illegible in places, and the code reviser's office cannot guarantee that the Register, as printed, accurately reflects the agency filing.

Chapter 260-34 WAC

DRUG AND ALCOHOL TESTING OF LICENSEES AND EMPLOYEES

WAC

- 260-34-010 Primary purpose.
- 260-34-020 ~~Intoxication~~ Use of controlled substances.
- 260-34-030 Testing.
- 260-34-040 Definitions of licensee and employees

- 260-34-050 Reasonable suspicion.
- 260-34-060 Refusal to test.
- 260-34-070 Responsibility to report valid prescriptions.
- 260-34-080 Testing procedure.
- 260-34-090 A positive test.
- 260-34-100 Confidentiality of test results.
- 260-34-180 Testing expense.
- 260-34-190 Severability.

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

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-010 PRIMARY PURPOSE. In order to protect the integrity of horse racing in the state of Washington, to protect the health and welfare of licensees and employees engaged in horse racing within the state of Washington, to prevent the exploitation of the public, licensees and/or employees engaged in horse racing in the state of Washington, to foster fairness of competition within the racing industry and in order to protect public safety within the state of Washington, the horse racing commission intends to regulate at all race meets licensed by it the use of any controlled substance as listed in chapter 69.50 RCW or any prescription legend drug as defined in Chapter 69.41 RCW unless such prescription legend drug was obtained directly and pursuant to a valid prescription from a duly licensed physician or dentist acting in the course of his or her professional practice. The commission recognizes that the most effective preventative measures are also measures considered by many to be most invasive of civil liberties, and intends to limit the impact on civil liberties by implementing limited preventative measures. The commission also recognizes that there are limits to the known correlation between the use of drugs, drug levels in bodily fluids and impairment from the presence of those drugs in the body, but that the known possible impairment and detriment to the integrity of the horse racing industry from the use of drugs warrants appropriate measures to prevent such use. This chapter shall be applicable to any licensee, or employee or applicant who is, or may be, responsible for the conduct of, or the officiating of, a race or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet.

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 88-02, filed 4/15/88)

WAC 260-34-020 ~~INTOXICATION~~ USE OF CONTROLLED SUBSTANCES. No licensee or employee of any racing association or any employee of the horse racing commission or applicant who is, or may be, responsible for the conduct of, or officiating of a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet or on grounds licensed by the horse racing commission, shall be under the influence of intoxicating liquor, ~~the combined influence of intoxicating liquor and any drug, or under the influence of any narcotic or other drug or have within their body any drug or controlled substance unless obtained directly, and used, pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice while within the enclosure of or on the premises managed by any association.~~ In addition the personal use by any licensee or employee of any drug or abuse of any "Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW is prohibited without valid legal prescription or legend drug as defined in chapter 69.41 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 88-02, filed 4/15/88)

WAC 260-34-030 **TESTING.** The board of stewards of the horse racing commission or the commission, acting through the executive secretary may require any licensee, employee of any racing association, or employee of the horse racing commission, or applicant, who is, or may be, responsible for the conduct of, or officiating of, a race, or whose duties include the training, exercising, riding, driving, or caring for a horse while the horse is on any association premises to participate in a horse racing meet or on grounds licensed by the horse racing commission, to provide blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(1) As part of a physical examination described in WAC 260-32-160, as close as practicable prior to the testee's participation in his/her first race meeting of a calendar year.

(2) When the board of stewards finds that there is reasonable suspicion to believe that the proposed testee has used any drug, narcotic or controlled substance as defined in chapter 69.50 RCW or any prescription legend drug unless such controlled substance prescription legend drug was obtained directly and used pursuant to a valid medical prescription from a duly licensed physician or dentist acting in the course of his or her professional practice or, alcohol in excess of the limits prescribed in this chapter.

(3) At the discretion of the stewards when the proposed testee has a documented history of an unexplained positive test which indicates illegal drug usage or when the proposed testee has a documented history of violation of chapters 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-040 **DEFINITIONS, OF LICENSEE AND EMPLOYEES** (1) "Licensee, employee or applicants": For the purpose of this chapter, "licensee," or "employee" or "applicant" means and includes any person licensed or employed, or an applicant for a license or employment, by the horse racing commission within the state of Washington or by any association whose duties include any of the following: Training, exercising, riding, driving, or caring for a horse while he/she is on the association grounds to participate in a horse racing meet or on premises licensed by the horse racing commission, or any licensed racing official who is involved in the conduct of a horse racing meet including, but not limited to:

- (1) Apprentice jockey;
- (2) Assistant starter;
- (3) Assistant trainer;
- (4) Clerk of scales;
- (5) Dentist;
- (6) Driver;
- (7) Exercise boy/girl;
- (8) Groom;
- (9) Horseshoer;
- (10) Jockey;
- (11) Jockey agent;
- (12) Out rider;
- (13) Paddock judge;
- (14) Pony rider;
- (15) Racing judge;
- (16) Security officer;
- (17) Starter;
- (18) Steward;
- (19) Trainer;
- (20) Valet;
- (21) Veterinarian;
- (22) Veterinarian's assistant;

(23) Any other licensed personnel deemed appropriate by the horse racing commission where the person is involved in the conduct of a race.

(2) "Suspension": For purposes of this chapter, "suspension" means prevention from conducting the activities permitted or authorized by a license or employment or, if an applicant, prevention from obtaining a license or employment. "Suspension" is to be interpreted as a temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein, and is not to be considered punitive.

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 88-02, filed 4/15/88)

WAC 260-34-050 **REASONABLE SUSPICION.** When ordering a drug or alcohol test based upon determining whether there is reasonable suspicion to require testing, the board of stewards may consider, but are not limited to, any of the following factors:

(1) Unexplained or continued rule violations which have a detrimental effect on racing.

(2) Involvement in any accident which causes injury to person or animal at the track as well as any near accident which created a clear danger of accident or injury to person or animal at the track.

(3) Willful conduct detrimental to horse racing as evidenced by continued rule violations, or other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track.

(4) Observable physical or emotional impairment at the track.

(5) Involvement in a race of questionable outcome or circumstance as determined by the board of stewards in the exercise of their expertise.

(6) Willful abuse of animal or person who is engaged in a race, work, or exercise engagement at the track.

(7) Prior positive test or tests, excluding those where a valid legal prescription has been revealed.

(8) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track.

(9) Information supplied by a law enforcement agency, the thoroughbred racing protective bureau, or horse racing commission of any state or country which is verified in writing relating to drug or alcohol abuse or both.

(10) Any other physical conduct at the track which can be documented which would indicate the possibility of drug or narcotic reasonable grounds to believe the existence of dependence on or usage of a controlled substance, or alcohol abuse.

(11) Repeated wrongful refusal to take a test when requested to do so within this chapter.

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 spelling error in the above section occurred in the copy filed by the agency and appears herein pursuant to the requirements of RCW 34.08.040.

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AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-060 **REFUSAL TO TEST.** (1) When any licensee, or employee or applicant is requested to submit to a test in a manner prescribed by this chapter, he/she the person shall do so in a prompt manner. Refusal to supply such sample shall result in:

(+) (i) Immediate suspension of the licensee, or employee or applicant; and

(2) (ii) A hearing before the board of stewards in accordance with WAC 260-24-440 with written notice of the issue to be addressed prepared by the presiding steward, to be held within the next two racing days or seven calendar days, whichever is less, after of the delivery

service of the notice, or sooner or later if the licensee, or employee or applicant and the board of stewards agree to it. Service shall be to the licensee, employee or applicant personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mailing the notice to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing.

~~(3)~~ (2) If the board of stewards shall confirm the facts with respect to the refusal to test at the hearing and where substantiated, finds at the hearing that said refusal to test occurred without just cause, the licensee, or employee or applicant shall be suspended from racing for and until such time as a negative test has been obtained in conformance with this chapter. In the event of a finding of just cause, the licensee, employee or applicant must submit to a test immediately once the conditions which justly prevented testing abate or can be eliminated.

~~(4)~~ (3) Continued Repeated refusal without just cause to submit to an ordered test will may result in license revocation and banning from race meets in the state of Washington by the commission after a hearing pursuant to Chapters 260-08 and 260-88 WAC.

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 88-02, filed 4/15/88)

WAC 260-34-070 RESPONSIBILITY TO REPORT VALID PRESCRIPTIONS. Whenever any licensee, employee or applicant has been directed by the stewards to submit to a drug test and that licensee, or employee or applicant is taking a controlled substance pursuant to a valid prescription on order of a duly licensed physician or dentist, it shall be the licensee's, or employee's or applicant's responsibility to give immediately prior to testing written notice to the chief of security or his medical staff member designated pursuant to WAC 260-34-080 or designated representative of the Washington horse racing commission containing the following:

- (1) Name of the licensee, or employee or applicant.
- (2) The name, quantity, and dosage of the controlled substance prescription prescribed.
- (3) The name of the duly licensed physician or dentist prescribing same.
- (4) The date the prescription was prescribed.
- (5) The time and date next preceding the date of the test when the prescribed controlled substance was ingested by the licensee, employee or applicant.

All such notices shall become part of the records of the drug test and preserved to maintain strict confidentiality of the contents.

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 spelling error in the above section occurred in the copy filed by the agency and appears herein pursuant to the requirements of RCW 34.08.040.

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AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

WAC 260-34-080 TESTING PROCEDURE. (1) When the drug testing is a result of a required physical examination or as described in WAC 23660-34-030(1), the following procedure will be used:

(a) The licensee, or employee or applicant will report to the specified physician where a member of the medical staff designated by the physician will supervise the sample being given. The supervision need not include actual observance of the delivery of the sample but the sample shall be taken under such circumstances that the integrity of the sample is maintained without unnecessarily interfering with the individual rights of the licensee person tested, including the right to be free from

unnecessary embarrassment. Intentional contamination of the sample by any licensee person tested which is likely to prevent appropriate analysis of the sample shall be grounds for the suspension or revocation of the licensee's license person tested.

(b) The urine sample will be at least 75 ml in volume. The urine sample will be divided into two parts of at least 25 ml and 50 ml in the presence of the person tested. If the licensee, employee or applicant is unable to provide 75 ml of urine, the licensee, employee or applicant may waive in writing the division of the sample and preservation of an untested portion of the sample per subsections (1)(c) and (4) below. If the person tested is unable to provide a sufficiently large sample, either 75 ml or 50 ml with a waiver, the person shall not be suspended, but shall not participate in racing until such time as he or she is able to provide sufficient urine and completes the test. Any All portions of the sample shall be placed in a containers and sealed together with a double identification tags in the presence of the person being tested.

(c) The 25 ml (or more) container will be preserved pursuant to subsection (3) below by the medical facility obtaining the sample. Both licensee, employee or applicant and the member of the medical staff, chief of security or designated representative of the horse racing commission will sign the tag to attest to the sealing and labeling of the sample.

(d) The 50 ml (or more) container will be prepared for transportation and testing, as follows: One portion of such the container's tag bearing a printed identification number shall remain with the sealed container. The other portion of such tag bearing the same printed identification number shall be detached in the presence of the person tested and a member of the medical staff, and the chief of security or his designated representative of the horse racing commission. The licensee, employee or applicant will attest by signature on the initial or sign the detached portion of the tag to indicate attest witnessing such action. The member of the medical staff, and the chief of security or his designated representative of the horse racing commission will further attest by signature to direct indicate also sign the detached portion of the tag to attest witnessing such action. The sample will then be handled in a manner consistent with an evidentiary chain of custody by the chief of security or his designated representative of the horse racing commission throughout the transportation and laboratory testing process. The sample and the tag identifying same the sample which is to be provided to the laboratory for analysis shall not identify the person by name, but only by number assigned and recorded by the members of the medical staff, the chief of security or his designated representative of the horse racing commission.

(2) When the testing is to be done as a result of reasonable suspicion or the result of mandatory testing being conducted after a positive test, the same procedure for handling the specimen(s) shall be utilized as in (1) above, but the sample may be taken at the track and witnessed by the chief of security or his designated representative of the horse racing commission. The witness must be of the same sex as the person being tested. After the sample is taken, divided and sealed, the chief of security or his designated representative of the horse racing commission will be responsible for the evidentiary chain of custody and transportation of one portion of the sample to the laboratory and storage of the other portion pursuant to subsection (3) below. The chief of security of the horse racing commission will maintain a checklist of procedures in to implementing these steps; which the checklist will be marked as they the steps are carried out and it will be maintained as part of security records.

(3) Each portion of the sample supplied by the person tested will be preserved by the member of the medical staff, chief of security, representative of the horse racing commission or laboratory for 30 days unless there is a positive test result. If there is a positive test result, the samples will be preserved until released by the executive secretary of the horse racing commission after all hearings and appeals have been terminated. The samples will be preserved in a secured location by refrigeration or freezing for the first 30 days and thereafter by freezing.

(4) Either or both portions of the sample may be retested at the request of the licensee, employee or applicant at either the laboratory used by the horse racing commission or a separate equally or better qualified and reputable laboratory designated by the licensee, employee or applicant. If the untested sample is transported for testing, transportation will be performed by the chief of security or designated representative of the horse racing commission using an evidentiary chain of custody. None of the originally untested 25 ml portion is required to be saved after testing for retesting. The licensee, employee or applicant is responsible for all costs of transporting and testing or retesting a sample at his or her request.

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

~~WAC 260-34-090 A POSITIVE TEST. In order to be considered positive any test must be confirmed by at least two independent testing methods which are state of the art as determined by the laboratory conducting the tests. A drug test shall be positive when the presence of a controlled substance is confirmed by two independent tests performed on the same sample supplied by a licensee, employee or applicant. The tests used will be the E.M.I.T. screen test, followed by a gas chromatography/mass spectrometry confirmatory test, or other tests which the scientific community recognizes are equally or more accurate and reliable. If marijuana is or its derivatives, salts, isomers, or salts of isomers is detected in a drug test, it such a result will not be reported positive unless found at the levels of at least one hundred nanograms per milliliter.~~

~~A positive controlled substance or prescription drug result test shall be reported by the laboratory to the presiding steward at the track. On receiving written notice from the laboratory that a specimen has been found positive for a controlled substance, or prescription legend drug, the procedure shall be as follows the presiding steward shall initiate the following procedure:~~

~~(1) The presiding steward shall give Written notice shall be given to the licensee, or employee or applicant in writing setting a hearing by the board of stewards in accordance with WAC 260-24-440 within the next two racing days or seven calendar days, whichever is less, after of delivery service of the notice, or sooner The hearing may be held within a shorter or longer period of time if the licensee, or employee or applicant named and the board of stewards agree. Service shall be to the licensee, employee or applicant personally, by leaving the notice at the person's residence with someone of reasonable age and discretion residing therein, or by mail to the person's last known address. If by mail, service shall be deemed completed on the third day after mailing.~~

~~(2) The hearing shall be conducted before the board of stewards pursuant to WAC 260-24-440. At the hearing, the licensee, or employee or applicant shall be provided an opportunity to explain a positive test.~~

~~(3) This The board of stewards' hearing shall be closed; and the findings facts therein will be kept confidential unless for use with respect to any subsequent contested hearing or order issued pursuant to this chapter or any administrative by the horse racing commission or judicial hearing with regard to such a finding facts. Closure of the hearing and confidentiality of the proceedings may be waived by the licensee, employee or applicant. The board may issue a public ruling which complies with the confidentiality requirements of this section and WAC 260-34-100.~~

~~(4) Lacking a satisfactory explanation and documentation or upon the licensee, or employee or applicant agreeing with the test results, the board of stewards shall suspend the licensee, employee or applicant until:~~

~~(a) Suspend the licensee or employee until such time as A negative test can be submitted by that licensee, or employee or applicant and the results reviewed by the board of stewards; and~~

~~(b) Refer The licensee, employee or applicant is referred to an approved agency for a drug evaluation interview and completes the evaluation. (i) If after such the evaluation concludes that the licensee, or employees or applicant condition proves is not nonaddictive addicted or habituated, determined by the board of stewards and if the board of stewards determines that the licensee's, employee's or applicant's condition is not detrimental to the best interests of racing, the licensee, or employee or applicant shall be allowed to participate in racing provided he or she that person agrees that further testing may be done as described in WAC 260-34-030(3); or~~

~~(c) (ii) If after such professional drug evaluation concludes that the licensee, employee or applicant condition proves is addicted or habituated, or the board of stewards determines that the licensee's, employee's or applicant's condition is detrimental to the best interests~~

of racing, the licensee, or employee or applicant shall not be allowed to participate in racing until such time as he or she can produce a negative test result and show official documentation that he or she has successfully completed a certified drug rehabilitation program approved by the board of stewards in consultation with the executive secretary of the horse racing commission. The licensee, employee or applicant must agree to further testing as described in WAC 260-34-030(3).

~~(5) For a second offense positive drug test in the calendar year, the licensee, or employee or applicant shall be suspended for the balance of the calendar year or one hundred twenty days, whichever is greater, and he or she the person is required to complete a certified drug rehabilitation program approved by the board of stewards in consultation with the executive secretary of the horse racing commission before applying for a reinstatement of license. The licensee, employee or applicant must agree to further testing as described in WAC 260-34-030(3).~~

~~(6) When any licensee, or employee or applicant has a history of more than two drug-related violations of this chapter WAC 260-34-020 or positive drug tests, the horse racing commission may, pursuant to a hearing conducted under chapter 260-08 WAC, that licensee or employee may be declared such person detrimental to the best interests of racing and sanctioned as such revoke that person's license or application. Reapplication shall not be permitted for such period of months or years as the commission determines is necessary to ensure the person's freedom from use of controlled substances and not until meeting the requirements of subsection (5) above.~~

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.

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AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

~~WAC 260-34-100 CONFIDENTIALITY OF TEST RESULTS. The executive secretary chief of security of the horse racing commission shall maintain all test results and records, both negative and positive, confidential. He or she shall document the process which will ensure the confidentiality of the handling of such results. Information contained in the test results shall remain confidential at all times except for use with respect to any contested hearing or order issued pursuant to this chapter or any administrative by the horse racing commission, or judicial hearing with regard to such an order. Access to the reports of any test results shall be limited to the executive secretary, the board of stewards, the chief of security of the commission at the track, the physician or member of the medical staff obtaining and preserving samples, the laboratory and the person being tested, except in the instance of a contested matter commission hearing. The information obtained as a result of a test being requested under the rules of the horse racing commission shall be considered privileged and shall be used for administrative purposes only and, further, shall be exempt from use as evidence in any criminal prosecution involving the violation of offenses listed in chapter 69.50 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.

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AMENDATORY SECTION (Amending Order 88-02, filed 4/15/88)

~~WAC 260-34-180 TESTING EXPENSE. Except for retesting requested by a licensee, employee or applicant pursuant to WAC 260-34-080(4), all testing, whether blood, urine, or breath, ordered pursuant to this chapter shall be at the expense of the horse racing commission. All expenses of drug and/or alcohol evaluation, treatment, reports, and fees shall be at the expense of the licensee, or employee or applicant undergoing such evaluation or treatment.~~

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 260-34-190 SEVERABILITY. If any section, subsection or provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or application of the section, subsection or provision to other persons or circumstances is not affected.

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
- REMOV = Removal of rule pursuant to RCW 34.04.050(5)
- 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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16-30-010	AMD-P	89-02-056	137-25-030	NEW-P	89-04-031	173-50-090	NEW-P	89-04-052
16-30-020	AMD-P	89-02-056	137-25-040	NEW-P	89-04-031	173-50-100	NEW-P	89-04-052
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16-30-030	AMD-P	89-02-056	137-28-025	AMD	89-04-032	173-50-120	NEW-P	89-04-052
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16-30-060	AMD-P	89-02-056	137-28-035	AMD	89-04-032	173-50-140	NEW-P	89-04-052
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