

CODE REVISER'S OFFICE

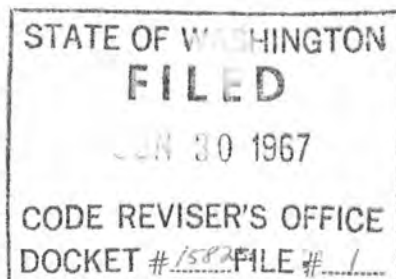
ORDER NO. 1

I, Richard O. White, The duly appointed and acting Code Reviser of the state of Washington, pursuant to notice and hearing as required by chapter 1.08 RCW and RCW 42.32.010, hereby adopt under authority of 1967 ex.s c237 §12 the attached rules concerning Practice and Procedure in and before all agencies not adopting their own rules of practice and procedure.

Done this thirtieth day of June, 1967 at Olympia, Washington.

R. White

RICHARD O. WHITE
Code Reviser

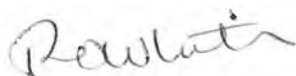


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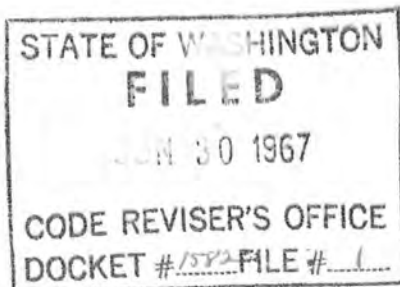
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Chapter 1-08

UNIFORM PROCEDURE RULES

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WAC 1-08-005 APPLICATION AND SCOPE OF CHAPTER 1-08 WAC.

Chapter 1-08 has been added to the Washington Administrative Code by the code reviser pursuant to the mandate of section 12, chapter 237, Laws of 1967 ex.s (RCW 1.08.022) which provides as follows:

"On or before July 1, 1967, the code reviser shall add to Title 1 of the Washington Administrative Code a new chapter to be known as chapter 1-08 WAC--Uniform Procedural Rules, which shall become effective July 1, 1967, and shall govern the administrative practice and procedure in and before all agencies which have not adopted comprehensive rules of practice and procedure prior to that date. Except for the numbering thereof, such rules shall be identical with the rules contained in WAC 308-08-010 through 308-08-590 as the same existed on January 3, 1966: PROVIDED, That in publishing chapter 1-08 WAC the reviser may revise such terms as are used in chapter 308-08 WAC to describe "agency", "department", "board", "commission", and like terms, so as to enable the use of such rules by multiple agencies.

This section shall not prohibit any such agency from hereafter adopting its own rules of practice and procedure in the manner provided by this chapter, if such agency shall elect to promulgate comprehensive rules on this subject and shall, in the order of adoption, expressly negative any further applicability to such agency of the rules contained in chapter 1-08 WAC. [1967 c 237 §12.]" [Order 1, § 1-08-005; Eff. 7/1/67.]

WAC 1-08-007 "AGENCY" DEFINED. As used in this chapter

"agency" means any agency as defined in RCW 34.04.010 to which the provisions of RCW 1.08.022 and WAC 1-08-005 are applicable. [Order 1, § 1-08-007; Eff. 7/1/67.]

WAC 1-08-010 APPEARANCE AND PRACTICE BEFORE AGENCY--WHO MAY

APPEAR. 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) 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. [Order 1, § 1-08-010; Eff. 7/1/67.]

WAC 1-08-030 -----SOLICITATION OF BUSINESS UNETHICAL.

It shall be unethical for persons acting in a representative capacity before the agency to solicit business by circulars, advertisement or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Order 1, § 1-08-030; Eff. 7/1/67.]

WAC 1-08-040 -----STANDARDS OF ETHICAL CONDUCT. All

persons appearing in proceeding 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 involved may decline to permit such person to appear in a representative capacity in any proceeding before the agency. [Order 1, § 1-08-040; Eff. 7/1/67.]

WAC 1-08-050 -----APPEARANCE BY FORMER EMPLOYEE OF AGENCY OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. 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 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 as provided by RCW 42.22.040. [Order 1, § 1-08-050; Eff. 7/1/67.]

WAC 1-08-060 -----FORMER EMPLOYEE AS EXPERT WITNESS. No former employee of the agency shall at any time after severing his employment with the state of Washington 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. [Order 1, § 1-08-060; Eff. 7/1/67.]

WAC 1-08-070 COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. 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. [Order 1, § 1-08-070; Eff. 7/1/67.]

WAC 1-08-080 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES. In any contested case all parties shall be served with a notice within the statutory time as required by statute governing the respective agency or proceeding involved, and in the absence of a statutory requirement, then not less than twenty days before the date set for hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090. [Order 1, § 1-08-080; Eff. 7/1/67.]

WAC 1-08-090 SERVICE OF PROCESS--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. [Order 1, § 1-08-090; Eff. 7/1/67.]

WAC 1-08-100 -----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. [Order 1, § 1-08-100; Eff. 7/1/67.]

WAC 1-08-110 -----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. [Order 1, § 1-08-110; Eff. 7/1/67.]

WAC 1-08-120 -----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. [Order 1, § 1-08-120; Eff. 7/1/67.]

WAC 1-08-130 -----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. [Order 1, § 1-08-130; Eff. 7/1/67.]

WAC 1-08-140 -----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. [Order 1, § 1-08-140; Eff. 7/1/67.]

WAC 1-08-150 SUBPOENAS--WHERE PROVIDED BY LAW-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 it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Order 1, § 1-08-150; Eff. 7/1/67.]

WAC 1-08-160 -----ISSUANCE TO PARTIES. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The director may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. [Order 1, § 1-08-160; Eff. 7/1/67.]

WAC 1-08-170 -----SERVICE. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Order 1, § 1-08-170; Eff. 7/1/67.]

WAC 1-08-180 -----FEES. Witnesses summoned before the agency shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. [Order 1, § 1-08-180; Eff. 7/1/67.]

WAC 1-08-190 -----PROOF OF SERVICE. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the agency or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the agency and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Order 1, § 1-08-190; Eff. 7/1/67.]

WAC 1-08-200 -----QUASHING. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the agency or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order 1, § 1-08-200; Eff. 7/1/67.]

Title 1 GENERAL PROVISIONS

WAC 1-08-210 -----ENFORCEMENT. Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Order 1, § 1-08-210; Eff. 7/1/67.]

WAC 1-08-220 -----GEOGRAPHICAL SCOPE. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Order 1, § 1-08-220; Eff. 7/1/67.]

WAC 1-08-230 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RIGHT TO TAKE. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint, application, or petition. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas. [Order 1, § 1-08-230; Eff. 7/1/67.]

WAC 1-08-240 -----SCOPE. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. [Order 1, § 1-08-240; Eff. 7/1/67.]

WAC 1-08-250 -----OFFICER BEFORE WHOM TAKEN. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding. [Order 1, § 1-08-250; Eff. 7/1/67.]

WAC 1-08-260 -----AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions. [Order 1, § 1-08-260; Eff. 7/1/67.]

WAC 1-08-270 -----PROTECTION OF PARTIES AND DEONENTS. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the agency or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories,

or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the agency or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the agency or the agency may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency, or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. [Order 1, § 1-08-270; Eff. 7/1/67.]

WAC 1-08-280 -----ORAL EXAMINATION AND CROSS-EXAMINATION. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim. [Order 1, § 1-08-280; Eff. 7/1/67.]

WAC 1-08-290 -----RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [Order 1, § 1-08-290; Eff. 7/1/67.]

WAC 1-08-300 -----SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the

deposition may then be used as fully as though signed, unless on a motion to suppress, the agency holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency, or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Order 1, § 1-08-300; Eff. 7/1/67.]

WAC 1-08-310 -----USE AND EFFECT. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party. [Order 1, § 1-08-310; Eff. 7/1/67.]

WAC 1-08-320 -----FEES OF OFFICERS AND DEONENTS. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken. [Order 1, § 1-08-320; Eff. 7/1/67.]

WAC 1-08-330 DEPOSITIONS UPON INTERROGATORIES--SUBMISSION OF INTERROGATORIES. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories. [Order 1, § 1-08-330; Eff. 7/1/67.]

WAC 1-08-340 -----INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 1-08-250 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. [Order 1, § 1-08-340; Eff. 7/1/67.]

WAC 1-08-350 -----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. [Order 1, § 1-08-350; Eff. 7/1/67.]

WAC 1-08-360 -----PROVISIONS OF DEPOSITION RULE. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule. [Order 1, § 1-08-360; Eff. 7/1/67.]

WAC 1-08-370 OFFICIAL NOTICE--MATTERS OF LAW. The 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 reviser.

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

(4) Agency organization. The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar. [Order 1, § 1-08-370; Eff. 7/1/67.]

WAC 1-08-380 -----MATERIAL FACTS. 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 prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief

served upon all parties, at any time prior to a final decision.

(6) Statement. Where an initial or final decision of the 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 nonexistence of the material fact assumed or denied in the decision;

(8) Evaluation of evidence. Nothing herein shall be construed to preclude the agency involved or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Order 1, § 1-08-380; Eff. 7/1/67.]

WAC 1-08-390 PRESUMPTIONS. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the 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 nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

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

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

(6) Interference with remedy. That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Order 1, § 1-08-390; Eff. 7/1/67.]

WAC 1-08-400 STIPULATIONS AND ADMISSIONS OF RECORD. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively

presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon whom binding. Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, 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 of the agency that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Order 1, § 1-08-400; Eff. 7/1/67.]

WAC 1-08-410 FORM AND CONTENT OF AGENCY DECISIONS IN CONTESTED CASES. 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. [Order 1, § 1-08-410; Eff. 7/1/67.]

WAC 1-08-420 DEFINITION OF ISSUES BEFORE HEARING. 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 hearing on relevant and material matter only. [Order 1, § 1-08-420; Eff. 7/1/67.]

WAC 1-08-430 PREHEARING CONFERENCE RULE--AUTHORIZED. In any proceeding the agency involved 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 issues;

(2) The necessity of amendments to the pleading;

(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. [Order 1, § 1-08-430; Eff. 7/1/67.]

WAC 1-08-440 -----RECORD OF CONFERENCE ACTION. 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. [Order 1, § 1-08-440; Eff. 7/1/67.]

WAC 1-08-450 SUBMISSION OF DOCUMENTARY EVIDENCE IN ADVANCE.

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 subsection (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. [Order 1, § 1-08-450; Eff. 7/1/67.]

WAC 1-08-460 EXCERPTS FROM DOCUMENTARY EVIDENCE.

When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing 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. [Order 1, § 1-08-460; Eff. 7/1/67.]

WAC 1-08-470 EXPERT OR OPINION TESTIMONY AND TESTIMONY

BASED ON ECONOMIC AND STATISTICAL DATA--NUMBER AND QUALIFICATIONS OF WITNESSES. 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. [Order 1, § 1-08-470; Eff. 7/1/67.]

WAC 1-08-480 -----WRITTEN SWORN STATEMENTS.

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 [Order 1, § 1-08-480; Eff. 7/1/67.]

WAC 1-08-490 -----SUPPORTING DATA. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties shall 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 WAC 1-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record. [Order 1, § 1-08-490, Eff. 7/1/67.]

WAC 1-08-500 -----EFFECT OF NONCOMPLIANCE WITH WAC 1-08-470 or 1-08-480. 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 WAC 1-08-470 or 1-08-480, 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. [Order 1, § 1-08-500; Eff. 7/1/67.]

WAC 1-08-510 CONTINUANCES. 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. [Order 1, § 1-08-510; Eff. 7/1/67.]

WAC 1-08-520 RULES OF EVIDENCE--ADMISSIBILITY CRITERIA. 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. [Order 1, § 1-08-520; Eff. 7/1/67.]

WAC 1-08-530 -----TENTATIVE ADMISSION--EXCLUSION--DISCONTINUANCE--OBJECTIONS. 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. [Order 1, § 1-08-530; Eff. 7/1/67.]

WAC 1-08-540 PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL WHO MAY PETITION. Any interested person may petition the agency involved requesting the promulgation, amendment, or repeal of any rule. [Order 1, § 1-08-540; Eff. 7/1/67.]

WAC 1-08-550 -----REQUISITES. 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. [Order 1, § 1-08-550; Eff. 7/1/67.]

WAC 1-08-560 -----AGENCY MUST CONSIDER. 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. [Order 1, § 1-08-560; Eff. 7/1/67.]

WAC 1-08-570 -----NOTICE OF DISPOSITION. The agency shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Order 1, § 1-08-570; Eff. 7/1/67.]

WAC 1-08-580 DECLARATORY RULINGS. As prescribed by RCW 34.04.080 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 nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for an oral hearing or the submission of written evidence upon the matter, and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved. If a hearing as provided in subsection (3) is conducted, the agency shall within a reasonable time:
 - (a) Issue a binding declaratory rule; or
 - (b) Issue a nonbinding declaratory ruling; or
 - (c) Notify the person that no declaratory ruling is to be issued. [Order 1, § 1-08-580; Eff. 7/1/67.]

WAC 1-08-590 FORMS. Any interested person petitioning the agency for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form for such purpose. At the top of the page shall appear the wording "Before the (name of agency)." On the left side of page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "Petition." The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state 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 8½" x 11" or 8½" 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 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 8½" x 11" or 8½" x 13" in size. [Order 1, § 1-08-590; Eff. 7/1/67.]

Chapter 1-08

UNIFORM PROCEDURE - RULES

AC

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WAC 1-08-005 APPLICATION AND SCOPE OF CHAPTER 1-08 WAC. Chapter 1-08 has been added to the Washington Administrative Code by the code reviser pursuant to the mandate of section 12, chapter 737, Laws of 1967 (RCW 1-08.022) which provides as follows:

"On or before July 1, 1967, the code reviser shall add to title 1 of the Washington Administrative Code a new chapter to be known as Chapter 1-08 WAC - Uniform Procedural Rules, which shall become effective July 1, 1967, and shall govern the administrative practice and procedure in and before all agencies which have not adopted comprehensive rules of practice and procedure prior to that date. Except for the numbering thereof, such rules shall be identical with the rules contained in WAC 308-08-010 through 308-08-590 as the same existed on January 3, 1966. PROVIDED, That in publishing chapter 1-08 WAC the reviser may revise such terms as are used in chapter 308-08 WAC to designate "agency", "department", "board", "commission", and like terms, in order to enable the use of such rules by multiple agencies.

This section shall not prohibit any such agency from hereafter adopting its own rules of practice and procedure in the event provided by this chapter, if such agency shall elect to promulgate comprehensive rules on this subject and shall, in the event of adoption, expressly negate any further applicability of the uniform rules of practice and procedure. [Order 1, § 1-08-005. Eff. 7/1/67.]

WAC 1-08-007 "AGENCY" DEFINED. As used in this chapter "agency" means any agency as defined in RCW 34.04.010 to which the provisions of RCW 1-08.022 and WAC 1-08-005 are applicable. [Order 1, § 1-08-007. Eff. 7/1/67.]

WAC 1-08-010 APPEARANCE AND PRACTICE BEFORE AGENCY--WHO MAY APPEAR. No person may appear in a representative capacity before an 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 that state law;
- (3) 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. [Order 1, § 1-08-010. Eff. 7/1/67.]

WAC 1-08-030 -----SOLICITATION OF BUSINESS UNETHICAL. 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, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Order 1, § 1-08-030. Eff. 7/1/67.]

WAC 1-08-040 -----STANDARDS OF ETHICAL CONDUCT. All persons appearing in proceeding 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 involved may decline to permit such person to appear in representative capacity in any proceeding before the agency. [Order 1, § 1-08-040. Eff. 7/1/67.]

WAC 1-08-050 -----APPEARANCE BY FORMER EMPLOYEE OF AGENCY OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. 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 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 as provided by RCW 42.22.040. [Order 1, § 1-08-050; Eff. 7/1/67.]

WAC 1-08-060 -----FORMER EMPLOYEE AS EXPERT WITNESS. No former employee of the agency shall at any time after severing his employment with the state of Washington 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. [Order 1, § 1-08-060; Eff. 7/1/67.]

WAC 1-08-070 COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. 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. [Order 1, § 1-08-070; Eff. 7/1/67.]

WAC 1-08-080 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES. In any contested case all parties shall be served with a notice within the statutory time as required by statute governing the respective agency or proceeding involved, and in the absence of a statutory requirement, then not less than twenty days before the date set for hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090. [Order 1, § 1-08-080; Eff. 7/1/67.]

WAC 1-08-090 SERVICE OF PROCESS--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. [Order 1, § 1-08-090; Eff. 7/1/67.]

WAC 1-08-100 -----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. [Order 1, § 1-08-100; Eff. 7/1/67.]

WAC 1-08-110 -----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. [Order 1, § 1-08-110; Eff. 7/1/67.]

WAC 1-08-120 -----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. [Order 1, § 1-08-120; Eff. 7/1/67.]

WAC 1-08-130 -----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. [Order 1, § 1-08-130; Eff. 7/1/67.]

WAC 1-08-140 -----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 [Order 1, § 1-08-140. Eff. 7/1/67.]

WAC 1-08-150 SUBPOENAS--WHERE PROVIDED BY LAW-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 it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Order 1, § 1-08-150. Eff. 7/1/67.]

WAC 1-08-160 -----ISSUANCE TO PARTIES. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The director may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. [Order 1, § 1-08-160; Eff. 7/1/67.]

WAC 1-08-170 -----SERVICE. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Order 1, § 1-08-170. Eff. 7/1/67.]

WAC 1-08-180 -----FEES. Witnesses summoned before the agency shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. [Order 1, § 1-08-180; Eff. 7/1/67.]

WAC 1-08-190 -----PROOF OF SERVICE. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the agency or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the agency and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Order 1, § 1-08-190; Eff. 7/1/67.]

WAC 1-08-200 -----QUASHING. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the agency or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue or (2) condition denial of the motion upon just and reasonable conditions. [Order 1, § 1-08-200; Eff. 7/1/67.]

WAC 1-08-210 -----ENFORCEMENT. Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Order 1, § 1-08-210; Eff. 7/1/67.]

WAC 1-08-220 -----GEOGRAPHICAL SCOPE. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Order 1, § 1-08-220; Eff. 7/1/67.]

WAC 1-08-230 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RIGHT TO TAKE. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint, application, or petition. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas. [Order 1, § 1-08-230; Eff. 7/1/67.]

WAC 1-08-240 -----SCOPE. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. [Order 1, § 1-08-240; Eff. 7/1/67.]

WAC 1-08-250 -----OFFICER BEFORE WHOM TAKEN. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding. [Order 1, § 1-08-250; Eff. 7/1/67.]

WAC 1-08-260 -----AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions. [Order 1, § 1-08-260; Eff. 7/1/67.]

WAC 1-08-270 -----PROTECTION OF PARTIES AND DEPONENTS. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the agency or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories,

or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examiner shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the agency or that business secrets or secret processes, developments or research need not be disclosed, or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the agency or the agency may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency, or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. [Order 1, § 1-08-270 Eff. 7/1/67.]

WAC 1-08-280 -----ORAL EXAMINATION AND CROSS-EXAMINATION. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim. [Order 1, § 1-08-280; Eff. 7/1/67.]

WAC 1-08-290 -----RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [Order 1, § 1-08-290; Eff. 7/1/67.]

WAC 1-08-300 -----SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the

deposition may then be used as fully as though signed, unless on a motion to suppress, the agency holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency or its designated hearing officer for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Order 1, § 1-08-300; Eff. 7/1/67.]

WAC 1-08-310 -----USE AND EFFECT. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not waive a party, or the proxy of a party, or his hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition when introduced by him or any other party. [Order 1, § 1-08-310; Eff. 7/1/67.]

WAC 1-08-320 -----FEES OF OFFICERS AND DEponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken. [Order 1, § 1-08-320; Eff. 7/1/67.]

WAC 1-08-330 DEPOSITIONS UPON INTERROGATORIES--SUBMISSION OF INTERROGATORIES. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories. [Order 1, § 1-08-330; Eff. 7/1/67.]

WAC 1-08-340 -----INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 1-08-250 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. [Order 1, § 1-08-340; Eff. 7/1/67.]

WAC 1-08-350 -----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

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 nonexistence of the material fact assumed or denied in the decision;

(8) Evaluation of evidence. Nothing herein shall be construed to preclude the agency involved or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Order 1, § 1-08-380; Eff. 7/1/67.]

WAC 1-08-390 PRESUMPTIONS. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the 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 nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

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

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

(6) Interference with remedy. That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Order 1, § 1-08-390; Eff. 7/1/67.]

WAC 1-08-400 STIPULATIONS AND ADMISSIONS OF RECORD. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively

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. [Order 1, § 1-08-440; Eff. 7/1/67.]

WAC 1-08-450 SUBMISSION OF DOCUMENTARY EVIDENCE IN ADVANCE. 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 subsection (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. [Order 1, § 1-08-450; Eff. 7/1/67.]

WAC 1-08-460 EXCERPTS FROM DOCUMENTARY EVIDENCE. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in evidence. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Order 1, § 1-08-460; Eff. 7/1/67.]

WAC 1-08-470 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--NUMBER AND QUALIFICATIONS OF WITNESSES. 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. [Order 1, § 1-08-470; Eff. 7/1/67.]

WAC 1-08-480 -----WRITTEN SWORN STATEMENTS. 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:



the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. [Order 1, § 1-08-530; Eff. 7/1/67.]

WAC 1-08-540 PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL-WHO MAY PETITION. Any interested person may petition the agency involved requesting the promulgation, amendment, or repeal of any rule. [Order 1, § 1-08-540; Eff. 7/1/67.]

WAC 1-08-550 -----REQUISITES. 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. [Order 1, § 1-08-550; Eff. 7/1/67.]

WAC 1-08-560 -----AGENCY MUST CONSIDER. 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. [Order 1, § 1-08-560; Eff. 7/1/67.]

WAC 1-08-570 -----NOTICE OF DISPOSITION. The agency shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Order 1, § 1-08-570; Eff. 7/1/67.]

WAC 1-08-580 DECLARATORY RULINGS. As prescribed by RCW 34.04.080 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 nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for an oral hearing or the submission of written evidence upon the matter, and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved.

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

- (a) Issue a binding declaratory rule; or
- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the person that no declaratory ruling is to be issued. [Order 1, § 1-08-580; Eff. 7/1/67.]

WAC 1-08-590 FORMS. Any interested person petitioning the agency for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form for such purpose.

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

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state 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 8½" x 11" or 8½" 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 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 8½" x 11" or 8½" x 13" in size. [Order 1, § 1-08-590; Eff. 7/1/67.]

FROM: _____
(Name of Agency)

TO: CODE REVISER
LEGISLATIVE BLDG (Southwest Corner, Ground Floor)
Olympia 98501

The enclosed Permanent rules , being order No. _____
Emergency rules

relating to (Name of rules or description of subject matter)

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. _____^① filed with the code reviser
on _____^② were regularly adopted as permanent rules of this
(date)
agency at _____ on _____ and are herewith
(place) (date)
filed in the office of the code reviser pursuant to chapter 34.04
RCW. The effective date of such rules shall be _____^③

(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding that the immediate adoption of
these rules is necessary for the preservation of the public
health, safety, or general welfare and that observance of the
requirements of notice and opportunity to present views on
the proposed action would be contrary to the public interest,
were regularly adopted as emergency rules of this agency at
_____ on _____ and are herewith filed in
(place) (date)
the office of the code reviser pursuant to chapter 34.04 RCW.

The undersigned hereby certifies that the requirements of chapter
34.04 RCW and of the Open Public Meetings Act of 1971, chapter
42.30 RCW (1971 ex.s. c 250) have been fulfilled.

Dated this _____ day of _____ 19 .

(AGENCY)

By _____

Title

① NOTICE NUMBER AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY RE-
VISER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE NO. OF LAST NOTICE)
② STAMPED DATE AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVIS-
ER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE DATE OF LAST NOTICE)
③ UNLESS A LATER DATE IS SPECIFIED IN THIS ORDER OR IS PRESCRIBED
IN ANOTHER STATUTE, RULES ARE EFFECTIVE 30 DAYS AFTER FILING:
RCW 34.04.040. LEAVE THIS SPACE BLANK EXCEPT IN SUCH SPECIAL CASES.

FROM: _____
(Name of Agency)

TO: CODE REVISER
LEGISLATIVE BLDG (Southwest Corner, Ground Floor)
Olympia 98501

The enclosed Permanent rules , being order No. _____
Emergency rules
relating to (Name of rules or description of subject matter)

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. _____ ① filed with the code reviser
on _____ ② were regularly adopted as permanent rules of this
(date)
agency at _____ on _____ and are herewith
(place) (date)
filed in the office of the code reviser pursuant to chapter 34.04
RCW. The effective date of such rules shall be _____ ③

(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding that the immediate adoption of
these rules is necessary for the preservation of the public
health, safety, or general welfare and that observance of the
requirements of notice and opportunity to present views on
the proposed action would be contrary to the public interest,
were regularly adopted as emergency rules of this agency at
_____ on _____ and are herewith filed in
(place) (date)
the office of the code reviser pursuant to chapter 34.04 RCW.

The undersigned hereby certifies that the requirements of chapter
34.04 RCW and of the Open Public Meetings Act of 1971, chapter
42.30 RCW (1971 ex.s. c 250) have been fulfilled.

Dated this _____ day of _____ 19__.

(AGENCY)

By _____

Title

① NOTICE NUMBER AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE NO. OF LAST NOTICE)
② STAMPED DATE AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE (IF PROCEEDINGS WERE CONTINUED, USE DATE OF LAST NOTICE)
③ UNLESS A LATER DATE IS SPECIFIED IN THIS ORDER OR IS PRESCRIBED IN ANOTHER STATUTE, RULES ARE EFFECTIVE 30 DAYS AFTER FILING:
RCW 34.04.040. LEAVE THIS SPACE BLANK EXCEPT IN SUCH SPECIAL CASES.
FORM REVISED, EFFECTIVE 8/9/71 [FORM CR-2]

(A)

Chapter 1-08

~~ALL~~

~~PRACTICE AND PROCEDURE IN AND BEFORE AGENCIES~~

~~AND ADOPTING SUCH RULES OF PRACTICE AND PROCEDURE~~

UNIFORM PROCEDURE RULES

WAC

1.08-005 Application and scope of chapter 1-08 WAC.

Chapter 308-08

PRACTICE AND PROCEDURE

- WAC
- 308-08-005 Portions of uniform procedural rules applicable to various subagencies.
 - 308-08-010 Appearance and practice before agency--Who may appear.
 - 308-08-030 -----Solicitation of business unethical.
 - 308-08-040 -----Standards of ethical conduct.
 - 308-08-050 -----Appearance by former employee of agency or former member of attorney general's staff.
 - 308-08-060 -----Former employee as expert witness.
 - 308-08-070 Computation of time.
 - 308-08-080 Notice and opportunity for hearing in contested cases.
 - 308-08-090 Service of process--By whom served.
 - 308-08-100 -----Upon whom served.
 - 308-08-110 -----Service upon parties.
 - 308-08-120 -----Method of service.
 - 308-08-130 -----When service complete.
 - 308-08-140 -----Filing with agency.
 - 308-08-150 Subpoenas--Where provided by law--Form.
 - 308-08-160 -----Issuance to parties.
 - 308-08-170 -----Service.
 - 308-08-180 -----Fees.
 - 308-08-190 -----Proof of service.
 - 308-08-200 -----Quashing.
 - 308-08-210 -----Enforcement.
 - 308-08-220 -----Geographical scope.
 - 308-08-230 Depositions and interrogatories in contested cases--Right to take.
 - 308-08-240 -----Scope.
 - 308-08-250 -----Officer before whom taken.
 - 308-08-260 -----Authorization.
 - 308-08-270 -----Protection of parties and deponents.
 - 308-08-280 -----Oral examination and cross-examination.
 - 308-08-290 -----Recordation.
 - 308-08-300 -----Signing attestation and return.
 - 308-08-310 -----Use and effect.
 - 308-08-320 -----Fees of officers and deponents.
 - 308-08-330 Depositions upon interrogatories--Submission of interrogatories.
 - 308-08-340 -----Interrogation.
 - 308-08-350 -----Attestation and return.
 - 308-08-360 -----Provisions of deposition rule.
 - 308-08-370 Official notice--Matters of law.
 - 308-08-380 -----Material facts.
 - 308-08-390 Presumptions.
 - 308-08-400 Stipulations and admissions of record.
 - 308-08-410 Form and content of agency decisions in contested cases.
 - 308-08-420 Definition of issues before hearing.
 - 308-08-430 Prehearing conference rule--Authorized.
 - 308-08-440 -----Record of conference action.
 - 308-08-450 Submission of documentary evidence in advance.
 - 308-08-460 Excerpts from documentary evidence.

WAC

- 308-08-470 Expert or opinion testimony and testimony based on economic and statistical data--Number and qualifications of witnesses.
- 308-08-480 -----Written sworn statements.
- 308-08-490 -----Supporting data.
- 308-08-500 -----Effect of noncompliance with WAC ~~308-08-470~~ or ~~308-08-480~~.
- 308-08-510 Continuances.
- 308-08-520 Rules of evidence--Admissibility criteria.
- 308-08-530 -----Tentative admission--Exclusion--Discontinuation--Objections.
- 308-08-540 Petitions for rule making, amendment or repeal--Who may petition.
- 308-08-550 -----Requisites.
- 308-08-560 -----Agency must consider.
- 308-08-570 -----Notice of disposition.
- 308-08-580 Declaratory rulings.
- 308-08-590 Forms.

WAC 1-08-005

APPLICATION AND SCOPE OF CHAPTER 1-08 WAC

Chapter 1-08 has been added to the Washington

by the code reviser

Administrative Code Chapter 1-08, effective 1-08-005

on Jan 12, Chapter 239, and 1-08-005.

(Raw 1-08-022) which provides as follows:

(19)

~~34-4-023 Uniform procedural rules on application~~

~~NEW SECTION, Sec. 12. There is added to chapter 234,~~

~~Laws of 1959 and to chapter 34-04 RCW a new section to read~~
~~as follows:~~

" On or before July 1, 1967, the code reviser shall add to Title 1 of the Washington Administrative Code a new chapter to be known as chapter 1-08 WAC--Uniform Procedural Rules, which shall become effective July 1, 1967, and shall govern the administrative practice and procedure in and before all agencies which have not adopted comprehensive rules of practice and procedure prior to that date. Except for the numbering thereof, such rules shall be

identical with the rules contained in WAC 308-08-010 through 308-08-590 as the same existed on January 3, 1966: PROVIDED, That in publishing chapter 1-08 WAC the reviser may revise such terms as are used in chapter 308-08 WAC to describe "agency", "department", "board", "commission", and like terms, so as to enable the use of such rules by multiple agencies.

This section shall not prohibit any such agency from hereafter adopting its own rules of practice and procedure in the manner provided by this chapter, if such agency shall elect to promulgate comprehensive rules on this subject and shall, in the order of adoption, expressly negate any further applicability to such agency of the rules contained in chapter 1-08 WAC. [1967 c 237 § 12.] " [Order], § 1-08.005, eff 7/1/67

CR Adoption of rules of practice and procedure on petition of initiation. WAC 308-08-010-090

(7)

WTC 1-08-007 Agency defined

As used in New Jersey "agency" means any agency as defined in Row 34.0X.010 ~~which has not adopted a performance code of practices and practices prior to July 1, 1967~~ to which the provisions of Row 1-08-022 and WTC 1-08-005 are applicable.

[Order, 5-1-08-007; Eff. 7/1/67.]

(F)

WAC 308-08-005 PORTIONS OF UNIFORM PROCEDURAL RULES APPLICABLE TO VARIOUS SUBAGENCIES. With the purpose of uniformity in mind, the director, under authority granted by statute and pursuant to RCW 34.04. et. seq., does hereby adopt the rules of practice and procedure in the subsequent sections:

(1) Rules WAC 308-08-010 through 308-08-590 apply to administrative procedure in reference to:

RCW Chapter

- 18.32 Dentists
- 18.78 Practical nurses
- 18.85 Real estate brokers and salesmen
- 18.92 Veterinarians
- 21.20 Securities act of the state of Washington
- 46.70 Dealers' licenses (Motor vehicles)

(2) Rules WAC 308-08-540 through 308-08-590 do not apply to the following agencies:

- 18.08 Architects
- 18.36 Drugless healing
- 18.57 Osteopathy
- 18.33 Psychologists
- 46.82 Commercial driver training schools

(3) Rules WAC 308-08-150 through 308-08-220 do not apply to the following agencies:

- 18.15 Barbers
- 18.18 Beauty culture
- 18.22 Chiropodists
- 18.39 Embalmers
- 18.74 Physical therapy
- 46.80 Motor vehicle wreckers
- 81.72 Passenger for hire licenses

(4) Rules WAC 308-08-150 through 308-08-220 and WAC 308-08-540 through 308-08-590 do not apply to the following agencies:

- 18.25 Chiropractors
- 18.29 Dental hygienists
- 18.34 Dispensing opticians
- 18.50 Midwifery
- 18.53 Optometry
- 18.90 Sanitarians
- 43.74 Basic science committee

(5) Only rules WAC 308-08-540 through 308-08-590 apply to the following license procedures under the motor vehicle laws:

- 46.12 Certificates of ownership
- 46.16 Vehicle licenses
- 46.24 Financial and safety responsibility
- 46.28
- 46.76 Motor vehicle transporters
- 46.84 Reciprocity
- 82.36 Liquid fuel tax
- 82.40 Use fuel tax

The exclusion of certain rules or the applicability of certain rules under this section is based upon the statutory authority given to the director of licenses by the legislature of the state of Washington. The word agency as used in these sections is interchangeable used with the word department, commission, or board. [Reg.08.005; Eff. 3/23/60.]

WAC 308-08-010 APPEARANCE AND PRACTICE BEFORE AGENCY--WHO MAY APPEAR. 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) 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. [Reg. 08.010; Eff. 3/23/60.] [Order 1, § 1-08-010; Eff. 7/1/67.]

WAC 308-08-030 -----SOLICITATION OF BUSINESS UNETHICAL. It shall be unethical for persons acting in a representative capacity before the department, ~~commission or board~~ to solicit business by circulars, advertisement or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Reg. 08.030; Eff. 3/23/60.] [Order 1, § 1-08-030; Eff. 7/1/67.] *a agency*

WAC 308-08-040 -----STANDARDS OF ETHICAL CONDUCT. All persons appearing in proceeding before the department, ~~commission or board~~ 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 involved may decline to permit such person to appear in a representative capacity in any proceeding before the agency. [Reg. 08.040; Eff. 3/23/60.] [Order 1, § 1-08-040; Eff. 7/1/67.] *agency*

WAC 308-08-050 -----APPEARANCE BY FORMER EMPLOYEE OF AGENCY OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. No former employee of the department or member of the attorney general's staff may at any time after severing his employment with the department or the attorney general appear 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 department as provided by RCW 42.22.040. [Reg. 08-050; Eff. 3/6/61.] [Order 1, § 1-08-050; Eff. 7/1/67.] *agency*

WAC 308-08-060 -----FORMER EMPLOYEE AS EXPERT WITNESS. No former employee of department, ~~board or commission~~ shall at any time after severing his employment with the state of Washington 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 department, ~~board or commission~~. [Reg. 08.060; Eff. 3/23/60.] [Order 1, § 1-08-060; Eff. 7/1/67.] *the agency*

WAC 308-08-070 COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of their 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. [Reg. 08-070; Eff. 3/23/60.] [Order 1, § 1-08-070; Eff. 7/1/67.]

WAC 308-08-080 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES. In any contested case all parties shall be served with a notice within the statutory time as required by statute ^{governing} of the respective agency or proceeding involved, and in the absence of a statutory requirement, then not less than twenty days before the date set for hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090. [Reg. 08-080; Eff. 3/23/60.] [Order 1, § 1-08-080; Eff. 7/1/67.]

WAC 308-08-090 SERVICE OF PROCESS--BY WHOM SERVED. The department, board or commission 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. [Reg. 08-090; Eff. 3/23/60.] [Order 2, § 1-08-090; Eff. 7/1/67.]

WAC 308-08-100 -----UPON WHOM SERVED. All papers served by either department, board or commission 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. [Reg. 08-100; Eff. 3/23/60.] [Order 1, § 1-08-100; Eff. 7/1/67.]

WAC 308-08-110 -----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. [Reg. 08-110; Eff. 3/23/60.] [Order 1, § 1-08-110; Eff. 7/1/67.]

WAC 308-08-120 -----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. [Reg. 08-120; Eff. 3/23/60.] [Order 1, § 1-08-120; Eff. 7/1/67.]

WAC 308-08-130 -----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. [Reg. 08-130; Eff. 3/23/60.] [Order 2, § 1-08-130; Eff. 7/1/67.]

WAC 308-08-140 -----FILING WITH AGENCY. Papers required to be filed with the involved agency shall be deemed filed upon actual receipt by said agency at the place specified in its rules accompanied by proof of service upon parties required to be served. [Reg. 08-140; Eff. 3/23/60.] [Order 1, § 1-08-140; Eff. 7/1/67.]

WAC 308-08-150 SUBPOENAS--WHERE PROVIDED BY LAW--FORM. Every subpoena shall state the name of the department and the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Reg. 08-150; Eff. 3/23/60.] [Order 1, § 1-08-150; Eff. 7/1/67.]

WAC 308-08-160 -----ISSUANCE TO PARTIES. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The director may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and

reasonable scope of the testimony or evidence sought. ~~(Reg. 08-160; Eff. 3/23/60.)~~ [Order 1, § 1-08-160; Eff. 7/1/67.]

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WAC 308-08-170 ----- ~~FEES~~. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. ~~(Reg. 08-170; Eff. 3/23/60.)~~ [Order 1, § 1-08-170; Eff. 7/1/67.]

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WAC 308-08-180 ----- FEES. Witnesses summoned before the ~~department, commission or board~~ shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. ~~(Reg. 08-180; Eff. 3/23/60.)~~ [Order 1, § 1-08-180; Eff. 7/1/67.]

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WAC 308-08-190 ----- PROOF OF SERVICE. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the ~~department~~ or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the department, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. ~~(Reg. 08-190; Eff. 3/23/60.)~~ [Order 1, § 1-08-190; Eff. 7/1/67.]

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WAC 308-08-200 ----- QUASHING. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the department or its authorized member or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. ~~(Reg. 08-200; Eff. 3/23/60.)~~ [Order 1, § 1-08-200; Eff. 7/1/67.]

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WAC 308-08-210 ----- ENFORCEMENT. Upon application and for good cause shown the ~~department, commission or board~~ will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. ~~(Reg. 08-210; Eff. 3/23/60.)~~ [Order 1, § 1-08-210; Eff. 7/1/67.]

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WAC 308-08-220 ----- GEOGRAPHICAL SCOPE. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. ~~(Reg. 08-220; Eff. 3/23/60.)~~ [Order 1, § 1-08-220; Eff. 7/1/67.]

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WAC 308-08-230 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RIGHT TO TAKE. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint, application, or petition. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas. ~~(Reg. 08-230; Eff. 3/23/60.)~~ [Order 1, § 1-08-230; Eff. 7/1/67.]

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WAC 308-08-240 ----- SCOPE. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. ~~(Reg. 08-240; Eff. 3/23/60.)~~ [Order 1, § 1-08-240; Eff. 7/1/67.]

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 WAC ~~308-08-250~~ -----OFFICER BEFORE WHOM TAKEN. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the ~~department, commission or board~~ or agreed upon by the parties by stipulation in writing filed with the ~~department, commission or board~~. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding. [Reg. 08-250, Eff. 3/23/60.] [Order 1, 81-08-250; Eff. 7/1/67.]

WAC 308-08-260 -----AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions. [Reg. 08-260, Eff. 3/23/60.] [Order 1, 81-08-260; Eff. 7/1/67.]

WAC 308-08-270 -----PROTECTION OF PARTIES AND DEONENTS. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the ~~department, commission or board~~ or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the ~~department, commission, or board~~ or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the affected agency or the agency may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency, or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. [Reg. 08-270, Eff. 3/23/60.] [Order 1, 81-08-270; Eff. 7/1/67.]

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WAC 308-08-280 -----ORAL EXAMINATION AND CROSS-EXAMINATION. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim. [~~Reg. 08-280, Eff. 3/23/60.~~] [Order 1, § 1-08-280, Eff. 7/1/67]

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WAC 308-08-290 -----RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [~~Reg. 08-290, Eff. 3/23/60.~~]

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WAC 308-08-300 -----SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the department, commission or board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency, or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [~~Reg. 08-300, Eff. 3/23/60.~~] [Order 1, § 1-08-300, Eff. 7/1/67]

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WAC 308-08-310 -----USE AND EFFECT. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does

not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party. [Reg. 08-310, Eff. 3/23/60.] [Order 1, § 1-08-310; Eff. 7/1/67.]

WAC 308-08-320 -----FEES OF OFFICERS AND DEponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken. [Reg. 08-320, Eff. 3/23/60.] [Order 1, § 1-08-320; Eff. 7/1/67.]

WAC 308-08-330 DEPOSITIONS UPON INTERROGATORIES--SUBMISSION OF INTERROGATORIES. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within 10 days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories. [Reg. 08-330, Eff. 3/23/60.] [Order 1, § 1-08-330; Eff. 7/1/67.]

WAC 308-08-340 -----INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 308-08-250 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. [Reg. 08-340, Eff. 3/23/60.] [Order 1, § 1-08-340; Eff. 7/1/67.]

WAC 308-08-350 -----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 involved, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent. [Reg. 08-350, Eff. 3/23/60.] [Order 1, § 1-08-350; Eff. 7/1/67.]

WAC 308-08-360 -----PROVISIONS OF DEPOSITION RULE. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule. [Reg. 08-360, Eff. 3/23/60.] [Order 1, § 1-08-360; Eff. 7/1/67.]

WAC 308-08-370 OFFICIAL NOTICE--MATTERS OF LAW. The 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 reviser.

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

(4) Agency organization. The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar. [Reg. 08-320, Eff. 3/23/60. Order 1, 61-08-370, Eff. 7/1/67.]

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WAC 308-08-380 ----- MATERIAL FACTS. In the absence of controverting evidence, the agency involved 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 involved 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 department commission or board 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 involved 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 involved or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Reg. 08-390; Eff. 3/23/60.] [Order 1, § 1-08.390; Eff. 7/1/67.]

WAC 308-08-390 PRESUMPTIONS. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the agency involved, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

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

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

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

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

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

(6) Interference with remedy. That evidence, with respect to a material fact which in bad faith is destroyed, eloiigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Reg. 08-390; Eff. 3/23/60.] [Order 1, § 1-08-390; Eff. 7/1/67.]

WAC 308-08-400 STIPULATIONS AND ADMISSIONS OF RECORD. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon whom binding. Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a 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 of the agency involved 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. [~~Reg. 08-400; Eff. 3/23/60.~~] [Order 1, § 1-08-400; Eff. 7/1/67.]

WAC 308-08-410 FORM AND CONTENT OF AGENCY DECISIONS IN CONTESTED CASES. 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. [~~Reg. 08-410; Eff. 3/23/60.~~] [Order 2, § 1-08-410; Eff. 7/1/67.]

WAC 308-08-420 DEFINITION OF ISSUES BEFORE HEARING. 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 hearing on relevant and material matter only. [~~Reg. 08-420; Eff. 3/23/60.~~] [Order 2, § 1-08-420; Eff. 7/1/67.]

WAC 308-08-430 PREHEARING CONFERENCE RULE--AUTHORIZED. In any proceeding the agency involved 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 issues;
- (2) The necessity of amendments to the pleading;
- (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. [~~Reg. 08-430; Eff. 3/23/60.~~] [Order 1, § 1-08-430; Eff. 7/1/67.]

WAC 308-08-440 -----RECORD OF CONFERENCE ACTION. The agency involved 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. [~~Reg. 08-440; Eff. 3/23/60.~~] [Order 1, § 1-08-440; Eff. 7/1/67.]

WAC 308-08-450 SUBMISSION OF DOCUMENTARY EVIDENCE IN ADVANCE. Where practicable the department, commission or board 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 subsection (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. ~~[Reg. 08-450 Eff. 3/23/60.]~~ [Order 1, § 1-08-450; Eff. 7/1/67.]

WAC 308-08-460 EXCERPTS FROM DOCUMENTARY EVIDENCE. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing 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. ~~[Reg. 08-460; Eff. 3/23/60.]~~ [Order 1, § 1-08-460; Eff. 7/1/67.]

WAC 308-08-470 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--NUMBER AND QUALIFICATIONS OF WITNESSES. 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. ~~[Reg. 08-470; Eff. 3/23/60.]~~ [Order 1, § 1-08-470; Eff. 7/1/67.]

WAC 308-08-480 -----WRITTEN SWORN STATEMENTS. 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. [Reg. 08-480; Eff. 3/23/60.]

WAC 308-08-490 -----SUPPORTING DATA. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties shall 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 WAC 308-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record. [Reg. 08-490; Eff. 3/23/60.]

WAC 308-08-500 -----EFFECT OF NONCOMPLIANCE WITH WAC 308-08-470 or 308-08-480. 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 WAC 308-08-470 or 308-08-480, 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. [Reg. 08-500; Eff. 3/23/60.]

WAC 308-08-510 CONTINUANCES. 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 involved 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 department, commission, board 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. [Reg. 08-510; Eff. 3/23/60.]

WAC 308-08-520 RULES OF EVIDENCE--ADMISSIBILITY CRITERIA. 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. [Reg. 08-520; Eff. 3/23/60.]

WAC 308-08-530 -----TENTATIVE ADMISSION--EXCLUSION--DISCONTINUANCE--OBJECTIONS. 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. [Reg. 08-530; Eff. 3/23/60.]

[Order 1, 81-08-530; Eff. 7/1/67.]
 WAC 308-08-540 PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL--WHO MAY PETITION. Any interested person may petition the agency involved requesting the promulgation, amendment, or repeal of any rule. [Reg. 08-540; Eff. 3/23/60.]

[Order 1, 81-08-540; Eff. 7/1/67.]
 WAC 308-08-550 -----REQUISITES. 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. [Reg. 08-550; Eff. 3/23/60.]

[Order 1, 81-08-550; Eff. 7/1/67.]
 WAC 308-08-560 -----AGENCY MUST CONSIDER. All petitions shall be considered by the agency involved and the department agency involved may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Reg. 08-560; Eff. 3/23/60.]

[Order 1, 81-08-560; Eff. 7/1/67.]
 WAC 308-08-570 -----NOTICE OF DISPOSITION. The agency involved shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Reg. 08-570; Eff. 3/23/60.]

[Order 1, 81-08-570; Eff. 7/1/67.]
 WAC 308-08-580 DECLARATORY RULINGS. As prescribed by RCW 34.04.080 any interested person may petition the agency involved for a declaratory ruling. The department, commission or board shall consider the petition and within a reasonable time the agency involved shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or ~~matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.~~
- (3) Set a reasonable time and place for an oral hearing or the submission of written evidence upon the matter, and give reasonable notification to the person of the time and place for such hearing or submission and of the issues involved.

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

- (a) Issue a binding declaratory rule; or
- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the person that no declaratory ruling is to be issued.

[Order 1, 81-08-580; Eff. 7/1/67.]
 WAC 308-08-590 FORMS. Any interested person petitioning the agency involved for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the

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

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state 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 8½" x 11" or 8½" 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, admendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by 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 8½" x 11" or 8½" x 13" in size. [Reg. 08.590, Eff. 3/23/60.]

[Handwritten: 28-590; Eff. 7/1/59]