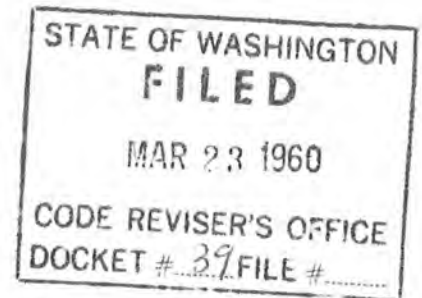


Department of Conservation and Development

EARL COE, DIRECTOR

335 GENERAL ADMINISTRATION BUILDING
OLYMPIARECLAMATION
FLOOD CONTROL
WATER RESOURCES
MINES AND GEOLOGY
COLUMBIA BASIN PROJECT
POWER RESOURCES
WEATHER MODIFICATIONALBERT D. ROSELLINI
GOVERNOR

March 22, 1960



Mr. Richard O. White
Code Reviser
Legislative Building
Olympia, Washington

Dear Mr. White:

The original and one copy of the existing rules and regulations of the Department of Conservation and a completed certification form are transmitted in accordance with section 4 (1), chapter 234, Laws of 1959.

Sincerely yours,

Earl Coe, Director


enc.
Ec:fy

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CERTIFICATE OF RULES

In accordance with section 4 (1), chapter 234,
Laws of 1959,

I, Earl Coe, Director of Conservation, do hereby
certify that the enclosed documents are true and correct
copies of all of the rules and regulations which have
been enacted by the Department of Conservation and which
are in effect as of this date, March 22, 1960.



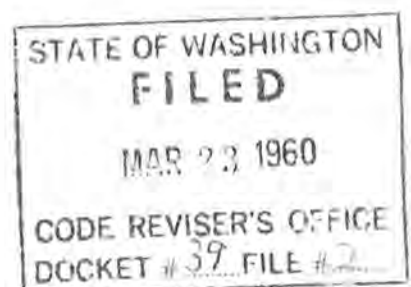
Earl Coe, Director

DEPARTMENT OF CONSERVATION
Division of Water Resources

Rules and Regulations of the Division of Water Resources Governing the Administration of the Surface and Ground Water Codes of the State of Washington.

REGULATION OF WATER RIGHT DIVERSIONS

1. Regulation and control of waters according to rights thereto, shall be made through watermasters and stream patrolmen, or a staff member of the Division of Water Resources. Chapter 90.08 RCW and 43.21.130 RCW.
2. Watermasters shall not attempt to regulate water beyond the points of diversion from the natural stream on unincorporated partnership ditches. Such regulations may be carried on by ditch patrolmen as outlined under section 90.28.130 RCW. When approved by the supervisor and water users a district watermaster may serve as a stream or ditch patrolman.
3. Where controlling works or measuring devices are not installed or maintained to the satisfaction of the supervisor, he shall give proper notice to the owner to install or repair such controlling works or measuring device. This notice shall allow not less than ten days time to make necessary repairs or installations. In the event the work outlined in the notice is not completed in the specified time, the diversion shall be closed to further flow of water, until such time as the notice has been fully complied with.
4. Controlling works or headgates shall be so constructed that they can be regulated and locked in place by the watermaster or stream patrolman.



5. The watermaster or a representative of the Division of Water Resources, shall close such diversions for non-compliance upon order of the supervisor.
6. Any water user opening a diversion after it has been closed or posted, under the above rules, shall be guilty of a misdemeanor under Chapter 90.32 RCW.
7. Objections, if any, to regulations or orders of a stream patrolman must be made to the district watermaster who will rule thereon, with or without the advice of the supervisor. In the absence of a district watermaster the objection shall be made to the supervisor. Appeals from watermasters' or supervisors' decisions may be made under 90.04.050 RCW.

DETERMINATION OF EXISTING RIGHTS TO THE USE OF WATER

8. Upon the filing of a petition by one or more persons requesting the rights to the use of the waters of a stream or other source of water, the supervisor shall conduct a reconnaissance survey for the purpose of determining whether or not the interests of the public can best be served by the adjudication of the individual rights thus involved. If, in his discretion, the proceedings should be instigated, he shall determine the description of lands to be included as well as the record ownerships. Each owner and interested party will be made a party to the proceedings and a lis pendens will be filed with the county auditor. (90.12.010 and 90.12.020 RCW)

APPROPRIATION PROCEDURE Surface Water

9. Permits secured through this office do not carry any right of way privileges. Right of way for diversion, storage or transmission

facilities must be obtained by the permittee from the owner of the property on which such structure or ditch will be located, or by condemnation proceedings.

10. Applications for permit to appropriate surface water shall be made on forms provided by the office of the Supervisor of the Division of Water Resources. (Supplements paragraph 5, 43.21.130 RCW.)
11. It shall be the general rule that an application must be filed for each separate source of water. In special instances one application may cover more than one source of water such as, a group of springs in close relationship to each other and with no intervening property ownership; and, to divert from two or more streams whose confluence is upon lands of the applicant; and, where a common distribution system may be employed. The amount, point of diversion and use from each source must be indicated in the application.
12. Three copies of maps or sketches must accompany the application showing source of supply, point of diversion, tie to a legal land corner, and general plan of the proposed development. If for irrigation, it must clearly show the lands to be irrigated. For small projects, maps or sketches prepared by the applicant on forms provided by this office will be acceptable if legible and accurate. For larger projects, maps on any reasonable scale prepared by engineers in planning the project may be required. (Supplemental to 90.20.020 RCW).
13. Where the applicant is other than the legal owner or part owner of the land on which the water is to be used, the application shall bear the signature and address of the legal owner in addition to

the signature of the applicant. (Supplements 90.20.020 RCW.)

14. The priority of an application is established as of time and date received when accompanied by initial examination fee. In the case of Governmental agencies, who are required to make payment by voucher, it shall be accepted as payment of initial fee when transmitted with the application.

15. An affidavit of publication of the notice of water right application executed by the publisher must be filed with the supervisor as proof of due notice to the public. (90.20.040 RCW.)

16. No action shall be taken toward issuance of a permit or granting a petition for change in point of diversion, purpose or place of use until 30 days after date of last publication of notice as provided in sections 90.20.040 and 90.28.090 RCW. In all instances, subsection 12 of 90.04.040 RCW shall apply.

17. Protests or objections to granting a permit or petition for change must be submitted within the prescribed 30 day period and must include a statement of the basis for said objections.

All protests or objections will be thoroughly investigated by a representative of this office and the supervisor, at his discretion may hold a hearing if deemed in the public interest to do so; at which hearing the administrative rules for procedure on hearings as adopted by the Department of Conservation shall govern.

18. Applications for amendments or transfers shall be made on forms provided by the Supervisor of Water Resources. (Supplements 90.28.090 RCW.)

19. In the event an applicant or permittee should desire to amend the terms of his application or permit regarding source, quantity, point of diversion, purpose, or place of use, the procedure shall be as outlined in 90.28.090 RCW excepting that no certificate of change will issue but the amendments shall be incorporated in the terms of the permit.

Amendment of a permit may be made without affecting priority, only after full consideration of the proposed changes in accordance with the provisions outlined in section 90.20.060 RCW.

20. Where a permit has been issued to a person and the land to which the water right is to become appurtenant has been divided before the issuance of a water right certificate, separate certificates may be issued to each holder of land with the proper share of the water allotted, providing assignments of each share are recorded in this office. (Supplements 90.20.100 RCW.)

21. Seasonal permits for change of point of diversion, purpose and/or place of use of water, shall be in writing and signed by the supervisor or one of his duly authorized deputies. (90.28.100 RCW.)

APPROPRIATION PROCEDURE Ground Water

22. The general application of rules numbered 9 through 21 inclusive on surface water applications, shall also apply to the ground water appropriation procedure.

23. Where controversy arises over the relative rights as between ground and surface water appropriators, the basic law of "first in time, first in right" shall apply.

24. Where a proposed well is to be constructed near a lake, stream, or spring, which is heavily or fully appropriated, the supervisor may specify a minimum distance between the well location and the surface water supply, or, require that the well casing be installed in such a manner as to insure a break in hydraulic continuity between the well and the shallow ground waters contributing to the surface water supply.

25. Wells penetrating artesian water zones: 90.44.070 RCW.

(a) Wells taking water from artesian zones shall contain watertight casings from the ground surface down through and properly sealed into the confining layer.

(b) Issuance of permits to take water from an artesian zone shall not be stopped when existing wells penetrating said artesian zone no longer flow at ground surface; rather, a reasonable seasonal lowering of the water table will be permissible to more fully utilize the reservoir capacity of the aquifer.

(c) Where the waste of water through improperly constructed wells has been found and wasting of said water is depriving others of water to which they are entitled, or causing an unreasonable drop in the water table, or threatens permanent damage to the aquifer, the supervisor shall direct the owner to make necessary repairs to correct the situation. (90.44.120 RCW.)

RESERVOIR PERMITS

26. A reservoir permit will be required whenever it is proposed to construct a barrier across a stream, channel, or water course, and which will actually retain for a beneficial use a portion of the

annual runoff of the stream or water course. (For positive determination of the necessity of a reservoir permit, a reservoir shall be defined as any dam or dike storing water to a depth of 10 or more feet at its deepest point, or one that is retaining 10 or more acre-feet of water). This will also apply to a reservoir adjacent to a stream channel when water will be required to fill the reservoir in addition to a constant diversion to keep it full.

27. Unless otherwise specified, a reservoir permit will allow the permittee to fill the reservoir once annually and the permit shall specifically state the period during which the water may be used to fill the reservoir. If water in excess of one filling of the reservoir is required, a further application for the additional water must be filed.

STORAGE DAMS

28. Section 90.28.060 RCW provides that any person intending to construct a dam or controlling works for the storage of 10 acre-feet or more of water shall, before beginning construction, submit plans and specifications thereof to the supervisor and secure his approval as to its safety.

The plans and specifications must be prepared by a properly qualified professional engineer and carry his signature and seal. They must also be submitted in duplicate such that one copy is retained in this office and the other approved and returned to the applicant. No special plans will be required unless those submitted are found to be incomplete. The minimum fee for examination and approval of plans shall be \$10.00.

29. In examining and analyzing plans it may be necessary for this office to employ a specialist in dam designs, in which instance the cost shall be charged to the owner of the proposed works.

(Supplements 90.28.060 RCW.)

M. G. WALKER, SUPERVISOR
DIVISION OF WATER RESOURCES
DEPARTMENT OF CONSERVATION

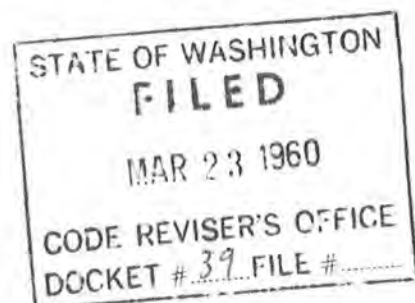
DEPARTMENT OF CONSERVATION
Division of Flood Control

Rules and Regulations of the Division of Flood Control Governing the
Administration of the Flood Control Codes of the State of Washington

REGULATORY CONTROL OVER ALL WATERS

Application for permit for the construction, operation and maintenance of any works, structures and improvements, private or public, to be created or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the flood plain or floodway of any stream or body of water within an established flood control zone shall be made in accordance with the following regulations:

1. Applications will be made to the State Supervisor of Flood Control, Olympia on Form F. 1 furnished by the Division of Flood Control and will give name, status and post office address of applicant.
2. State nature of works proposed, such as bridge, dike, road, revetment, logging works, gravel pits, etc.
3. When possible designate the works by name, such as "Alder Bridge," Delta Dike," etc.
4. Give general location with reference to some town or well known locality, such as "two miles west of Cedar post office," etc.
5. Name the stream which may be directly affected and, if a tributary, also name the main stream.
6. State whether the works are of a permanent nature such as might be the case if a highway bridge, road or dike, or of a temporary character such as a log boom, logging works across a stream, bridge on logging spur, etc., in which case give the estimated period the proposed works will be in use. Permits for temporary works and structures will stipulate that they be removed by the owners at the end of the period stated in the permit.
7. Maps and plans of proposed works, structures and improvements must be furnished in duplicate with each copy of application on sheets $8\frac{1}{2}$ inches wide and, where possible, limited to 11 inches in length. Sheets of greater length should be folded to $8\frac{1}{2}$ x 11 inches with a clear left hand margin of $1\frac{1}{4}$ inches for binding. Each sheet will



have a title in the lower right hand corner showing: Name and number of Flood Control Zone, name designated for proposed works, name of applicant and of engineer under whose responsible direction plans have been prepared, the scale of maps and plans expressed numerically and graphically, the date, and spaces for application and permit numbers placed in the lower right hand corner of the title, thus: Application No....., Permit No..... Maps and plans should be numbered consecutively.

8. A map shall be furnished showing definite location of works, structures and improvements by ties to government corners and section lines and in relation to all streams and bodies of water liable to be affected thereby. Diagrammatic plans of the works and structures shall clearly indicate to scale and by written dimensions and elevations all contemplated obstructions to passage of flood waters and all openings and provisions for the passage of water under, over, through and around such proposed works and structures, together with known high water elevations and their approximate date of occurrence.
9. Where works and structures will reduce the cross sectional area of a stream channel at bank-full width of the stream over a reach long enough to include not less than three such cross sections beyond both the upstream and downstream termini of the proposed works. Known high water marks with dates of occurrence should be shown on cross sections and location of the latter should be indicated on the map.
10. All elevations shown on plans should refer to U.S.G.S. datum. This office assumes no jurisdiction over structural designs but is solely concerned with the probable influence on the regimen of streams and bodies of water and with any adverse effect such proposed works and structures may have upon the security of life, health and property.
11. If proposed works are to be on navigable waters, applications should be made in duplicate.
12. State dates when work is to be commenced and when construction is scheduled for completion so that permits may be issued accordingly. Delays in construction beyond stated dates may, under certain conditions, necessitate altered designs to meet new conditions.

13. Under "Remarks" make any statement which may be pertinent and not otherwise covered.
14. Application must be signed on behalf of applicant by persons having full authority to do so.
15. EXEMPTION: In order to avoid costly surveys, flood zone boundaries quite generally follow government section and subdivisional lines. It follows that certain areas within the zones may not be affected by flood waters and works, structures or improvements thereon cannot influence flood conditions. Applications and permits will not be necessary for works in such locations. Likewise, incorporated cities and towns or parts thereof included within a zone will not generally be required to secure permits for street and road improvements which conform to general existing plans of thoroughfares and existing improvements.
16. Abuses of these regulations governing exemptions may make the owner liable under Section 86.16.090 RCW.

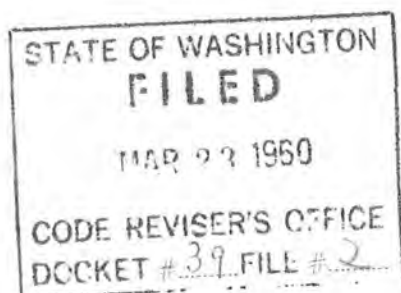


GREGORY M. HASTINGS, SUPERVISOR
DIVISION OF FLOOD CONTROL
DEPARTMENT OF CONSERVATION

DEPARTMENT OF CONSERVATION
State of Washington
WEATHER MODIFICATION BOARD

Rules and Regulations of the Weather Modification Board.

1. In addition to the requirements set forth in Sections 11 and 12 of Chapter 245, 1957 Laws of Washington, each and every application for permit to conduct weather modification operations shall include a copy of the contract between the operator and the client authorizing the project.
2. Upon the issuance of any permit by the Weather Modification Board, notification describing the target area, generator location and proposed periods of operation will be sent to the Washington State University Agricultural Extension Service as well as the county agents in all counties affected.
3. The permittee shall be required to submit reports on all operations, on a daily basis, twice a month (1st and 15th) to the Weather Modification Board. These semi-monthly reports will include number of days under contract, number of days of operation and number of hours each day for all stations operated, including the consumption rate and name of the seeding agent used. In addition, a brief summary statement evaluating the past fifteen day period in regard to the seeding potential experienced and a brief statement of projected plans for the coming fifteen day period. In the event operations are unexpectedly terminated, a special report covering that fraction of the half month period of operation is required. All reports must be postmarked not later than one day after due date. Summaries of these reports will be sent to county extension agents in the operational areas.



UNIFORM RULES OF PRACTICE AND PROCEDURE BEFORE ALL DIVISIONS OF THE
DEPARTMENT OF CONSERVATION

.04.010 - .04.990 -- Reserved for agency use.

Appearance and Practice Before Agency

.08.010 No person may appear in a representative capacity before [the agency] or its designated hearing officer other than the following:

- (1) Attorneys at law duly qualified and entitled to practice before the Supreme Court of the State of Washington.
- (2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the State of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.
- (3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to [the agency] and have been duly authorized by [the agency] to appear in a representative capacity before [the agency].
- (4) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

~~(5) [Qualification of non lawyer representative, ethical conduct, etc.]~~

~~██████ In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where [the agency] or its designated hearing officer determines that representative activity in such hearing requires a high degree of legal training, experience, and skill, [the agency] or its designated hearing officer may limit those who may appear in a representative capacity to attorneys at law.~~

~~.08.030 It shall be unethical for persons acting in a representative capacity before [the agency] to solicit business by circulars, advertisements or by personal communication or interviews not warranted by personal relations.~~

STATE OF WASHINGTON
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MAR 23 1960
-1- CODE REVISER'S OFFICE
DOCKET # 39 FILE # 2

provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind.

~~██████████ All persons appearing in proceedings before [the agency] in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, [the agency] may decline to permit such person to appear in a representative capacity in any proceeding before [the agency].~~

.08.050 No former employee of [the agency] or member of the Attorney General's staff may at any time after severing his employment with [the agency] or the Attorney General appear, except with the written permission of [the agency], in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of [the agency].

.08.060 No former employee of [the agency] shall at any time after severing his employment with [the agency] appear, except with the written permission of [the agency], as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of [the agency].

Computation of Time

.08.070 In computing any period of time prescribed or allowed by [the agency] rules, by order of [the agency] or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

Notice and Opportunity for Hearing in Contested Cases

.08.080 In any contested case, all parties shall be served with a notice [[at least _____ days before the date set for the hearing]]. The notice

shall state the time, place, and issues involved, as required by section 9 (1), chapter 234, Laws of 1959.

Service of Process

.08.090 By Whom Served. [The agency] shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

.08.100 Upon Whom Served. All papers served by either [the agency] or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

.08.110 Service Upon Parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

.08.120 Method of Service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; or by telegraph.

.08.130 When Service Complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

.08.140 Filing with Agency. Papers required to be filed with [the agency] shall be deemed filed upon actual receipt by [the agency] at the place specified in its rules accompanied by proof of service upon parties required to be served.

~~Subpoenas Where Provided by Law~~

~~§ 10.150~~ Form. Every subpoena shall state [the name of the agency] and the title of the proceeding, if any, and shall command the person to whom

~~0.8.250~~ Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in .08.250 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

~~0.8.250~~ Attestation and Return. The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to [the agency], or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

~~0.8.250~~ Provisions of Deposition Rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

Official Notice - Matters of Law

.08.370 [The agency] or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) Federal Law. The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts and Administrative Agencies; Executive Orders and Proclamations; and all rules, orders and notices published in the Federal Register;

(2) State Law. The Constitution of the State of Washington, acts of the Legislature, Resolutions, Records, Journals and Committee Reports; decisions of administrative agencies of the State of Washington, Executive orders and proclamations by the Governor; and all rules, orders and notices filed with the Code Revisor.

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

(4) Agency Organization. [The agency's] organization, administration, officers, personnel, official publications, and practitioners before its bar.

Official Notice - Material Facts

.08.380 In the absence of controverting evidence, [the agency] and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) Agency Proceedings. The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by [the agency];

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

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

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

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

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

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

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

Presumptions

.08.390 Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, [the agency], with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

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

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

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

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

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

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

Stipulations and Admissions of Record

.08.400 The existence or non-existence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon Whom Binding. Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or non-existence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a pre-hearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) Withdrawal. Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or [the agency] that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

Form and Content of Decisions in Contested Cases

.08.410 Every decision and order, whether proposed, initial, or final, shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered Findings of Fact and Conclusions of Law;
- (5) Whenever practical, the Conclusions of Law shall include the reason or reasons for the particular order or remedy afforded;
- (6) Wherever practical, the Conclusions and/or Order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

Definition of Issues Before Hearing

.08.420 In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only.

[[Particularity should be required in complaints, answers, applications for rules or licenses, and petitions to intervene. In proceedings in which there is only one interested party besides the agency, the orders setting hearings should clearly specify the issues to be heard. Either at this point or in other

sections of rules dealing with particular types of proceedings, set out any detailed requirements governing the formulation of issues in proceedings before the agency.]]

Prehearing Conference Rule

.08.430 In any proceeding [the agency] or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts

and of documents;

- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the

proceeding.

.08.440 [The agency] or its designated hearing officer shall make an order or statement which recites the action 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 or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

Submission of Documentary Evidence in Advance

.08.450 Where practicable [the agency] or its designated hearing officer may require:

- (1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to

permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subdivision (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

Excerpts from Documentary Evidence

.08.460 When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

Expert or Opinion Testimony

.08.470 That the hearing examiner or other appropriate officer in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

.08.480 That the hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, require, and

when not so permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses.

.08.490 That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with .08.480, but, wherever practicable that he restrict to a minimum the placing of such data in the record.

.08.500 Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of .08.470 or .08.480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

Continuances

.08.510 Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify [the agency] or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. [The agency] or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and

timely made. For good cause shown, [the agency] or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

Rules of Evidence

.08.520 Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury, in the superior court of the State of Washington.

.08.530 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

Petitions for Rule Making, Amendment or Repeal

.08.540 Any interested person may petition [the agency] requesting the promulgation, amendment, or repeal of any rule.

.08.550 Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out

as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

.08.560 All petitions shall be considered by [the agency] and [the agency] may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

.08.570 [The agency] shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.

.08.580 Declaratory Rulings. As prescribed by section 8, chapter 234, Laws of 1959, any interested person may petition [the agency] for a declaratory ruling. [The agency] shall consider the petition and within a reasonable time [the agency] shall:

- (1) Issue a non-binding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, [the agency] shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
- (2) Issue a non-binding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued.

.08.590 Forms Any interested person petitioning [the agency] for a declaratory ruling pursuant to section 8, chapter 234, Laws of 1959, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the (name of agency)," On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs.

The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and two legible copies shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

Any interested person petitioning [the agency] requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

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

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